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Race, Immigration Law, and the U.S.-Mexico Border: A history of the Border Patrol  
and the Mexican-origin population in the Southwest

A thesis submitted in partial satisfaction of the requirements for the degree  
Master of Arts

in

Latin American Studies

by

Brandon Salvador Luna

Committee in charge:

Professor Robert R. Alvarez, Chair  
Professor Tomás Jiménez  
Professor Luis Alvarez

2008

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Chair

University of California, San Diego

2008

## DEDICATION

To my mother, Carol Luna. And to the rest of my *familia* and friends, thanks for all of your love and support!

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## ABSTRACT OF THE THESIS

Race, Immigration Law, and the U.S.-Mexico Border: A history of the Border Patrol  
and the Mexican-origin population in the Southwest

by

Brandon Salvador Luna

Master of Arts in Latin American Studies

University of California, San Diego, 2008

Professor Robert Alvarez, Chair

This thesis interrogates notions of race and the history of immigration law to investigate the history of the U.S. Border Patrol. What were the historical developments that contributed to the establishment and maintenance of the Border Patrol, and how was race influential in this development? This thesis critically engages the theme of race in regards to the creation and development of the United States Border Patrol at the U.S.-Mexico border. In particular I concentrate upon the history of the Mexican-origin population in the U.S. and how the racialization of this population, combined with the emergence of the Border Patrol, helped equate “Mexican” with the terms “illegal”, “alien” and “wetback”. From this perspective I ask “How have notions of race in the Southwest U.S. shaped the creation and

maintenance of the U.S. Border Patrol and contributed to the ‘illegalization’ of the Mexican-origin population?” I argue that the United States Border Patrol uses racially discriminatory enforcement tactics, such as interrogating persons based solely upon their racial “appearance”, that have disproportionately impacted the Mexican-origin population since its founding to the present. This thesis serves as a social history of the Border Patrol in the Southwest, looking at how the emergence of the agency and its development since 1924 has impacted the Mexican-origin population. By focusing on early conceptions of race in the Southwest and immigration law I discuss how the Border Patrol emerged as an agency that uses discriminatory enforcement measures, from its establishment up to the present.



## **Chapter 1: Overview, Relevance & Organization of the Thesis**

The vehicle-mounted computer is just one piece of Chertoff's efforts to revolutionize the nation's border with Mexico. Besides the installation of high-tech surveillance tools meant to create a virtual fence, he is spearheading the construction of 670 miles of real fence and a rapid expansion of the Border Patrol. . . .Chertoff wants 18,000 border agents by the end of the year, up from about 15,300, double the number when President Bush took office in 2001.<sup>1</sup>- Nicole Gaouette,  
Los Angeles Times Staff Writer

Though many agencies are responsible for security at the U.S.-Mexico border it is the United States Border Patrol, one of the largest law enforcement agencies in the nation with 15,000-plus agents, which serves as the primary patrol force at United States borders.<sup>2</sup> The agency has a long history of over eighty years of enforcement operations, fusing militaristic operating procedures and law enforcement tactics in order to deter unauthorized entry to the U.S. and enforce law at the border.

These U.S. Border Patrol operations, employed in order to prevent unauthorized entry, include: Operation Wetback (1954), Operation Hold the Line (1993), Operation Gatekeeper (1994), Operation Safeguard (1999) and the Intelligence Reform and Terrorism Prevention Act of 2004. These operations serve as important examples of how the Border Patrol approaches its task of upholding the law at the border. The rapid growth and expansion of the agency, combined with technology and the militarization of the border and increased funding has now transformed the

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<sup>1</sup> Nicole Gaouette, "On the Border with Michael Chertoff". Los Angeles Times Online. April 19, 2008  
Stable URL:< <http://www.latimes.com/news/nationworld/world/la-na-chertoff19apr19,1,3833607.story>>

<sup>2</sup> "A Day in the Life of CBP - Fiscal Year '07 Statistics Published". Customs and Border Protection Online. Stable URL:  
<[http://www.cbp.gov/xp/cgov/newsroom/fact\\_sheets/cbp\\_overview/fiscal\\_year.xml](http://www.cbp.gov/xp/cgov/newsroom/fact_sheets/cbp_overview/fiscal_year.xml)>

Border Patrol agency into an omni-present entity at the U.S.-Mexico border.<sup>3</sup>

Increased governmental and social pressure to “secure our borders”, combined with the reorganization of the Border Patrol under the Department of Homeland Security (DHS), have allowed increases in government funding that have never been seen before in the history of the Border Patrol. The Immigration and Naturalization Service (INS), which the Border Patrol agency was formally organized under, is now defunct as most agencies formerly under the INS have been reorganized under the Department of Homeland Security. Customs and Border Protection (part of DHS), of which the Border Patrol is now organized under, is the new agency that oversees the Border Patrol. Other agencies that are responsible for immigration enforcement and border protection include Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (USCBP). ICE is responsible for workplace raids, warrants and interior enforcement while USCBP mans locations such as official ports of entry, airports, and U.S. seaports. The Border Patrol is responsible for all land and sea borders excluding official ports of entry. The increased efforts to “secure our borders” has placed the Border Patrol at the top of the list of largest law enforcement agencies in the United States, only second to the Federal Bureau of Investigation.<sup>4</sup> Yet despite this history of operations and the continued growth of the agency there exists a limited amount of scholarly work published about the history of the

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<sup>3</sup> for a detailed account of the militarization of the border see Timothy J. Dunn’s *The Militarization of the U.S.-Mexico Border*. Austin: CMAS Books, 1996.

<sup>4</sup> Randal C. Archibold, “Border Patrol Draws Scrutiny as Its Role Grows”. June 4, 2006. New York Times Online. Stable URL:  
<[http://www.nytimes.com/2006/06/04/us/04border.html?\\_r=1&oref=slogin](http://www.nytimes.com/2006/06/04/us/04border.html?_r=1&oref=slogin)>

organization, with no complete published scholarly history of the United States Border Patrol.<sup>5</sup>

This thesis aims to critically engage the theme of race in regards to the creation and development of the United States Border Patrol<sup>6</sup> at the U.S.-Mexico border. In particular I concentrate upon the history of the Mexican-origin population in the U.S. and how the racialization<sup>7</sup> of this population, combined with the emergence of the Border Patrol, helped equate “Mexican” with the terms “illegal”, “alien” and “wetback”. From this perspective I ask “How have notions of race in the Southwest U.S. shaped the creation and maintenance of the U.S. Border Patrol and contributed to the ‘illegalization’<sup>8</sup> of the Mexican-origin population?” I maintain that the history of

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<sup>5</sup> Scholars such as Kelly Lytle-Hernandez, Josiah McC. Heyman, Timothy Dunn, Joseph Nevins, Leo Chavez, and Mae M. Ngai have all produced work that focused on and/or discusses the U.S. Border Patrol. In particular, Lytle-Hernandez, Heyman, Dunn, Ngai and Nevins have produced scholarly articles/publications that discuss/analyze the Border Patrol in great depth. Each scholar has focused upon specific instances or time periods such as: Operation Gatekeeper by Nevins, Border Patrol 1924-1955 by Lytle-Hernandez, Militarization of the Border by Dunn, B.P. agents of Mexican ancestry by Heyman.

<sup>6</sup> The U.S. Border Patrol is responsible for all land and sea borders, but this thesis directly focuses on the Border Patrol at the U.S.-Mexico border and does not cover other borders (e.g. U.S.-Canada border) patrolled by the agency.

<sup>7</sup> I define racialization as the socio-legal process of establishing privilege based upon race, granting power to a particular group (based on “whiteness”) while relegating those outside the group to an unequal socio-economic and political standing. Further this process limits any possibilities of political and/or socio-economic mobility within society. This definition is similar to Martha Menchaca’s definition that states: “I define this process of racialization as the use of the legal system to confer privilege upon Whites and to discriminate against people of color.” from *Recovering History, Constructing Race: The Indian, Black, and White Roots of Mexican Americans*. University of Texas Press: Austin, 2001. Also similar, see Laura E. Gomez’ discussion about race: “Racial categories and racial differences are socially constructed; rather than having inherent significance, race is historically contingent and given meaning by persons, institutions, and social processes.” in *Manifest Destinies: The Making of the Mexican American Race*. New York: New York University Press, 2007.

<sup>8</sup> I define illegalization as the process in which no distinction has been made between authorized or documented immigrants and U.S. citizens versus undocumented immigrants and ALL persons of

race in the Southwest U.S., particularly after the U.S.-Mexico War (1846-1848), helped propel racially-based immigration laws that ultimately lead to the creation of the Border Patrol in 1924 and led to the policing of the Mexican-origin population. The Border Patrol was established to patrol the border, but as scholars suggest<sup>9</sup> and as I agree, the Patrol policed the Mexican-origin population rather than policing the border.

This thesis argues that the United States Border Patrol uses racially discriminatory enforcement tactics, such as interrogating persons based solely upon their racial “appearance”, that have disproportionately impacted the Mexican-origin population from 1924 to present. The argument I make is similar to Kelly Lytle Hernandez’ argument about the policing of *Mexicanos* by the Border Patrol from 1924 to 1955. I extend Lytle-Hernandez’ argument to the current time, showing that although time has passed and the U.S. has undergone significant social, economic and political changes many of the early discriminatory tactics of the Border Patrol still exist. Though ideas about race and racial differences have changed over time and space I contend that the Border Patrol continues to use race as a marker for

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Mexican-origin have been equated to being “illegal” or “alien”, similar to Mae M. Ngai’s “alien citizenship” concept. This concept, as defined by Mae M. Ngai in *Impossible Subjects*, is that “Asian Americans and Mexican Americans born in the United States with formal U.S. citizenship but remained alien in the eyes of the nation.” Introduction, pg. 8

<sup>9</sup> In Kathleen (Kelly) Lytle-Hernandez’ dissertation titled “Entangling Bodies and Borders: Racial Profiling and the United States Border Patrol, 1924-1955” (2002) she argues the Border Patrol racially profiled Mexicanos (both Mexican nationals and Mexican-Americans) and policed this population rather than policing the border. Timothy J Dunn makes a similar case in *The Militarization of the U.S.-Mexico Border: Low Intensity Conflict Doctrine Comes Home* (1996), stating “Thus, a growing federal police force with greatly expanded legal authority was largely devoted to overseeing and controlling people of Mexican origin.” p.156. Alfredo Mirande in *Gringo Justice* states the Border Patrol “was created to protect American capitalists and their property from the so-called depredations carried out by Mexicans.” p. 110

interrogations, surveillance, and apprehension of persons of Mexican-origin. The failure of the Border Patrol to recognize the diversity of the Mexican-origin population, especially in regards to one's phenotypical appearance determining their citizenship status, has consequentially led to the harassment and abuse of U.S.-born/naturalized citizens, legal permanent residents, visa-holders and cross-border workers of Mexican-origin.<sup>10</sup> As Scott Michaelsen observes:

Generalized 'foreignness,' thought to its limit, here long has been associated with criminality, and documented Mexican nationals, undocumented Mexicans, and Chicanos all have shouldered the burden...At the border 'itself,' or at its 'functional equivalent' (the checkpoint set up at least twenty five, and no more than one hundred, miles away from the border), simply looking Mexican is judged inherently suspicious and a sound reason for interference.<sup>11</sup>

In particular discrimination and confrontation along the border between the Border Patrol and their supporting agencies and persons of Mexican-origin have been part and parcel to the history of the Border Patrol. Gilberto Rojas, in "The Thickening Borderlands: Diffused Exceptionality and 'Immigrant' Social Struggles during the 'War on Terror'", argues "the establishment of the Border Patrol in the 1920s institutionalized an already pervasive racial logic; the collapsing of brown skin, impoverishment and nationality as racial difference."<sup>12</sup> I agree with Rojas about the

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<sup>10</sup> U.S.-born citizens are those born in the United States of Mexican-origin. Naturalized citizens are those who have gone through the legal processes of naturalization and are citizens of the U.S. but were born in Mexico. Legal Permanent Residents (LPR's), Visa holders, and cross-border workers are those persons who are authorized to be in the U.S. but are not naturalized citizens.

<sup>11</sup> Scott Michaelsen, "Between Japanese American Internment and the USA PATRIOT Act: The Borderlands and the Permanent State of Racial Exception". *Aztlan*. 30:2 Fall 2005. 87-111. pg. 89, 96.

<sup>12</sup> Gilberto Rojas, "The Thickening Borderlands: Diffused Exceptionality and 'Immigrant' Social Struggles during the 'War on Terror'". *Cultural Dynamics* 2006; 18; 335-349. p. 339

founding and the development of the Border Patrol and argue that racial difference is heavily correlated with brown skin to determine nationality. Based on notions of race that developed during the late nineteenth to early twentieth century the early Border Patrol (1924-1955) acted in discriminatory and often violent ways.<sup>13</sup> I argue that these discriminatory and violent modes of operation continue and that although ideas about race and racial difference have changed over time, discrimination and violence along the border perpetuated by the Border Patrol against the Mexican-origin population still persists. Furthermore I argue that immigration law and enforcement has “illegalized” the Mexican-origin population, equating the Mexican-origin population with illegality and as a foreign population since the early twentieth century. As Kelly Lytle-Hernandez’ suggests: “The material meaning of Border Patrol practice Mexicanized both the idea of the “illegal” immigrant and the structures of surveillance, interrogation, apprehension, and deportation that accompanied it.”<sup>14</sup>

The historical legacy of U.S. racism and discrimination has changed over time, but its relevance during the early years of the Border Patrol is just as important then as it is today. The Mexican-origin population has both been considered “white” and non-white, or part of a separate “Mexican” in the United States. The social processes of “creating” races and racial differences between the Mexican-origin population and whites have informed Border Patrol practices since the agency has been created. Once

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<sup>13</sup> see Clifford Alan Perkins’ *Border Patrol: With the U.S. Immigration Service On the Mexican Boundary 1910-1954*. Texas Western Press: El Paso, 1978 and Kelly Lytle Hernandez’ dissertation *Entangling Bodies and Borders: Racial Profiling and the United States Border Patrol, 1924-1955* (2002) UCLA.

<sup>14</sup> Lytle-Hernandez, *Entangling Bodies*. p. 17

explicit and written directly into federal and state law and practiced through discriminatory tactics, especially against the Mexican-origin population<sup>15</sup>, racially-based laws have for the most part been abolished from the law books. Despite such developments the United States Supreme Court “stated in 1975 that ‘Mexican appearance’ constitutes a legitimate consideration under the Fourth Amendment for stopping a person to verify his or her immigration status.”<sup>16</sup> Increased checkpoints on roads and freeways have led to a number of cases designated as instances of racial profiling in the Southwestern United States, particularly in California.<sup>17</sup> In addition human and civil rights abuses against persons of Mexican-origin, both Mexican American and Mexican nationals, continue to cast a shadow over the legitimacy and operation of the Border Patrol.<sup>18</sup>

Violence along the border against persons of Mexican-origin by the Border Patrol highlights the impact of the increased presence of the U.S. Border Patrol,

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<sup>15</sup> Mexican-origin population refers to both Mexican nationals and U.S.-born or naturalized Mexicans in the United States. Laws that determined citizenship, especially state laws during the late 19<sup>th</sup> to early 20<sup>th</sup> century, combined with de facto & de jure segregation of the Mexican-origin population, impacted the opportunities for socio-economic and political participation and mobility in the Southwest U.S.

<sup>16</sup> Kevin R. Johnson referring to U.S. Supreme Court Case “United States v. Brignoni-Ponce 1975” in “Race Profiling in Immigration Enforcement”. Human Rights Magazine, American Bar Association. Stable URL:<<http://www.abanet.org/irr/hr/winter01/johnson.html>>

<sup>17</sup> see Adalberto Aguirre Jr.’s “Profiling Mexican American Identity: Issues and Concerns”. American Behavioral Scientist 2004; 47; pp. 928-942. Aguirre provides three examples of public officials (A federal judge, mayor and lawyer) of Mexican-origin whom were interrogated by the Border Patrol based upon their racial profile.

<sup>18</sup> see John F. Dulles’ *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*. Published in conjunction with the Arizona, California, New Mexico and Texas Advisory Committees to the United States Commission on Civil Rights. DIANE Publishing Company: Darby, 1997.

discriminately affecting the Mexican-origin population. A number of shootings involving Border Patrol agents and supporting agencies demonstrates how the increased presence of agents and militarization of the border disproportionately affects the Mexican-origin population. The shooting death of an 18 year-old U.S. citizen of Mexican-descent named Ezequiel Hernandez in 1997 by a U.S. Marine illustrates the tragic consequence of using military troops at the border. The four-man Marine team was surveying a suspected drug route by the Rio Grande at the request of the U.S. Border Patrol and was cleared of any wrongdoing despite conflicting reports about the incident from the Texas Rangers and local prosecutors.<sup>19</sup> The shooting and injuring of Osvaldo Aldrete-Davila in 2005 at the U.S.-Mexico border by Border Patrol agents Ignacio Ramos and Jose Campeon led to the incarceration of the agents for a number of crimes for 11 and 12 years in prison, respectively. Aldrete-Davila, fleeing from the agents unarmed and on foot, was shot while running back to Mexico after abandoning a van loaded with drugs. Campeon and Ramos were charged with violating Aldrete-Davila's civil rights, tampering with evidence for not reporting the shooting and because Agent Campeon picked up the shell casings after the shooting. The shooting death of Javier Dominguez-Rivera (2007) age 22 by Border Patrol agent Nicholas Corbett during the apprehension of Dominguez-Rivera at the U.S.-Mexico border also displays how aggressive enforcement has led to the death of unauthorized immigrants

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<sup>19</sup> "Grand jury doesn't indict Marine in border shooting". CNN Online. August 14, 1997. Stable URL: <<http://www.cnn.com/US/9708/14/border.shooting/>>



at the border.<sup>20</sup> Corbett claimed self-defense but three witnesses, persons apprehended with Dominguez-Rivera, stated that Dominguez-Rivera was not threatening Agent Corbett's life and that the shooting was unjustified.

These cases demonstrate just a handful of the many cases of violence involving the Border Patrol and persons of Mexican-origin. One major issue with cases regarding civil or human rights violations is that there is no central committee or independent task force assigned to handle complaints from civilians about the Border Patrol. The United States Commission on Civil Rights Advisory Boards of Arizona, California, New Mexico and Texas investigated the situation at the U.S.-Mexico border in their report *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities* (1997). The Advisory Boards summarize the issue of Civil Rights at the border, stating:

Border Communities in the Southwest are uniquely impacted by the presence of large-scale Federal immigration law enforcement activity and often times this serves to diminish civil rights protection, especially for Hispanics. The committees also conclude that the existing mechanisms for redress of alleged misconduct by Federal immigration authorities are inadequate, inaccessible and lack the confidence of the communities most directly affected. Finally, the committees were presented with substantial testimony and information indicating that a pattern of abusive treatment by the U.S. Border Patrol might exist. While the committees were unable to verify or confirm many of the allegations, the large numbers and severity of abuse complaints are a cause of deep concern.<sup>21</sup>

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<sup>20</sup> Brentin Mock, "Immigration Backlash: Hate Crimes Against Latinos Flourish". Southern Poverty Law Center Intelligence Report Winter 2007, Online. Mock discusses all three cases and the details of the mentioned cases and other hate crimes. Stable URL:<  
<http://www.splcenter.org/intel/intelreport/article.jsp?aid=845>>

<sup>21</sup> John F. Dulles' *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*. Published in conjunction with the Arizona, California, New Mexico and Texas Advisory Committees to the United States Commission on Civil Rights. DIANE Publishing Company: Darby, 1997. Letter Transmittal, Introduction.

The tracking and verifying of Civil and Human Rights abuses by the Border Patrol is a challenge, but organizations such as the Border Action Network and American Friends Service Committee have produced reports and publications to help shed light on issues of abuse at the border.

Why is the “Hispanic” community susceptible to such discrimination? How those in power, particularly government institutions such as Congress, the former Immigration and Naturalization service and now the Department of Homeland Security, have viewed race and used these conceptions of race to inform their policies and procedures has had significant impacts upon the Mexican-origin population. Early conceptions of race helped shape these views and informed their decisions to allow discriminatory practices to occur. Those of Mexican-origin, both Mexican-Americans and Mexican nationals, have been considered a separate and distinct race while also being categorized as “white” in the Southwest U.S. during the late nineteenth and twentieth centuries.<sup>22</sup> The racial categorization of the Mexican-origin population in the Southwest during this period, both as “white” and “Mexican”, has been a complex process. As Laura E. Gomez states in *Manifest Destinies* “Mexican Americans came to occupy a position in the American racial hierarchy that was

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<sup>22</sup> Laura E. Gomez, *Manifest Destinies: The Making of the Mexican American Race*. New York: New York University Press, 2007. pg. 87. Also see Neil Foley’s *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture*. Berkeley: University of California Press, 1997, Ian Haney Lopez’ *White by Law: The Legal Construction of Race*. New York: University Press, 1996, Claire Sheridan’s “‘Another White Race:’ Mexican Americans and the Paradox of Whiteness in Jury Selection”. *Law & History Review*, Spring 2003 Vol. 21, No. 1., and Juan F. Perea’s “A Brief History of Race and the U.S.-Mexican Border”. *UCLA Law Review* 283 (2003).

between white and non-white, or what I have termed ‘off-white’”.<sup>23</sup> The Treaty of Guadalupe Hidalgo in 1848 afforded federal citizenship to Mexicans choosing to stay in the new territories, legally categorizing Mexicans as “white” in certain respects. But as Gomez and others suggest the social sphere of relations and interactions between the Mexican-origin population and the Anglo-American population proved otherwise, as Mexicans were designated as a separate race through social practice.<sup>24</sup> Despite citizenship status Mexican-Americans were also deemed as a separate, non-white group. David Gutierrez states that “Mexican Americans increasingly became a situational or circumstantial ethnic group as a result of the persistent racism and discrimination they experienced in the United States.”<sup>25</sup> The social practice of differentiating Mexicans as a separate race had a critical impact upon the socio-economic and political standing of the Mexican-origin population and is discussed in chapter two.

Furthermore, processes of racial categorization combined with the history of Mexican immigration to the U.S. has contributed to the construction of persons of Mexican-origin categorized as “illegal”, “alien” and “wetback”. These labels, perpetuated by early Border Patrol officials, restrictionists, nativists, and other anti-immigrant parties eventually became popular terms used by the media, society-at-

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<sup>23</sup> Laura E. Gomez, *Manifest Destinies: The Making of the Mexican American Race*. New York: NY University Press, 2007. p. 84

<sup>24</sup> see footnote 16.

<sup>25</sup> David G. Gutierrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity*. Berkeley: University of California Press, 1995. p. 7

large, and even by academics. Though now not as socially acceptable, especially the term “wetback”, these terms are still used today.<sup>26</sup> As Richard Read notes in The Oregonian’s (Portland, OR) special series on the now-defunct Immigration and Naturalization Service in December 2000, some “supervisors[of the INS] and officers call foreigners ‘wets’—for wetbacks—and ‘tonks’, U.S. Border Patrol slang for the sound of a flashlight hitting and illegal immigrant’s head.”<sup>27</sup> The attitude highlighted by Read’s article shows that though agents have come and gone throughout the years the categorization of Mexican-origin persons as “wetbacks” and violence against unauthorized immigrants, evidenced by the term “tonks”, continues. I discuss both the history of racialization and the construction of the Mexican as “illegal”, “alien”, and “wetback” in chapters two and three.

In addition I discuss the Asian-origin population in the U.S. during the late nineteenth and early twentieth century. The Asian-origin population was the first target of exclusionary immigration law, specifically Chinese immigrants that were banned with the passage of the Chinese Exclusion Act of 1882. The earliest

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<sup>26</sup> I do not contend that ALL persons mentioned use such terminology but instead offer my analysis about the inception and spreading of the terms mentioned. For details about recent controversy over the use of the word “wetback” see the following articles: “Hispanic Community Blasts Councilman For ‘Wetbacks’ Remark”, June 4, 2008. KITV Online, KITV Channel 4 ABC Honolulu, HI. Stable URL:<<http://www.kitv.com/mostpopular/16503208/detail.html>>, “Mustang Ridge official defends use of word ‘wetback’” by Marty Toohey, American-Statesman staff writer. Austin American-Statesman Online. Stable URL:<<http://www.statesman.com/news/content/news/stories/local/03/22/0322laws.html>>, “Brandeis professor under fire for description of racial epithet” by Mark Pratt AP Writer, Boston Globe. January 24, 2008. Stable URL:<[http://www.boston.com/news/local/massachusetts/articles/2008/01/24/brandeis\\_professor\\_under\\_fire\\_for\\_description\\_of\\_racial\\_epithet/](http://www.boston.com/news/local/massachusetts/articles/2008/01/24/brandeis_professor_under_fire_for_description_of_racial_epithet/)>.

<sup>27</sup> Richard Read, “Overwhelmed, demoralized INS develops culture of abuse, racism.” Thursday December 14, 2000. The Oregonian ONLINE. Stable URL:<[http://www.oregonlive.com/ins/index.ssf?/news/oregonian/00/12/lc\\_51cultr14.frame](http://www.oregonlive.com/ins/index.ssf?/news/oregonian/00/12/lc_51cultr14.frame)>

immigration officers at the U.S.-Mexico border were stationed to patrol for Chinese immigrants who were attempting unauthorized entry at the border in violation of the exclusion act. It was not until the Border Patrol was established in 1924 that the shift from focusing on Chinese immigrants to focusing on the Mexican-origin population at the U.S.-Mexico border would take place. Furthermore the Asian-origin population, like the Mexican-origin population, did not “fit” into the existing U.S. racial paradigm defined by “white” and “black”. Therefore discussing the Asian-origin population and the history of Asian immigration and racialization provides a comparative analysis of both populations. As Natalia Molina, in *Fit to be Citizens? Public Health and Race in Los Angeles, 1879-1939*, notes: “Asians and Mexicans were not easily classified into racial categories. They were neither white nor black. What position should they occupy in the racial order?”<sup>28</sup> The position the Asian and Mexican-origin populations occupied in the racial order during the late nineteenth and early twentieth century is reviewed in chapter two.

The main focus of this thesis is the Mexican-origin population. The reason for this focus is two-fold. The first reason for this focus is because of the history of the Mexican-origin population in the Southwest, both as a colonized population and as an immigrant population throughout U.S. history. Through the conquest and colonization of the Mexican-origin population in the Southwest, combined with Anglo-American conceptions of race and racial difference, the Mexican-origin population was afforded

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<sup>28</sup> Natalia Molina, *Fit to be Citizens? Public Health and Race in Los Angeles, 1879-1939*. Berkeley: University of California Press, 2006. p. 5

“second-class” citizenship status.<sup>29</sup> As Oscar J. Martinez contends “the status of Mexicans in U.S. society became one of conquered subjects and foreigners in their own homeland.”<sup>30</sup> Also, with an unprecedented history of immigration to the U.S., both authorized and unauthorized, the Mexican-origin population continually interacts and encounters immigration enforcement agencies such as the U.S. Border Patrol.<sup>31</sup>

The second reason for focusing on the Mexican-origin population is the size and density of the population in the Southwest U.S. The U.S. Census estimates that 28.3 million persons of Mexican-origin live in the United States in 2008. Out of the total population almost three-fourths of the population, or 17.86 million, live in the states of California and Texas.<sup>32</sup> Based on the number of persons living in California and Texas, both Border States, the probability for encounters between persons of Mexican-origin and the Border Patrol is substantial. Also with an estimated 28 percent of “Hispanic” border patrol agents, many of Mexican-origin, focusing on this particular population and their participation within the agency provides an example of the dynamics of race and the Border Patrol. In other words an agency which has

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<sup>29</sup> Laura E. Gomez, *Manifest Destinies: The Making of the Mexican American Race*. Introduction pg. 2

<sup>30</sup> Oscar J. Martinez, *Troublesome Border*. Rev. Ed. Tucson: University of Arizona Press, 2006

<sup>31</sup> Of the estimated 11-12 million unauthorized immigrants in the U.S. the Pew Hispanic center states that 6.2 million are of Mexican-origin. For detailed information see article “Size and Characteristics of the Unauthorized Migrant Population in the U.S. Estimates Based on the March 2005 Current Population Survey” by Jeffrey S. Passel, Senior Research Associate, Pew Hispanic Center March 7, 2006. Stable URL:<<http://pewhispanic.org/reports/report.php?ReportID=61>>. The overall foreign-born population of immigrants from Mexico is estimated at 11.53 million for 2006. see “Statistical Portrait of the Foreign-Born Population in the United States, 2006”. Pew Hispanic Center Online January 23, 2008. Stable URL:< <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=36>>

<sup>32</sup> U.S. Census Bureau Online. “Facts for Features; Cinco de Mayo”. March 5, 2008. Stable URL:<[http://www.census.gov/Press-Release/www/releases/archives/facts\\_for\\_features\\_special\\_editions/011613.html](http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/011613.html)>

historically discriminated against the Mexican-origin population now has a significant population of Hispanic agents.

In order to investigate further this complexity I conduct interviews with nine agents and discuss questions about their cultural background and how they view their position as agents of the state. Of the nine agents eight identified as being of Mexican-origin. How does an agency, nicknamed “*la Migra*” by the Mexican-origin community and known for discrimination against persons of Mexican-origin, recruit and promote persons of Mexican-origin? Is the hiring of persons of Mexican-origin a defense tactic of the Border Patrol that allows the agency to show that it does not practice discriminatory tactics? How can the Border Patrol put into practice racially based discrimination when the agency itself contains a large number of Hispanic agents and is headed by Chief David V. Aguilar, an agent who has a Latino surname? As Rojas suggests “it bears noting that as of 2001 some 40 percent of the Border Patrol was Latino, according to a spokesman for the Tucson sector of this police force, disrupting an essentialist, largely phenotypical, understanding of racism and exceptionalism.”<sup>33</sup> The idea of racial symbolism, or hiring for purposes of appearing “diverse” by an agency, is important in my discussion about Hispanic Border Patrol agents.<sup>34</sup> I discuss the following questions in chapter four where I describe the

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<sup>33</sup> Rojas, “The Thickening Borderlands”. p. 341

<sup>34</sup> John Skretny defines racial symbolism: “Racial symbolism refers to situations where employers believe that there will be benefits from having others perceive different races play certain roles in an organization—or working for an organization in any capacity.” pg. 123-124, in “Are America’s Civil Rights Laws Still Relevant”. *Du Bois Review*, 4:1 (2007) 119-140.

interviews and provide analysis about how racial symbolism can be applied in my analysis of the interviews and the agents.

### **Organization of the Thesis**

In order to support my claims I use a variety of resources and discuss a number of topics. I follow changes that take place in the U.S. Southwest from 1848 to the present, including the creation and maintenance of the U.S. Border Patrol. In particular I trace how early ideas about the Mexican-origin population as a separate race, as well as the Asian-origin population during the late nineteenth to early twentieth century, impacted the status of these populations. I then outline how these conceptions, specifically about the Mexican-origin population, impacted early immigration law. A review of the history of immigration law focused upon race-based exclusion illustrates how these early laws influenced the development of the National Origins Act of 1924. The National Origins Act established immigration quotas based on nationality, while simultaneously calling for creation of the United States Border Patrol. Though the National Origins Act did not establish immigration quotas for the Western Hemisphere it did change the nature of existing immigration patterns between the U.S. and Mexico and began the process of enforcement and fortification at the U.S.-Mexico border. This analysis helps establish the connections between anti-immigrant laws, xenophobia and racism while revealing the historical context in which the Border Patrol was created. I then trace the creation and the development of



the Border Patrol and highlight examples of discrimination against the Mexican-origin population, from its early years at the Southwest border to the present.

This thesis is a social history of the United States Border Patrol at the U.S.-Mexico border that examines the history of immigration law and race in the U.S. Southwest in order to identify the historical connections between these early policies and the establishment and development of the agency. I trace these developments in a chronological manner, highlighting the expansion of the agency and its impact upon the U.S.-Mexico border and the Mexican-origin population. The agency has changed since 1924, from a small, loose-knit agency to one of the largest law enforcement agencies in the nation. During this time the demographic makeup of the agency has changed, as well as the presence of the agency at the Border (both size and expansion) and the utilization of technology and physical barriers. What has remained constant is the use of racial markers in enforcement procedures by the Border Patrol. In addition, through a critical race framework that interrogates the theme of race throughout the history of the Southwest, this thesis investigates the ways in which the Border Patrol developed in response to the Mexican-origin population. This framework recognizes the impact race has and continues to have upon U.S. society. This impact, or “legacy of race”, recognizes “the role race has played and continues to play in American society in shaping both group relations and individual life chances.”<sup>35</sup> The recognition of race as a critical element of U.S. history locates race as the central theme in this thesis.

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<sup>35</sup> Laura E. Gomez, *Manifest Destinies*. p. 2-3

Through the use of primary sources such as interviews and biographical accounts I inquire about the micro-level activity taking place “on the ground”. An “insider’s” perspective of the agency is provided by texts such as Clifford Alan Perkins’ *Border Patrol: With the U.S. Immigration Service On the Mexican Boundary 1910-1954* (1978), and autobiographical account of his service as an early Border Patrol agent. Additionally Josiah McC. Heyman’s article "U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police" (2002) provides in-depth interviews with 104 INS agents, 33 of Mexican-origin. I am able to analyze the Border Patrol through the use of secondary documents and government reports, but how can I gain insight about the everyday activities of the agents and their perspectives that contributes to the existing literature?

In order to address this question I concluded that I needed to look further into the possibility of conducting my own interviews. I was able to conduct eight interviews with Border Patrol agents in the San Diego-El Centro region of Southern California and ask nine questions about their cultural background, the impact of their cultural background on their job, demographic changes they may have witnessed during their employment and what challenges they may have faced as Border Patrol agents. This helps establish an inside look into the agency itself and lets the agents voice their opinions and insights about working for the Border Patrol.

Secondary sources such as scholarly publications (books, dissertations, and articles), newspaper and media articles, and official government reports provide insights about how policies are created, enacted and enforced or laxly enforced at the

U.S.-Mexico border. The use of newspaper and media articles helps capture the particulars of everyday activities at the border. These articles, though journalistic and not produced in an academic manner, provide up-to-date information about current events and day-to-day developments along the U.S.-Mexico border. Through the use of newspaper, magazine and other media outlet articles I am able to provide a current analysis of the issues affecting the U.S. Border Patrol. These issues include increased cases of Border Patrol agent corruption, continuing discrimination of the Mexican-origin population, the emergence of vigilante groups such as the Minute Men, and the increasing number of deaths of unauthorized immigrants along the U.S.-Mexico border. Combining these various sources captures the numerous perspectives and viewpoints about the U.S. Border Patrol. These sources reveal the changing nature of the Border Patrol and provide examples of how race informs the operation and enforcement tactics of the Border Patrol.

The thesis is organized as follows. Chapter one establishes the argument of the thesis, which is the Border Patrol discriminately “patrols” the Mexican-origin population instead of the border, from its inception to the present and that immigration law and enforcement has led to the categorization of the Mexican-origin population as “foreign” and “illegal”. Chapter one also states the relevance of the thesis and state of the field regarding “Border Patrol” studies, and presents a definition about race and how race is utilized in this thesis. I also discuss how the Border Patrol has changed over time since its establishment, and how violence along the U.S.-Mexico Border between Anglo-Americans and the Mexican-origin population throughout the history

of the Southwest. This violence is inextricably linked to the violence perpetuated by the Border Patrol against those of Mexican-origin. Chapter two covers 1882-1924 and deals with early immigration law and the pre-Border Patrol era. In particular this chapter discusses early exclusionary laws and the Texas Rangers, early Immigration agents (patrolling for undocumented Chinese immigrants) and the U.S. Immigration service. Chapter three covers the early Border Patrol era from 1924-1964 and deals with the National Origins Act of 1924, the early challenges the Border Patrol faced during its preliminary existence, the *Bracero* program beginning in 1942, and Operation Wetback 1954. Chapter four discusses the Border Patrol and immigration law from 1965 to present. Topics covered in chapter four include the Immigration Reform Act of 1965, the Immigration Reform and Control Act of 1986 and the changing “face” of the Border Patrol. This changing nature, not only regarding demographics but also the size of the agency and structure (technology, barriers, logistics and communication) is discussed in this chapter. In order to get a more personal, individual perspective of how the agents view their job and its duties eight interviews with Border Patrol agents from the Southern California region are presented. The concluding section of chapter four discusses the current state of the agency and the State’s mission to “secure” the U.S.-Mexico border. In the conclusion I revisit my main points of the thesis and offer concluding remarks.

## **Relevance**

Limited scholarly work has been published concerning the Border Patrol.<sup>36</sup> Yet the Border Patrol has grown at an intense rate over the last decade and now serves as a governmental institution that is mentioned in media outlets throughout the United States on a daily basis regarding the continuing debate(s) over undocumented immigration. But what are the origins of the Border Patrol at the U.S.-Mexico border? What was the historical context before and during the establishment of the Border Patrol, and what were the early years of the agency like? With limited amounts of scholarly work produced that focuses upon Border Patrol history, this thesis will serve as a foundation for further Border Patrol research. In this thesis I contribute to understanding the Border Patrol and the ways in which race and immigration laws are important factors in the history of the agency. As the agency grows and continues to be a significant government institution it is my hope that further research will be conducted regarding the Border Patrol and its history.

The relevance of the Border Patrol in today's political, social, and cultural climate, especially regarding the "war on terrorism", secure borders, and unauthorized immigration can not be overstated. Current legislation continues to transform the U.S.-Mexico border through increased patrols, checkpoints, border "fences", "virtual fences", UAV's (unmanned aerial vehicles), motion-detecting sensors, stadium

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<sup>36</sup> The existing scholarly work regarding the Border Patrol will be discussed in the "Border Patrol Studies" section of chapter one.

lighting and night vision cameras.<sup>37</sup> President George W. Bush has appropriated funds throughout his presidency for increased staffing of agents at the border, technology and logistics for the U.S. Border Patrol, and has pushed for increased barrier construction throughout the 2,000 mile-long border.<sup>38</sup> Michael Chertoff, United States secretary of Homeland Security, faces the daunting task of attempting to “close off” the United States-Mexico border from unauthorized immigrants, drug smugglers, and any other possible law breakers. As Chertoff states "To me, the most important thing we're doing at the border is showing the American people that if we make a judgment that we need to do something and we promise to do it, we'll do it,".<sup>39</sup> How have these judgments, promises, and the implementation of such policies influenced the way in which the border<sup>40</sup> has been patrolled? In the year 2008 the debate over undocumented immigration continues, as President Bush and the U.S. congress have fallen short of producing any “comprehensive” and bipartisan legislation in response to the issue of undocumented immigration and immigration in general. As the U.S. prepares for a presidential election in fall 2008 concerns about the U.S.-Mexico border and how the agency that is responsible for patrolling the border operates and expands will remain on the political and social radar.

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<sup>37</sup> See Wayne A. Cornelius' article “Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy”. *Population and Development Review* 24(4)661-685 (December 2001).

<sup>38</sup> *Ibid.* p. 661

<sup>39</sup> Nicole Gaouette, “On the Border with Michael Chertoff”. *Los Angeles Times Online*.

<sup>40</sup> border, borders, etc. will refer specifically to the U.S.-Mexico border, unless otherwise indicated.

### **State of the Field, “Border Patrol Studies”**<sup>41</sup>

Five scholars are particularly relevant to the production of this thesis. These scholars also make up the field of what I call “Border Patrol Studies”. This field focuses on the Border Patrol through disciplines including History, Anthropology, Geography, and Sociology. Josiah McC. Heyman and Kelly Lytle-Hernandez are both scholars who have investigated the Border Patrol, approaching the agency from different disciplines and investigating different time periods. Mae M. Ngai, though not directly investigating the Border Patrol itself, discusses the Border Patrol and Immigration and Naturalization Service in great lengths in her book *Impossible Subjects* (2004). Joseph Nevins’ book *Operation Gatekeeper* (2004) provides an in-depth analysis of the preceding developments and implementation of Operation Gatekeeper in San Diego, California in 1994. In similar fashion Timothy J. Dunn provides a detailed account of the massive buildup of agents, infrastructure, technology and barriers since the late 1970s in *The Militarization of the U.S.-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home*.

The state of the field is in its beginning stages in regards to directly focusing on the Border Patrol, though the field of U.S.-Mexico Border studies is quite established. Literature produced regarding the Border Patrol is limited at this current time but my hope is that as the issues of unauthorized immigration and immigration enforcement continue to be relevant. The overall trends of the field vary, with the

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<sup>41</sup> This term is used to reference scholars whose research is directly or indirectly related to the Border Patrol. This is a generic term and in no way implies that there is actually a dedicated field or organization that studies the patrol, but instead is used to target and identify a specific group of scholars who have produced scholarly works in relation to the Border Patrol.

scholars mentioned focusing on different time periods, themes, and through different disciplinary “lenses”. A heavy emphasis is placed upon policy analysis by scholars Nevins and Dunn, as they highlight the continual development and implementation of policies impacting Border Patrol operations. Ngai, Heyman, and Lytle-Hernandez all interrogate the theme of race and the history of the Southwest, situating the Mexican-origin population within the racial hierarchy of the U.S. Southwest. Furthermore they argue that the Mexican-origin population has been historically discriminated against and racialized in the process.

I contribute to the field by providing an analysis of the Border Patrol from its establishment in 1924 to the present. This analysis, which argues that racial profiling tactics of the Border Patrol has unequally discriminated against persons of Mexican-origin, contributes to the existing literature regarding the agency and how race has played a central factor in the history of the Border Patrol. My argument illustrates how the practice of race-based stops and apprehensions continue today, substantiating Lytle-Hernandez’ argument and extending this argument to the present. Additionally I present interviews with Border Patrol agents, which adds to the existing literature of agent interviews. All mentioned scholars have made significant contributions to the field of Border Patrol studies and I outline these contributions as follows.

I begin with Kelly Lytle-Hernandez and her dissertation titled *Entangling Bodies and Borders: Racial Profiling and the United States Border Patrol, 1924-1955* (2002). Lytle-Hernandez contributes immensely to the field of Border Patrol studies with her work, drawing connections between early eras of racial formation in the



Southwest U.S. and how these notions of race contributed to racial profiling tactics of early Border Patrol agents. The analysis she provides has been extremely helpful during the production of this thesis. She was able to access the National Records Administration archives in Washington D.C. By accessing these records she was able to organize and document files that had not been previously accessed and was able to use primary and secondary sources directly from the Border Patrol's internal correspondence, records and reports. Through detailed investigation she was able to critically engage race as a central theme in the history of the Border Patrol.

Kelly Lytle-Hernandez' work reminds us that race is fundamental to any discussion about Border history, especially during the early years of the Border Patrol. Her dissertation focuses upon the historical development of racial divides at the U.S.-Mexico border and the history of the Border Patrol from 1924-1955. The legacy of conflict during the fight for Texas independence and the U.S.-Mexico War, Jim Crow laws, residential and school segregation contributed to the "imagination of difference" between Mexican and Anglo populations in the Southwest.<sup>42</sup> Through this imagination of difference a social and legal process of differentiation placed the Mexican-origin population on an unequal footing with Anglo-American populations in the late nineteenth to early twentieth century, extended second-class citizenship to Mexicans. In turn these historical developments created the racial divides that Lytle-Hernandez discusses. Specifically, Lytle-Hernandez looks at how the Border Patrol used these racial divides, from segregation law to laws inhibiting the equal rights of

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<sup>42</sup> Lytle-Hernandez, pg. 30

Mexicans, to police people of Mexican origin instead of patrolling the Mexican border. This created what Hernandez calls “the largest color line” in the United States, dividing not only Anglo-Americans and Mexicans but Mexican-Americans as well. Lytle-Hernandez traces the emergence of the Patrol and its early attempts to curb undocumented Chinese immigration at the southern border and the eventual transformation of the agency from a small unit into a federal institution. This build up was in response to increased undocumented immigration and the onset of the prohibition era (resulting in alcohol smuggling). But how did the Border Patrol go from an agency patrolling the border to an agency patrolling Mexicanos, as Lytle-Hernandez states?

Lytle-Hernandez contends that the image of the “wetback” as Mexican and later the “illegal alien” as Mexican have been constructed through racial formation. She employs Michael Omi and Howard Winant’s definition of racial formation, which is the “sociohistorical process by which racial categories are created, inhabited, transformed and destroyed.”<sup>43</sup> In other words the history of conflict, coupled with existing notions of race in the Southwest U.S., helped create an ideology in which the Mexican was deemed as unequal to the Anglo. Lytle-Hernandez utilizes Ngai’s argument that Border Patrol practice’s (1924-1955) operated to create a new site of racial formation to the U.S.<sup>44</sup> In this history the border emerged as a point of contention, the dividing line of the American “free white race” and the “half-savage,

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<sup>43</sup> Lytle-Hernandez, pg. 17-citation from Michael Omi and Howard Winant’s *Racial Formation in the United States*. pg. 55

<sup>44</sup> Ibid., pg. 17

half-civilized race of Mexico”<sup>45</sup>. But in reference to the “half-savage, half-civilized race of Mexico” Lytle-Hernandez argues that no distinction was made between Mexican-Americans and Mexican nationals, blurring the lines between immigrant and citizen. Hernandez explains that to be brown along the U.S.-Mexico border equated to being subject to interrogations, deportations, and vengeance campaigns while being white equated to being exempt from such scrutiny.<sup>46</sup> In other words race was equated with “illegality”, and thus all brown bodies, according to Lytle-Hernandez, were subject to surveillance and harassment by the Border Patrol. The establishment and development of the Border Patrol helped reinforce notions about who belonged in the Nation<sup>47</sup> versus those who did not, with ethnic identity often blurring the lines of who was presumed to be a U.S. citizen and who was not. Through the policing of “Mexicanos”, as Lytle-Hernandez argues, and not policing the border the Patrol further aligned the idea of the “illegal alien” or “wetback” with the Mexican-origin population.

Heyman, an Anthropologist, has investigated the bureaucracy of the Immigration and Naturalization Service.<sup>48</sup> His article titled "U.S. Immigration

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<sup>45</sup>Ibid., pg. 3

<sup>46</sup> Ibid., p. 71

<sup>47</sup> the United States of America, as a nation-state.

<sup>48</sup> Heyman has produced three articles regarding the Immigration and Naturalization Service (now agencies organized under the Department of Homeland Security, including Immigration and Customs Enforcement and Customs and Border Protection. I discuss the most relevant article to this thesis, but the other two articles are also extremely informative. See “Putting Power in the Anthropology of Bureaucracy: The Immigration and Naturalization Service at the Mexico-United States Border”. *Current Anthropology*. Vol. 36, No. 2, (Apr. 1995), pp. 261-287 & “Respect for Outsiders? Respect for

Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police" (2002) focuses upon the issue of ethnicity and ethnic solidarity in regards to immigrants and Border Patrol agents. He examines the complex ways that Border Patrol officers view themselves, their duties, and the migrants they come in contact with. Heyman's article addresses agents of Mexican ancestry and focused upon what Heyman describes as possibilities of "ethnic solidarity". This form of solidarity presumes that there is a possibility for recognition of shared ethnic experiences that may occur between two individuals of similar ethnic or cultural background, in particular focusing on Mexican-American INS agents and the immigrants, a majority Mexican, which they come in contact with. The evidence provided by Heyman's article shows that a majority of agents of Mexican origin did not create feelings of solidarity or compassion for Mexican immigrants. The possibility for solidarity between the agents and the immigrants stems from the idea that since the Mexican-origin population as a whole in the border region has been discriminated against there may be possibilities for ethnic solidarity based upon this shared historical experience. The historical discrimination Heyman discusses originates from the relationship between those of Mexican-origin<sup>49</sup> (both Mexican nationals and Mexican-Americans) and Anglo-Americans in the Southwest during the late eighteenth century and throughout the nineteenth century. Heyman states "Mexican-Americans historically

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the Law? The Moral Evaluation of High-Scale Issues by US Immigration Officers". *The Journal of the Royal Anthropological Institute*. Vol. 6, No. 4, (Dec. 2000), pp. 635-652.

<sup>49</sup> The term Mexican-origin or Of Mexican Descent refers to all peoples of Mexican ancestry, both Mexican nationals and Mexican-Americans.

have been treated as a separate ‘race’ in this region, blurring the lines between them and people in Mexico.”<sup>50</sup> Due to the discriminatory practice of unequal treatment based on race of Mexican-origin persons in the Southwest United States Heyman proposes that “cross-national ethnic solidarity” is a possible outcome of agent-immigrant interactions.<sup>51</sup> This racialization process, which paradoxically labeled those of Mexican-origin as “white” in certain legal terms while segregating Mexican populations through residency laws and segregated schools, is seen by Heyman as a site of possible solidarity because of the harsh treatment received by those of Mexican-origin deemed non-white.<sup>52</sup>

Heyman does not discuss the critical issue of diversity within the Mexican-origin population, as Mexican-American and Mexican Immigrant solidarity should not be considered an automatic outcome of “shared” history or experience of discrimination. As Matt S. Meier and Feliciano Ribera state “an important characteristic of Mexican Americans [including Mexican immigrants] is that they do not form a homogenous group politically, socially, or racially.”<sup>53</sup> Due to generational differences of length of time in the United States, socio-economic status, individual historical experiences, citizenship status, and varying degrees of European,

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<sup>50</sup>Heyman, p. 482

<sup>51</sup>Ibid., p. 482

<sup>52</sup> Claire Sheridan discusses in the Historical Context section of her article the contrasting ways that the Mexican-origin population was viewed in the Southwest U.S. in her article titled “‘Another White Race:’ Mexican Americans and the Paradox of Whiteness in Jury Selection”. Found in the *Law & History Review*, Spring 2003 Vol. 21, No. 1.

<sup>53</sup> Matt S. Meier and Feliciano Ribera, *Mexican Americans/American Mexicans: From Conquistadors to Chicanos*. Revised edition of *The Chicanos*. New York: Hill and Wang, 1993. p. 6

Indigenous, and African ancestry the Mexican-origin population is extremely diverse. The issue of diversity within the Mexican-origin population serves to complicate the notion of ethnic solidarity.

Heyman interviewed 104 agents, 33 of Mexican descent. Heyman's main contention is that a culmination of relationships between the individual and institutions of citizenship (such as the state-sponsored institutions previously mentioned) and the life history of the individual create the attitudes which agents foster toward outsiders (immigrants). The agents, as citizens of the United States employed by a state bureaucracy within the primary labor market, find little room for comparison between themselves and the often low-educated and underprivileged undocumented immigrants from Mexico or Latin America they come in contact with. The majority of agents Heyman interviews are Mexican-American who identify themselves as U.S. citizens, often with patriotic or nationalistic sentiments. Such attitudes, according to the evidence presented by Heyman's ethnographic account, often allow for little or no form of ethnic solidarity between the Mexican-origin agents and Mexican immigrants. Heyman also discusses language, drawing a linguistic connection between those agents who are fluent in Spanish and the immigrants they detain or with whom they come in contact with; a majority of these immigrants being Latino. Despite this linguistic connection of Spanish fluency between many of the agents and the immigrants, Heyman's evidence suggests that attitudes and perspectives of the agents remains constant. The general attitude that Heyman's respondents report is that they "are just doing their job", and that the economic needs of their immediate family

outweigh any possible forms of solidarity that would cause them to question their choice of employment.<sup>54</sup>

What makes the perception of agents of Latino background any different than non-Latino agents? According to Heyman “their case remains intriguing because their development as citizens motivated them to join a law enforcement agency openly and overwhelmingly directed at people of their own national origin”.<sup>55</sup> Timothy J. Dunn (1996) also discusses the ethnicity of Border Patrol agents, providing an interesting analysis and call for further investigation regarding the issue:

Another important point to keep in mind is that a substantial proportion of new Border Patrol agents were Latinos, particularly Mexican Americans. It seems clear that the employment of Latino agents has been a growing trend over the past fifteen years, at least. This development raises a number of thought-provoking issues regarding race and ethnic relations and the role of police agencies in shaping them, because most of those apprehended by the Border Patrol are Mexican immigrant and the patrol has long focused much of its enforcement efforts on Mexican American communities. Unfortunately, data on trends in the employment of Latino agents in the Border Patrol were not readily available. Nonetheless, this is a vital issue, meriting in-depth investigation and analysis elsewhere.<sup>56</sup>

By positing this idea Heyman and Dunn shows there are numerous possible contradictions or conflicts that may arise regarding Latino Border Patrol agents. On the one hand the agency is capturing unauthorized Latino immigrants while on the other they are recruiting document Latinos to serve within the agency to facilitate the

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<sup>54</sup> Josiah McC. Heyman, “U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens and Immigration Police”. *Current Anthropology* Volume 43 Number 3, June 2002. p. 487

<sup>55</sup> Ibid. p. 483

<sup>56</sup> Timothy J. Dunn. *The Militarization of the U.S.-Mexico Border: Low Intensity Conflict Doctrine Comes Home*. CMAS Books: Austin, 1996. p. 50

process of apprehension and due process. Due to the complexity of racial/ethnic identity I do not generalize that Latinos or Mexican-Americans should necessarily form solidarity strictly based on shared ethnicity and realize there are a number of ways such interactions (between agents and immigrants) can take place.

By utilizing Heyman's article we can see that a number of possible scenarios may arise when considering ethnic identity and employment as an agent of the state. When investigating Mexican-American Border Patrol agents there are a number of considerable factors that could contribute to the ways in which agents view themselves in relation to the unauthorized immigrants they come in contact with. First, in Mexican and Mexican-American culture the Border Patrol, also known as "*la Migra*", has been stigmatized as a burdensome agency.<sup>57</sup> As Alfredo Mirande points out in *Gringo Justice* "for most Mexicans in the United States, moreover, the Border Patrol (*la Migra*), like the Texas Rangers, remains a symbol of American domination and exploitation."

Yet some agents of Mexican-origin may have not experienced or heard of the history of the Border Patrol and their interactions with the Mexican-origin population. At one extreme an agent of Mexican-origin may themselves have been at one point in time an unauthorized immigrant or may have family members who are unauthorized immigrants, possibly legalized through the Immigration Reform and Control Act of

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<sup>57</sup> see Kevin R. Johnson's article "The Forgotten 'Repatriation' of Persons of Mexican Ancestry and Lessons for the 'War of Terror'". *Pace Law Review*, Vol. 26 Fall 2005 No.1. Also see Alfredo Mirande's *Gringo Justice*.



1986, and have family members who have strong ties and sentiments with Mexico.<sup>58</sup>

At the other the agent may be many generations removed from the immigration process, have little command of the Spanish language, and may have never been to Mexico with a minimal level of experience of interacting with Mexican nationals. An agent may have grown up in a region other than the U.S.-Mexico border region or the U.S. Southwest, or may hail from a border city such as San Ysidro, California or Calexico, California. It is this wide range of possibilities that propelled me to attempt to conduct my own interviews, which will be discussed in detail in chapter four.

Timothy J. Dunn's *The Militarization of the U.S.-Mexico Border, 1978-1992* covers the intense militarization of the border over two decades with a historical overview of the border and the conflicts waged between the United States and Mexico. Dunn specifically focuses upon the militarization of the border; the introduction of new strategies, language, technologies and official operating procedures that created a "war zone" at the Border through the implementation of the low-intensity conflict doctrine. Through a detailed analysis of U.S. policy at the border Dunn investigates how policies were created and implemented at the U.S.-Mexico border.

Focusing on historical context, Dunn provides a critique of early U.S. policies and actions that allowed for the annexation of Northern Mexico, identifying the Southwest region as an "internal colony" for those of Mexican descent.<sup>59</sup> Dunn

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<sup>58</sup> a friend of mine who joined the Border Patrol discussed his early citizenship status in a similar vein as the scenario I am discussing here.

<sup>59</sup> Dunn uses Mario Barrera's "internal colony" model which argues "that the Chicano population has historically been maintained in a subordinate position through the imposition of a colonial labor system

maintains that the state and Anglo-Americans helped establish and maintain social control through various means of subordination, including land appropriation, theft, dubious legal challenges, squatting, and other means as well. In this instance racial or ethnic lines were established and conflict ensued, leading to bloody conflicts such as the Cortina War (1859-1860) and the Plan de San Diego incident (1915). Reaction to these incidents included official state responses of deploying troops to the Border region to quell any attempt at an uprising and the emergence of the Texas rangers. Dunn show the ways in which the border served as a site of conflict between Mexicans and Anglos during the late nineteenth and early twentieth centuries.

Dunn's focus is placed upon the state's attempt at curbing undocumented immigration and drug smuggling at the border. He focuses on early attempts of enforcement and how immigration policies and attitudes toward Mexican immigration often changed, depending on the state of domestic and world affairs in the United States. Using the notion of a "revolving door" policy, Dunn explains how the U.S. would often allow Mexican immigrants to enter the U.S. through legal and illegal means (National Origins Act of 1924), and then "close" the door to allow raids and deportations to occur (Great Repatriation of 1930, Operation Wetback 1954).<sup>60</sup>

Utilizing the term "low-intensity conflict" doctrine, Dunn argues that the U.S. adopted military like tactics that are often used in guerilla or urban warfare scenario, comparing these tactics to ones used during the battles in Central America in the

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that not only shaped racial and ethnic relations in earlier times but also, to a lesser extent, has endured in the contemporary period." p. 6 *The Militarization of the U.S.-Mexico Border* (1996).

<sup>60</sup> Ibid., p. 14

1980s (El Salvador & Nicaragua).<sup>61</sup> As the U.S. adopted these strategies at the border the undocumented immigrant and drug smuggler was seen as the “enemy” in the war on undocumented immigration and drugs. A switch from apprehension at the border to prevention at the border took place, as the “Tortilla Curtain”, or the first early border fence, was erected in the late 1970s.<sup>62</sup> The establishment of infrastructure, technology and barriers would continue in high-apprehension regions such as San Diego and El Paso, with the introduction of military technology such as night vision, helicopters, motion detecting sensors in the ground, and m-14/m-16 automatic weapons. As we can see today this militarization continues to be intensified, with the introduction of UAV’s (Unmanned Aerial Vehicles) and new triple-layered fences with patrol roads between the fences.

Dunn concludes by reiterating the fact that the LIC (low intensity conflict) approach, causing increased militarization at the border, has led to increased human rights abuses that are consistent and not exceptions to the rule. Dunn reminds the reader that the increased militarization at the U.S.-Mexico border should not come as a surprise, as the border serves as the United States direct contact with neighboring, “third world” Mexico. The LIC doctrine has been implemented by U.S. funded and supported factions throughout Latin America and the third world with similar effects. Dunn criticizes the militarization model due to the fact that there is not a military threat present at the border, yet also points out that the presence of drug smugglers creates a need for increased weaponry and tactics.

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<sup>61</sup> Ibid., p. 29

<sup>62</sup> Ibid., p. 38

During the time this book was published, in the early 1990s, little had been written in regards to the militarization of the Border and the INS response to policing the region. The utilization of Dunn's text helps illustrate the increasing militarization of the U.S.-Mexico border, specifically from a policy-oriented perspective. Dunn contributes to the literature of Border Patrol studies by providing his in-depth analysis of policies and their implementation at the Border by showing how policies in theory do not always achieve their intended goals and often create unintended consequences and reactions (e.g. increased deaths at the border and the sophistication of immigrant & drug smugglers). Dunn adds that the implications of this militarization, along with the phenomenon itself, have not been fully researched and or recognized. Mentioning the recently passed North American Free Trade Agreement (1994) and the Los Angeles riots (1992) Dunn discusses the potential of increased repression and subordination of marginalized groups through the increased militarization and enforcement tactics in the border region. While maintaining the separation between the U.S. and Mexico, controlling the flow of undocumented immigration from various urban centers towards rural regions, and maintaining surveillance and patrol regimes in the potentially unstable border region, the INS, now the Customs and Border Protection, remains a crucial arm of the state and must continually be looked at as an important research topic. According to Dunn the INS and the militarization approach should be ceased, and a more respectful and just approach must be applied to guarantee civil liberties and rights to those groups who are discriminated against by law enforcement organizations.

Joseph Nevins' *Operation Gatekeeper* contributes a significant case study to Border patrol studies. His investigation into Operation Gatekeeper, implemented in San Diego, California in 1994, provides a thoroughly detailed analysis of enforcement at the U.S.-Mexico border. Nevins' connects a number of local, regional, state and national policies and attitudes that contributed to the realization of Operation Gatekeeper. Nevins take on the development of Operation Gatekeeper is two-fold. He argues that a combination of micro- and macro-level factors led to the development and execution of Gatekeeper, and that the execution of such operations (including Operation Blockade a.k.a. Hold-The-Line) has promoted an idea of a normal and non-problematic border. In other words state, national, and regional issues (historic, social, political, economic, and cultural) have combined and created the promotion of increased boundary policing and build-up while simultaneously fostering a "natural" sentiment of "secure borders" in the Southwest.<sup>63</sup> Nevins highly succeeds in establishing a historical context for the U.S.-Mexico border and I would argue that his focus upon a specific region and operation help highlight a microcosm of the U.S.-Mexico border as a whole. By looking at the San Diego-Tijuana region Nevins accomplishes the task of highlighting the regional similarities and differences between both this area and other "twin-city" areas along the Border.

By both referencing national political and cultural ideology, while also discussing regional and local sentiment Nevins reiterates the long existing dichotomy at the U.S.-Mexico border: the local vs. the national. Since the sole responsibility of

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<sup>63</sup> Joseph Nevins, *Operation Gatekeeper*. (2004) p. 131

regulating immigration is of the federal government local officials have often responded in a non-conforming manner, attempting to pass policies and initiate local change, with the pinnacle of such action being Proposition 187 in California. I do believe that Nevins, though he does construct the idea of the “citizen” vs. the “alien/other”, could have furthered his coverage of the history of the Southwest with an infusion of further discussion about the issue of race in the borderlands. The history of violence in the border region, especially based upon race in reference to the Texas Rangers and the lynching of Mexicans, is highly relevant when discussing the eventual creation of the Border Patrol. Nevins does thoroughly cover the construction of the “illegal”, the “wetback”, the “Mexican other”, providing historical analysis of the ways in which state and non-state institutions and actors contributed to undocumented immigration and a heavily reliance on cheap, temporary labor. The eventual outcome of this development was the Mexican immigrant becoming the “illegal” immigrant. Nevins point that the mere existence and heavy reliance upon border fortification to stem the “tide” of undocumented immigration at the U.S.-Mexico border further perpetuates anti-immigrant sentiment is important.

Nevins use of primary documents when discussing the San Diego-Tijuana region was especially effective in my view, bringing the large debate about immigration on the national stage home to the locale. The example about those in San Diego (especially North County) having little or no connection or knowledge about their southern neighbor differs from many other “twin-cities”. The reality is that San Diego is both connected and disconnected from Tijuana, at one point praising while at

the same time criticizing. The execution of Operation Gatekeeper, Operation Blockade, and any future operations serve as a reminder that there is indeed a border war going on, at least in the eyes of the federal government who approaches border enforcement from a highly-militaristic standpoint. And as Nevins suggests, as long as such activity is seen as a “natural” consequence of the U.S.-Mexico border there will be minimal controversy about the implementation of such operations. Nevins makes the case that not only is the implementation of these operations crucial, but the media coverage and praise such operations may receive is also of importance. Combined with government statistics that “show” operations are indeed working help, Nevins argues that the “perception” of secure borders by the U.S. public is just as important as actually executing procedures to secure the U.S.-Mexico border.<sup>64</sup> Drawing from Nevins’ text helps reveal the connections between the various levels of government involved in law enforcement and immigration enforcement at the U.S.-Mexico border. His detailed and critical analysis of Operation Gatekeeper contributes to the existing body of literature about the Border Patrol.

Mae M. Ngai’s *Impossible Subjects: Illegal aliens and the making of modern America* adds to the body of literature regarding the Border Patrol by detailing the socio-historical processes that constructed Asian and Mexican-origin populations as “alien”. Her concept of “alien citizenship”, which she defines as “Asian Americans and Mexican Americans born in the United States with formal U.S. citizenship but who remained alien in the eyes of the nation” recognizes the failure of authorities and

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<sup>64</sup> Ibid., p. 12

the American public to differentiate between foreign-born nationals, including unauthorized immigrants, and U.S.-born citizens.<sup>65</sup> Ngai recognizes the process of “legal racialization” as contributing to the idea that these ethnic groups, because of their national origin, are “foreign and unassimilable to the nation.”<sup>66</sup> Through the legal and social process of “othering” the Mexican and Asian populations in the Southwest Ngai argues that these groups were recognized or treated as equals of Anglo-Americans. Her “alien citizenship” concept is critical to Border Patrol studies because it reaffirms the agency’s failure to distinguish between Mexican-Americans and Mexican-nationals, resulting in the policing of all Mexican-origin persons. Her concept also emphasizes the idea of Mexican and Asian populations as unassimilable, illustrating the idea held by some that national origin impedes the ability to assimilate.<sup>67</sup> Ngai also provides details about the early years of the Border Patrol and its development, but her focus on the making of “illegal aliens” serves as her major contribution to Border Patrol studies.

These authors serve as the best examples of Border Patrol scholars, providing critical perspectives that employ issues such as race, citizenship, identity, and assimilation in their investigations of the Border Patrol and immigration. Chicano scholar Alfredo Mirande, author of *Gringo Justice* (1978), also contributes to the body of literature and discusses many of the same topics that the aforementioned authors

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<sup>65</sup> Mae M. Ngai, *Impossible Subjects*. p. 8

<sup>66</sup> *Ibid.*, p. 8

<sup>67</sup> For further discussion about “Hispanics” as unassimilable see Samuel Huntington’s *Who are We?: The Challenges to America’s National Identity*. New York: Simon & Schuster, 2004



discuss.<sup>68</sup> Mirande notes that “most of the information about the Border Patrol has been written either by ex-Border Patrolmen or sympathizers of the force.”<sup>69</sup> At the time Mirande published his book none of the existing literature of Border Patrol studies was available. Although these works have been produced since then the pace of growth of the Border Patrol has outmatched the pace of production of scholarly publications regarding the agency. It is my hope that more literature will be produced to help further develop the field of Border Patrol studies, whether it be from scholars, authors or ex-agents.

### **Race & and early examples of violence in the Southwest**

Race and violence have played crucial roles in the history of the United States. The way race has been viewed historically in the United States has changed over time but race is still a relevant issue today. I recognize that defining such concepts is a challenge and I offer important concepts about race in the U.S. and understand that my major points and definition are not all-encompassing in regards to race. I employ the term race in this thesis because of the overwhelming impact ideas about race, racial groups, and perceived racial differences have had in American history. Laura E. Gomez captures the fundamental nature of race in relation to the Mexican-origin population as she states:

The status of Mexican Americans as a racial group is rooted in their long history in this nation. In making this argument, I draw heavily on the experiences of the first Mexican Americans, those who joined

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<sup>68</sup> for this reason a detailed description of Mirande’s chapter is not discussed.

<sup>69</sup> Alfredo Mirande. *Gringo Justice*. University of Norte Dame Press: Norte Dame, 1978. p. 111

American society involuntarily, not as immigrants, but as a people conquered in war...Moreover, Mexicans joined American society at that time as citizens, albeit, as second-class citizens in many respects. *Manifest Destinies* excavates the history of Mexican Americans as an American racial group that was uniquely situated as “off-white”. It analyzes the larger American racial order as it evolved in the late nineteenth century and the social process of racialization—or how groups come to be identified and identify themselves in racial terms and learn their place as deserving or undeserving in the racial hierarchy.<sup>70</sup>

I employ Gomez’ argument about the Mexican-origin population and the concept of racialization in order to highlight the position of the Mexican-origin population in the racial hierarchy of the United States in detail in chapter two. Additionally I discuss the theme of violence and how the history of violence along the U.S.-Mexico border directly influenced the actions of early Border Patrol agents. Additionally I take a look at how violence along the U.S.-Mexico border today impacts the Border Patrol and the Mexican-origin population.

There are four major points that make up my definition of race. First, I define race as a social construct that has no biological basis. As scholars suggest race is socially constructed through racial formation. This process ascribes certain characteristics to racial groups while simultaneously dividing racial groups based upon race, affording privilege to those in power.<sup>71</sup> In the U.S. this privilege and power was

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<sup>70</sup> Gomez, *Manifest Destinies*. p. 2

<sup>71</sup> For definitions of race as a social construct see Laura E. Gomez’ *Manifest Destinies*, Laura Pulido’s *Black, Brown, Yellow & Left: Radical Activism in Los Angeles*. Berkeley: University of California Press, Richard Delgado & Jean Stefancic’s basic tenets of Critical Race theory in *Critical Race Theory: An Introduction*. New York: New York University Press, 2001, Michael Omi & Howard Winant’s, *Racial Formation in the United States*. New York: Routledge, 1994, and Ian Haney Lopez’ *White by Law: the Legal Construction of Race*. New York: New York University Press, 1996.

determined by whiteness, in a model that equated whites as the “universal dominant” and Blacks as the “universal subordinate”. In this sense nonwhite and non-Black groups such as the Mexican-origin population and the Asian-origin population held flexible yet distinct positions in the racial hierarchy of the United States. Laura Pulido, in *Black, Brown, Yellow & Left: Radical Activism in Los Angeles* (2006) maintains that “race is a social construct” that can be defined “specifically as an ideology that functions separate to the human population into various groups based on supposedly significant features, including skin color, hair texture, and eye structure.”<sup>72</sup> These conceptions (especially in the late 19<sup>th</sup> to early 20<sup>th</sup> century) of race helped develop the ideology that the Mexican-origin population was unequal to the Anglo-American population, faulted by their racial background. “The idea of racial groups and race itself”, states Pulido, “is rooted in attempts to assert control over particular populations in order to enhance the position and well-being of others.”<sup>73</sup> I employ Pulido’s and Gomez’ definitions of race and racial groups in this thesis in order to illustrate the manner in which those in power, specifically Anglo-Americans in the Southwest, used racial difference and the social construction of race to inhibit the Mexican-origin population’s social, political and economic participation as “equal” citizens.

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<sup>72</sup> Laura Pulido, *Black, Brown, Yellow & Left: Radical Activism in Los Angeles*. Berkeley: University of California Press, 2006. p. 21

<sup>73</sup> *Ibid.*, p. 22

Second, I recognize that race is not a fixed or static “idea” but instead is a category “that society invents, manipulates and retires when convenient”.<sup>74</sup> This definition reaffirms Michael Omi and Howard Winant’s discussion about race in *Racial Formation in the United States* discussed earlier, and as the examples provided in the following chapters suggest racial categories have transformed throughout the history of the United States.<sup>75</sup> The racial formation of the Mexican-origin population during the late nineteenth and through the twentieth century is unique because Mexicans were considered both white and non-white, depending on one’s phenotypical features and skin color. This led to a certain ambiguity about the racial standing of the Mexican-origin population as they were considered white in certain legal terms but considered non-white in social practices and other legal terms. Natalia Molina discusses the highly fluid nature of the white-nonwhite paradigm, stating:

The ambiguity that resulted from retooling racial categories also meant that people who were neither white nor black had no clearly defined position in the racial hierarchy. The “nonwhite” category helped stabilize the new racial order. Like whiteness, nonwhiteness was neither a monolithic nor a static category; it incorporated degrees of access to privilege, and its composition changed in responses to national factors (e.g., labor needs, immigration laws, and economic cycles) and more regional pressures (e.g., the presence or absence of other marginalized populations).<sup>76</sup>

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<sup>74</sup> see Richard Delgado & Jean Stefancic’s basic tenets of Critical Race theory in *Critical Race Theory: An Introduction*. New York: New York University Press, 2001.

<sup>75</sup> Michael Omi & Howard Winant, *Racial Formation in the United States*. New York: Routledge, 1994. p. 55

<sup>76</sup> Natalia Molina, *Fit to Be Citizens? Public Health and Race in Los Angeles, 1879-1939*. Berkeley: University of California Press, p. 6

I focus upon those of Mexican-origin (and Asian-origin from the late nineteenth to early twentieth century) considered non-white and how these perceptions impacted their social inclusion and integration. The reason for this focus is to highlight how racial formation created a two-tiered system of treatment in the U.S. Southwest, relegating the Mexican-origin population to second-class citizenship.

The invention and manipulation of racial categories in U.S. history has allowed for the “racialization” of specific populations, which is the process by which White privilege is established through legal and social means that create categories of difference for non-White populations. As Ian Haney Lopez proposes “the processes of racial fabrication in the United States have and continue to impose distinct burdens on racialized peoples.”<sup>77</sup> One outcome has been the establishment of a two-tiered system of social, economic and political participation that places favor for those of Anglo-origin over those of non-Anglo, or in this case Mexican-origin. I apply both Omi & Winant’s definition of racial formation and Ian Haney Lopez’ recognition of race as a burden on racialized peoples in order to illustrate how race is constructed, manipulated and used to favor particular groups in society. Recognizing that meanings of race change over time I utilize these concepts in order to show how as meanings of race changed in the Southwest regarding the Mexican-origin population, so too did the Border Patrol. One evident change is the inclusion of a large number of Latino agents in the Border Patrol, and I address this change through the use of interviews with Mexican-American and Anglo-American Border Patrol agents.

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<sup>77</sup> Ian Haney Lopez. “Retaining Race: LatCrit Theory and Mexican American Identity in *Hernandez v. Texas*”. 1 Harv. Latino L. Rev. pp. 279- 297 (1997). p. 282

Third, race and what race means is part of our day-to-day reality and it is crucial to recognize how race informs our reality. This “reality” of race in the U.S. is what critical race theorists call “normal science”, or part of the everyday reality of people of color.<sup>78</sup> Social, economic, cultural and political exchanges and interactions between different racial groups have historically affected the way the nation has developed. Institutionalized racism has legally created racial difference and produced preferential treatment for Whites. Slavery in the United States and the history of White-Native American cooperation and conflict has informed the way race and preferential treatment has developed in the U.S. Institutionalized racism and racist social practices have impacted the economic, cultural, political and social development of racialized minority groups throughout U.S. history. The colonization and conquest of the U.S. Southwest impacted the development of the Mexican-origin population and this must be recognized when discussing the history of Mexicans in the Southwest.

Fourth it is an error to talk about a color blind society when for so long throughout U.S. history race has been a dominant issue. In other words a failure to recognize the legacy of social and legal racism, institutionalized through laws or optionally carried out through social practices, perpetuates the idea that all persons in the United States have been historically treated equally. Race is a central component of United States history. Laws have been created based on perceived racial differences and as little as sixty years ago Jim Crow laws created separate public and

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<sup>78</sup> Richard Delgado & Jean Stefancic, CRT: Intro p. 7

private spaces for “Whites” and “Coloreds”, yet questions about race in America and the history of race relations remain in the background of bureaucratic politics in the U.S.<sup>79</sup> Furthermore questions about those groups outside of the “Black-White” binary of race in the U.S., such as Latinos and Asians, and their respective situations in American society have now recently garnered attention in scholarly and non-academic settings. The Jim Crow era specified that Whites and Blacks should not socially interact, with laws dictating those of “color” from “whites”. Furthermore it established segregated public spaces for Mexicans and established Mexican schools throughout the Southwest while simultaneously considering Mexicans “white”.

Through the use of these concepts I argue that the experience of the Mexican-origin population, both Mexican Americans and Mexican nationals, in the Southwest as border crossers and border residents is where the process of racialization happens. As persons who reside close to the geo-political boundary between the U.S. and Mexico, where a long history of conflict and cooperation between Mexican and Anglo populations exists, the Mexican-origin population experiences race and racial differences based upon the history of the Southwest. The Border Patrol has historically facilitated the racialization and illegalization process, equating nationality and citizenship status with phenotypical features and socially constructed ideas about what a “Mexican” looks like. These processes still occur today, as I discuss how the Border Patrol uses racially discriminatory enforcement measures that disproportionately affect the Mexican-origin population throughout the thesis.

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<sup>79</sup> see Leon F. Litwack’s, *Trouble in Mind: Black Southerners in the Age of Jim Crow* New York: Knopf, 1998.

Cooperation and conflict can best describe the historical relationship between Anglo-Americans and those of Mexican-origin. One extreme instance of confrontation is violence against those of Mexican-along the U.S.-Mexico border. As Oscar J. Martinez notes, describing the late nineteenth and early twentieth century: “An unfortunate element in the history of Mexican Americans in the U.S. border region has been their strained relations with the dominant society. The record reveals an enduring patten of racial, ethnic and cultural confrontation, much of which is directly traceable to border tensions. Armed clashes, raids, thefts, rapes, lynchings, murders and other outrages became commonplace in border areas from Texas to California.”<sup>80</sup> Martha Menchaca observes a similar situation in Santa Paula, California in her case study about a Southern California community during the early 1900s. She notes that: “Physical violence was often used by Anglo Americans to intimidate the Mexican community and to maintain it in a subordinate position. Violent actions committed against Mexicans ranged from police brutality to Ku Klux Klan intimidation.”<sup>81</sup>

Violence initiated by Anglo-Americans against the Mexican-origin population spilled over into the Border Patrol, specifically the issue of Texas Rangers and former Ku Klux Klan (KKK) members as new agents. George J. Sanchez discusses KKK members as agents in *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900-1948* (1993). Sanchez notes “that some of the early

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<sup>80</sup> Martinez, *Troublesome Border*. p. 76.

<sup>81</sup> Martha Menchaca. *The Mexican Outsiders: A Community of Marginalization and Discrimination*. Austin: University of Texas Press, 1995. p. 46



immigration inspectors were members of the Ku Klux Klan, which was a leading organization in the El Paso region at the time.”<sup>82</sup> Clifford Alan Perkins, a former Border Patrol agent and head supervisor, also explains how during his tenure as an agent many of the early agents were either ex-Rangers or emulated the Texas Rangers, a group historically known for violence against Mexicans in the State of Texas. Perkins even went so far as sending known ex-Rangers who were now agents, what he called a bunch of well-trained fighters, to clean up stations plagued with problems.<sup>83</sup>

I provide these early examples of violence in order to highlight the contested nature of not only the U.S.-Mexico border but also between racial groups. In particular conflict between Anglo-Americans and the Mexican-origin population resulted in both cooperation and conflict, but as we see from the examples mentioned sometimes this conflict became violent. Throughout the thesis I provide other examples of violence, in particular highlighting recent cases of human rights abuses and shooting incidents involving Border Patrol agents and persons of Mexican-origin.

In chapter two I focus upon the Mexican-origin and Asian populations and their history in America as immigrants and U.S-born citizens. The reason for this particular focus is that immigration law specifically barred entrants into the United States based on nationality and often enforced such laws based upon phenotypical features and skin color. Thus Latino (specifically Mexican-origin) and Asian populations faced additional scrutiny and inspection by the Border Patrol, with the

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<sup>82</sup> George J. Sanchez. *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900-1948*. New York: Oxford University Press, 1993.

<sup>83</sup> Perkins, p. 91.

latter barred by official laws such as the Chinese Exclusion Act of 1882 and the Gentlemen's Agreement of 1907. My discussion about race includes an inquiry about how the Mexican-origin population has been dealt with in regards to race-based laws and popular notions of race in the Southwest United States. How were Mexicans viewed by lawmakers and institutions and where did they "fit" within the black-white racial paradigm? I discuss how the Mexican-and Asian-origin population faced processes of legal and social racial fabrication in chapter two.

## **Chapter 2: Race and its meaning in the Southwest: Pre-Border Patrol era**

In order to better understand the evolution of race and the ways in which race influenced law and social organization in this chapter I review race relations in the Southwest from the 1850s to the 1920s. This review is helpful in order to establish the historical context in which early immigration laws based upon race were created and also informs us about the dynamic nature of race relations and immigration during this period. In particular I look at how the annexation of Mexico's northern territories and the subsequent influx of Anglo-Americans and the establishment of new governmental order influenced the ways in which the Mexican-origin population and others were relegated to an inferior status of citizenship and social belonging. Though the Treaty of Guadalupe Hidalgo appeared to grant all Mexicans in the newly acquired territories "equal" rights and status what followed was the disintegration of rights and opportunities of the new Mexican-American population and other non-Anglo populations in the Southwest U.S. Confounding the situation further was the unclear classification of the Mexican-origin population that was both considered white and non-white by the courts and other government institutions.

The changing demographics of the newly acquired territories that made up the Southwestern United States created new opportunities for social and economic prosperity post-1850. Following the dismantling of large land tracts owned by *Californios*, the discovery of gold in California and other economic opportunities, Chinese immigrants arrived in large numbers and would soon face discrimination from Anglo-Californians. An anti-Chinese and Anti-Japanese hysteria would soon flourish

in California and impact immigration law on a national level. In the remaining portion of chapter two I discuss how these sentiments flourished, particularly along the west coast, and how they impacted federal immigration law. The end result would lead to the passages of the Chinese Exclusion Act of 1882, the Gentlemen's Agreement of 1907 which severely limited Japanese immigration, and the Immigration Act of 1917 which essentially barred all Asian immigration. These acts would ultimately lead to the establishment of the U.S. Immigration Service, the precursor to the U.S. Border Patrol. The following examples highlight the contested nature of Anglo-Non-Anglo interactions and help establish the predominant perspectives of Mexicans and Asians (Chinese and Japanese) during this time period.

### **Major Historical Developments Regarding Race and the U.S.-Mexican Border**

I know further, sir, that we have never dreamt of incorporating into our Union any but the Caucasian race-the free white race. To incorporate Mexico, would be the very first instance of the kind of incorporating an Indian race; for more than half the Mexicans are Indians....I protest against such a union as that. Ours, sir, is the Government of a white race....And yet it is professed and talked about to erect these Mexicans into a Territorial Government and place them on equality with the people of the United States. I protest utterly against such a project. Are we to associate with ourselves as equal, companions, and fellow citizens, the Indians and mixed race of Mexico? Sir, I should consider a thing as fatal to our institutions.”<sup>84</sup>

- Senator John Calhoun voicing his opposition to annexation of Mexican lands (1848)

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<sup>84</sup> Congressional Globe, 30<sup>th</sup> Congress. 1<sup>st</sup> Session. 98 (1848)

In 1845 the United States annexed the territory of *Tejas* in Northern Mexico, or Texas, despite the Mexican government's disapproval. This annexation developed from conflict that arose between Anglo-Texan settlers and the Mexican government regarding slavery. Mexico outlawed slavery in 1829, but as many Anglo-Americans settled in Texas they viewed the outlawing of slavery as impeding upon their personal liberties and rights. The eventual outcome was the war of independence between Mexico and Texans (both Anglo- and Mexican-) and the establishment of the independent state of Texas. In turn the new Texas constitution allowed for slavery and allowed no freed persons of African descent to reside permanently in the state without formal approval from congress.<sup>85</sup>

From 1846-1848 the United States waged war with Mexico, leading to a United States victory and the annexation of Mexico's northern territory. This made up one-third of Mexico's territory that included parts or all of Texas, California, Arizona, Nevada, Utah, Wyoming, Colorado, Kansas, Oklahoma and New Mexico and contained an estimated 75,000 to 100,000 Mexicans.<sup>86</sup> Manifest destiny, or the notion that the United States of America as a nation had the god-given right to rule "from sea to shining sea", allowed for the justification of secession of Mexican lands and called for the absorption of all Mexican lands. Yet this right, based on racial superiority, was

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<sup>85</sup> Francis N. Thorpe, "The Federal and State Constitutions: Colonial Charters, and Other Organic Laws of the States, Territories and Colonies Now or Heretofore Forming the United States of America". 3539-40 (1909).

<sup>86</sup> David Gutierrez, "Legacies of Conquest" in *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity*. p.13

the right of the “divine Anglo-Saxon” and had no answer or details about how the Mexican people in these newly conquered lands were supposed to be dealt with.<sup>87</sup>

At first glance the Treaty of Guadalupe Hidalgo, which ended the U.S.-Mexico War in 1848, seems to afford the new Mexican-American populations in the United States equal protection and affords Mexican-Americans citizenship. Signed by both the U.S. and Mexican governments, the final version of the treaty describes what treatment former citizens of Mexico who chose to remain in American territory and not retain Mexican citizenship will receive. These Mexican-Americans were to be:

Incorporated into the Union of the United States, and admitted *as soon as possible, according to the principles of the Federal Constitution*, to the enjoyment of all the rights of citizens of the United States. In the meantime, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws. With respect to political rights, their condition shall be on equality with that of the inhabitants of the other territories of the United States.<sup>88</sup> (emphasis added by author)

Yet a number of problems remained regarding the granting rights and protection of the new Mexican-American population(s) in the former Mexican territories. According to Juan F. Perea, in his article titled “A Brief History of Race and the U.S.-Mexico Border”, the allowance of rights as citizens of the United States under the Federal Constitution was not as significant as it may appear. The treaty’s provisions did not grant state citizenship, which was the source of political representation and potential

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<sup>87</sup> Juan F. Perea, “A Brief History of Race and the U.S.-Mexican Border”. UCLA Law Review 283 (2003) p.285

<sup>88</sup> Treaties and Other International Acts of the United States of America 41 (Hunter Miller ed. 1937) (emphasis added)

voting rights for Americans in these territories.<sup>89</sup> This, in turn, meant that in theory Mexican-Americans were granted rights by the federal government but on the state level they were powerless in exercising their rights as U.S. citizens. The final draft language, as cited by Parea, further complicated and delayed the granting of actual rights by the Union. This was accomplished by changing the detailed language of the treaty. The final ratified version of Article IX read: “The Mexicans...shall be incorporated into the Union of the United States and be admitted, *at the proper time (to be judged by Congress of the United States)* to the enjoyment of all the rights of the citizens of the United States according to the principles of the Constitution.” (emphasis added by author)<sup>90</sup> The ambiguous language of the treaty appeared to grant equal rights to Mexican-Americans but in reality allowed the granting of rights to be determined by Congress.

Furthermore, as David Gutierrez notes in *Walls and Mirrors: Mexican Americans, Mexican Immigrants and the Politics of Ethnicity*, the new Mexican-American population faced two prominent issues in regards to exercising their newly appointed “rights”.<sup>91</sup> The legal rights of Mexican-Americans, as noted by Parea, were the most crucial issues at hand. The wording of the treaty allowed Congress to determine when statehood and citizenship was granted to the newly acquired territories. This would later contribute to the usurping of Mexican-Americans’ land and allow for the social, economic and political mobility and representation of

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<sup>89</sup> Parea, “A Brief History of Race and the U.S.-Mexican Border”. 296

<sup>90</sup> Parea, “A Brief History”. 296

<sup>91</sup> Gutierrez, “Walls and Mirrors”, p. 18

Mexican-Americans to be constrained in many areas of the Southwest post-1850. As Gutierrez notes Mexican-Americans were “facing pervasive ethnocentrism and racial prejudice in their own homelands” and “were gradually divested of both political and economic influence in all areas except northern New Mexico and south Texas”.<sup>92</sup> In northern New Mexico and south Texas Mexican-Americans maintained numerical majorities and some form of influence until the late nineteenth century.

The second issue at hand according to Gutierrez was the biased views that Americans held against Mexican. Pre-existing notions of Mexicans as “half-breeds” or a “mongrel race”, combined with anti-Mexican sentiment aroused by the recent war, created a contested atmosphere in which Americans exercised their racist tendencies. The most intense displays of racism occurred in regions with large Mexican-American populations such as Texas and California, with the discovery of Gold in California in 1848 further contributing to racial prejudice not only against Mexicans but against other non-Anglo populations as well.

The Foreign Miners Tax and the Land Act enacted in California highlight the changing nature of California during the 1850s. Both laws showcase the continuing belief that that non-Anglo populations, mainly *Californios*, had not maximized the potential of existing lands and that any possibilities of prosperity from mining discoveries should be entitled to “Americans”. The Foreign Miners Tax of 1850 and the Land Act of 1851 served to further impede the socio-economic mobility of *Californios* and other non-Anglo groups. The Foreign Miners Tax of 1850 allowed

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<sup>92</sup> Gutierrez, “Walls and Mirrors”. p.14



American miners to evict Mexican (including Californios), Chinese, Chilean and other “foreign” miners from mining sites based on the notion that they were foreigners and were not entitled to the potential wealth that mining sites held.<sup>93</sup> Though the act was repealed a year after it was enacted the terror and fear that developed from the expulsion of “foreigners” from mining sites continued to linger. The law had allowed Anglo-Californians to halt any possible economic opportunities available to miners of color. As Douglas Monroy describes the situation, the “ultimate result, in other words, was the expulsion of non-Americans; Mexicans and Chinese were especially singled out-from the mining opportunities of California through state-sanctioned mass violence against people of color”.<sup>94</sup>

The Land Act of 1851 further exacerbated the socio-economic and political status of *rancheros* in California. Families who held land titles to vast amounts of land faced the hurdles of the Land Act law that required *rancheros* to prove the validity of their land titles. The Land Act of 1851 in California was responsible for dispossessing approximately 40 percent of land owned by Mexican Californians (*Californios*) due to the conflicting nature of past legal cultures. *Californios* held their land titles based upon indiscriminate survey methods that were often based upon landmarks such as rocks, rivers, trees, etc. that allowed for an ambiguous method of determining where one land title ended and where another began. Often passed down from generation to generation between families, many land titles were issued by the

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<sup>93</sup> Douglas Monroy, “Land and the Conflict of Legal Cultures” p.131 in *Major Problems in California History*, ed. Sucheng Chan and Spencer Olin. Boston: Houghton Mifflin, 1997.

<sup>94</sup> Monroy, “Land and the Conflict of Legal Cultures”. p. 132

Spanish Crown or the Mexican government, while the new reigning U.S. government established a burden of proof upon landholders. Further aggravating the situation court costs, legal fees, and the location of hearings to determine the validity of land titles served to erode *Californios* land holdings and ultimately allowed speculators to capitalize off of the newly “freed” lands.<sup>95</sup>

Despite the promises and guarantees of the Treaty of Guadalupe Hidalgo those Mexicans who remained in the Southwest United States faced a number of obstacles that contributed to a lack of social and political participation in the new territories. As Oscar J. Martinez notes in regards to the failures of the federal government in securing rights for minority groups, “state and local authorities, who were in a better position to intervene, were generally not sympathetic to the plight of people of Mexican descent, thus leaving these people vulnerable to exploiters and oppressors.”<sup>96</sup> A combination of factors contributed to the status of the Mexican-origin population in the Southwest after the U.S.-Mexico War (1846-1848). The legacy of Anglo-Mexican conflict beginning with the Texas Revolt and continuing after the U.S.-Mexico War helped shape distinct perceptions held by both Anglo-Americans and Mexican-Americans towards one another. This in turn led to the continued restriction of U.S. citizenship for “free whites only” and led to state constitutions (such as in California) being

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<sup>95</sup> Henry George, “Henry George Censures Land Monopoly, 1871” in *Major Problems in California History*. Olin, Spencer, and Sucheng Chan, eds. Boston: Houghton Mifflin, 1997.

<sup>96</sup> ed. Oscar J. Martinez, *U.S.-Mexico Borderlands: Historical and Contemporary Perspectives*. p.49

drafted to deny political rights to non-whites.<sup>97</sup> States ultimately determined the political participation and socio-economic standing of the Mexican-origin population as “Congress minimized the political influence of Mexicans by refusing to admit states unless whites held political control.”<sup>98</sup>

The eventual outcome would be a disintegration of political, social and economic rights and participation for the Mexican-origin population and the development of Mexican-Americans as a racial category during the late 1800s. The failure to uphold rights guaranteed by the Treaty of Guadalupe Hidalgo and the implementation of Anti-Indian laws severely impacted the Mexican-origin population, as government officials crafted images of Mexicans as half-breeds and inferior. As Martha Menchaca suggests the treaty “was broken and they did not give Mexicans the political rights of White citizens” which produced “a legacy of racial discrimination”.<sup>99</sup> Complicating the situation further would be the unclear status of the Mexican-origin population as neither white nor black in the legal realm of U.S. society. Though afforded “whiteness” in certain legal contexts the overall “racialization” of the Mexican-origin population would further contribute to the marginalization of those of Mexican descent, combined with increased immigration

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<sup>97</sup> Juan F. Perea, “A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest” p. 298

<sup>98</sup> Perea, p. 301

<sup>99</sup> Martha Menchaca, “A History of Colonization and Mexican American Education,” Paper Presented for a Conference, Harvard Educational Review, March 9, 1998 at the University of California, Irvine. Found in Rodolfo Acuna’s *Occupied America: A History of Chicanos*. 4th Ed. p. 56

from Mexico during the early twentieth century.<sup>100</sup> The outcome of racially-based laws created a separate and unequal “second-class” status for Mexican-Americans and would serve as a point of contention from the late nineteenth century and on.

### **Immigration Policy and the Pre-Border Patrol Years**

During the late 1800s to early 1900s a number of immigration policies were implemented in response to increasing immigration to the United States. These policies, mainly barring Asian immigrants from entering the U.S., specifically stated that one’s ethnic background was the determining factor to legally enter the U.S. The Chinese Exclusion Act of 1882 was the first such act, barring Chinese laborers from entering the United States, and would later be extended in 1888. The exclusion act received widespread, partisan support and faced little backlash, as established “Chinese newcomers were essentially powerless to resist new exclusionary laws” lacking representation in U.S. courts and elections.<sup>101</sup> But, what were the underlying causes of Chinese exclusion and how did predominant views about race in the Southwest U.S. help launch exclusion from the state level to the national level?

In California and throughout the west Chinese immigration had greatly increased due to the discovery of gold in 1848 and the possibility of new economic opportunities. An estimated 110,000-250,000 Chinese were admitted into the United

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<sup>100</sup> For more about the legal construction of Mexican-American identity see: David G. Gutierrez’ *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity*, Mae M. Ngai’s *Impossible Subjects*, Neil Foley’s “Straddling the Color Line: The Legal Construction of Hispanic Identity”, in *Not Just Black and White: Historical Contemporary Perspectives on Immigration, Race and Ethnicity in the United States*, and Ian F. Haney Lopez’ *White By Law: The Legal Construction of Race*, “The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice”,

<sup>101</sup> p. 13, David Tichenor, *Dividing Lines: The Politics of Immigration Control in America*.

States from 1850-1882, with a majority settling in California.<sup>102</sup> Chinese workers were employed in a variety of labor sectors, including railroad work, agriculture, mining, domestic work, laundry service, and restaurants.<sup>103</sup> Despite the contributions made in these various labor sectors the Chinese faced rampant nativism in states such as California. The State Supreme Court ruled that the Chinese were ineligible for equal protection under the California Constitution. In the *People v. Hall* 1854 the California Supreme Court ruled the testimony of a Chinese man against a white defendant inadmissible on the grounds that state law prohibited “[n]o Black, or Mulatto person, of Indian shall be allowed to give evidence in favor of, or against a white man”.<sup>104</sup> The court determined that the “same rule which would admit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls.”<sup>105</sup> In essence the ruling solidified the state’s power to determine citizenship and equal rights and reiterated that such citizenship was only available to “free white men”. As David Tichenor notes the “effect of the ruling was to make Chinese vulnerable to countless acts of violence and lesser crimes perpetrated by white settlers”.<sup>106</sup> The result would

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<sup>102</sup> Kitty Calavita, “The Paradoxes of Race, Class, Identity, and ‘Passing’: Enforcing the Chinese Exclusion Acts, 1882-1910”. *Law & Social Inquiry*, Vol. 25, No.1 (Winter 2000). p. 4 estimates 110,000 Chinese during this period while David Tichenor, in *Dividing Lines* Ch. 4 “Chinese Exclusion” estimates 250,000 during this same period.

<sup>103</sup> Gutierrez, *Walls and Mirrors*. p. 43

<sup>104</sup> *THE PEOPLE, RESPONDENT, v. GEORGE W. HALL, APPELLANT*. Supreme Court of the State of California, 1854. Online Stable URL:< <http://academic.udayton.edu/race/03justice/case0001.htm>>

<sup>105</sup> *People v. Hall*, 1854.

<sup>106</sup> Tichenor, *Dividing Lines*. p. 90

be an atmosphere of anti-Chinese rhetoric and would lead California politicians and other organizations to push the Chinese exclusion cause all the way to Capital Hill.

The main contention of supporters of the Anti-Chinese movement in California, mainly organized labor unions and anti-Chinese clubs, was that the Chinese served to displace white workers by accepting lower wages and harsh working conditions. Cities such as San Francisco, which was expanding dramatically between 1860 and 1870, had undergone labor market changes that contributed to high unemployment which was blamed on Chinese workers who were seen as “undercutting” white workers. Chinese laborers were also seen as potential strikebreakers as they were recruited to replace striking Irish railroad workers by Pacific Railroad in 1863.<sup>107</sup> A combination of xenophobia, concerns about labor and employment, and a belief in maintaining existing political and racial hierarchies helped galvanize anti-Chinese sentiments in both Republican and Democratic circles.

As unemployment continued to plague California in the 1870s a bi-partisan coalition helped push for anti-Chinese provisions in California’s constitution. Realizing that only on a national level could official Chinese exclusion effectively produce the outcome that they were looking for a coalition of Republicans and Democrats introduced Chinese exclusion bills in both the House and the Senate. At first vetoed by President Chester Arthur a modified version was sent back to Congress and was overwhelmingly approved.<sup>108</sup> The Chinese Exclusion Act of 1882 barred

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<sup>107</sup> Tichenor, *Dividing Lines*. p. 94

<sup>108</sup> Tichenor, *Dividing Lines*. p. 107

Chinese “labor” immigration for ten years, and would later be ratified in 1888 to extend an additional twenty years and heavily restricted the rights of Chinese laborers in the U.S. to return back after traveling abroad.<sup>109</sup> The aim was not only to restrict new Chinese immigration but was also to create restrictions that hindered the mobility of the existing Chinese population in order that they would leave voluntarily or face the possibility of being denied re-entry.

The Chinese Exclusion Act of 1882 served as the first law to ban immigration based on one’s nationality. This was particularly important because Chinese exclusion served as a departure from traditional immigration policies during this particular era. What was seen as an isolated incident eventually would serve as a model for future immigration policies that also barred or limited the number of immigrants of particular nationalities. David Tichenor identifies the ways in which Chinese exclusion informed future policies:

In particular, Chinese exclusion initiated and legitimated state capacities for restricting immigration on ethnic and racial bases that challenged the nineteenth-century of U.S. policy toward European inflows. Chinese exclusion proved several decades later to be anything but an isolated development, as national policymakers constructed an increasingly elaborate immigration control system of racist design.<sup>110</sup>

Blatant discrimination against those of Chinese ethnic-origin was put into practice with official support from the federal government, leading to anti-Chinese riots on the

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<sup>109</sup> Calavita, “The Paradoxes of Race, Class, Identity, and ‘Passing’: Enforcing the Chinese Exclusion Acts, 1882-1910”. p. 5

<sup>110</sup> Tichenor, *Dividing Lines*. p. 113

west coast throughout the 1880s.<sup>111</sup> The U.S. State Department summarizes the Chinese Exclusion era “American objections to Chinese immigration took many forms, and generally stemmed from economic and cultural tensions, as well as ethnic discrimination.”<sup>112</sup> This discrimination would soon include other groups who were perceived as cultural, economic and social threats.

The Gentleman’s agreement of 1907 forcefully limited Japanese immigration and would serve as the second direct “act” that prohibited immigrants of a specific nationality, further increasing the ban on Asian immigration to the U.S.<sup>113</sup> Though not a formal diplomatic treaty the agreement was reached in response to increased xenophobia, specifically in California, of the Japanese-origin population in the early 1900s and was agreed to by Japan with the hope that a “Japanese Exclusion Act” would not be created.<sup>114</sup>

The overwhelming xenophobia against Asian and specific European immigrants allowed for exclusionary legislation and the eventual creation of a law enforcement agency to patrol our nation’s borders. Mounted Inspectors had originally been dispatched to the Southern border to keep Chinese and Southern & Eastern

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<sup>111</sup> “The Anti-Chinese Hysteria of 1885-1886” from The Chinese-American Experience 1857-1892. Online. Stable URL: <<http://immigrants.harperweek.com/ChineseAmericans/2KeyIssues/TheAntiChineseHysteria.htm>>

<sup>112</sup> U.S. Department of State, “Chinese Immigration and the Chinese Exclusion Acts”. Online. Stable URL:<<http://www.state.gov/r/pa/ho/time/gp/82014.htm>>

<sup>113</sup> see David Tichenor’s *Dividing Lines: The Politics of Immigration Control in America*. Chapter 1 focuses upon the “Gilded Age” and the “Progressive Era and the 1920s” in which Tichenor goes into detail about these Acts and their implementation.

<sup>114</sup> Roger Daniels. *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion*. Berkeley: University of California Press, 1999.



Europeans from entering into the United States. David Tichenor validates this point, stating “the problem of illegal immigration was initially associated in the American mind not with Latin American immigrants, but unwanted Asian and European ones”.<sup>115</sup> The main emphasis was upon keeping Chinese entrants out under legislation from the Chinese exclusion act. U.S. Customs and Border Protection, referring to the mounted inspectors sent to the border, states “although these inspectors had broader arrest authority, they still largely pursued Chinese immigrants trying to avoid the Chinese exclusion laws.”<sup>116</sup> These mounted inspectors would eventually transform into the Border Patrol after 1924, when their main interests were maintaining prohibition laws by preventing smuggling by bootleggers and the continued enforcement of Chinese exclusion. Immigrants from Latin America and the Western Hemisphere were not restricted from immigrating under the National Origins Act as there was no quota set for immigrants from these regions.

The Dillingham Commission, also known as the U.S. Immigration Commission, reported to the Senate during 1911 that Mexicans in the Southwest represented a vital source of temporary, migratory labor in the Southwest.<sup>117</sup> Yet what is considerable about the report is that though the report praises the availability of low-wage, temporary labor, it also highlights the cultural ramifications of the Mexican population and their status as temporary migrants. The commission noted that the

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<sup>115</sup> p. 168, Tichenor, *Dividing Lines*

<sup>116</sup> U.S. Customs and Border Protection, “Border Patrol History”. Stable URL: <[http://www.cbp.gov/xp/cgov/border\\_security/border\\_patrol/border\\_patrol\\_ohs/history.xml](http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_ohs/history.xml)>

<sup>117</sup> Tichenor, p. 168 Ch. 6 “Two-Tiered Regulatory Regime”.

potential for assimilation was difficult but should be of little concern. “While the Mexicans are not easily assimilated, this is not of very great importance as long as most of them return to their native land in a short time”, states the commission. Increasing barriers to entry such as the 1917 Immigration Act helped establish Mexican populations throughout the United States and countered the claim that such migration was temporary or seasonal, while reinforcing the notion of restricted immigration from the “barred Asiatic zone”. The barred Asiatic zone increased the restrictions of immigration from China to much of Asia and the Pacific Islands.<sup>118</sup>

With increased restrictions and a new focus upon entry into the United States at land ports-of-entry the face of immigration to the Southwestern United States was changing. Many immigrants who left Mexico during the early 1900s stayed in the U.S. with no intentions of leaving. Whether it was due to a social network that had been established in the U.S. or new impositions placed upon their entry and exit from the United States many Mexican migrants decided to stay in the U.S. As George Sanchez states, “consequently, when work in the fields or on the railroads proved temporary, an increasing number of Mexicans settled in the large cities of the American Southwest”.<sup>119</sup> On the flipside of the increased restrictions to entry for immigrants various organizations continued to lobby for an ease of or no restrictions placed upon Mexican laborers entering the Southwestern U.S. in order to fulfill the need for low-wage laborers in critical industries such as agriculture. Labor Secretary

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<sup>118</sup> Ngai, p. 22

<sup>119</sup> Sanchez, p. 59 Ch. 2 “Across the Dividing Line”

William B. Wilson to eased restrictions during the aftermath of the 1917 Immigration Act allowed for an estimated 75,000 Mexican guest workers from 1917-1921 and an undetermined number of undocumented workers as well.<sup>120</sup>

The passage of the Immigration Act of 1917 and its new requirements (literacy test and a head tax) created barriers-to-entry that had not previously existed. The details of the Immigration Act of 1917 show that an eight dollar head tax was created, a literacy test was now required, a medical examination was included, and the procedure of investigating those persons who would likely become a public charge was established.<sup>121</sup> Though these changes were not extremely radical and no quota had been placed on immigration many Mexican immigrants still chose to avoid requirements such as the “degrading procedure of bathing and delousing” and enter undocumented.<sup>122</sup>

What sets apart the Mexican immigrant experience during the time of the Act and during the early years of the Border Patrol (1924-1929) is that they were allowed to cross “freely”; this was due to the fact that Mexican labor in the Southwest was utilized in sectors that were often seasonal or cyclical in nature, such as agriculture or construction (e.g. railroad). Another factor that separates the Mexican immigrant experience at the U.S.-Mexico border is the historical context through which the Borderlands were contested, established and maintained. Through the Treaty of Guadalupe Hidalgo in 1848 those Mexican citizens who did not declare Mexican

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<sup>120</sup> Tichenor, p.170

<sup>121</sup> Sanchez, p. 55 and Tichenor, introduction

<sup>122</sup> Mae M. Ngai, *Illegal Aliens*, p. 67

citizenship within one year were automatically conferred U.S. citizenship. Though considered U.S. citizens Mexicans in the newly formed territories were never considered racial equals of Anglo-Americans in the Southwest, and the eventual transformation of socioeconomic relationships between Mexicans and Anglo-Americans would result in a largely white population of property owners and skilled employees and a largely landless Mexican population during the early twentieth century.<sup>123</sup> This difference in socio-economic standing was further exacerbated by increased, continual migration from Mexico during the first half of the nineteenth century.

The National Origins Act of 1924 shifted policy from solely barring Chinese and Japanese immigration and included preferences for Northern and Western Europeans, while indirectly discriminating against Southern and Eastern Europeans. This was achieved through basing the National Origins Act, which allowed for 2% immigration rates based upon the number of persons of that nationality in the U.S., on the 1890 census.<sup>124</sup> Though the true demographic makeup of the U.S. differed from the 1890 census, lawmakers used this census as a way to promote immigration from specific European regions, as the U.S. contained a European majority from the northern and western regions in the 1890s.

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<sup>123</sup> George Sanchez, p. 38

<sup>124</sup> Special to The New York Times.  
April 19, 1924, Saturday. Stable URL:  
<<http://select.nytimes.com/gst/abstract.html?res=F20715F7395F17738DDDA00994DC405B848EF1D3>>

As Lytle-Hernandez suggests “the centerpiece of the National Origins Act of 1924 was ‘the protection of American racial stock from further degradation or change through mongrelization’ through a system of national quotas.”<sup>125</sup> Ngai proposes that the National Origins Act of 1924 “constructed a vision of the American nation that embodied certain hierarchies of race and nationality....in which the cultural nationalism of the late nineteenth century had transformed into a nationalism based on race.”<sup>126</sup> That is preference was now given to “desirable, assimilation-capable” white Northern and Western Europeans and restrictions were placed upon Southern and Eastern Europeans, while immigrants from the “barred Asiatic zone” were prohibited from entry into the U.S. The National Origins Act now contributed to shaping the demographic makeup of the United States during the late 1920s, while leaving the question of Mexican immigration unanswered. Along with the passage of the National Origins Act legislation to create the U.S. Border Patrol was enacted in 1924. This was in response to fears of Chinese and Southern & Eastern European immigrants crossing the U.S.-Mexico border and would only later target Mexican immigrants crossing in the Southwest.

As we can see the inception of the Border Patrol was a response to concerns about non-Latino immigrants entering the U.S. Latino immigration, mainly from Mexico, has fluctuated throughout the twentieth century but has maintained relatively high numbers, with the exception of the 1930s (due to the Great Depression and

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<sup>125</sup> p. 23, Lytle-Hernandez, *Entangling Bodies*

<sup>126</sup> p. 23, Ngai, *Illegal Aliens*.

government-sponsored repatriation) and the mid-1950s (Operation Wetback).<sup>127</sup> For decades Mexican immigrants had crossed the Rio Grande and other points of entry to provide labor in the Southwest, mainly in agricultural sectors. Mexican immigrants also found industrial work and other occupations throughout the Southwest and the Midwest and established Mexican communities in urban centers and rural areas. As previously mentioned no quota was set for Mexican immigration or any immigration from the western hemisphere.

In conclusion concerns about maintaining racial purity in the name of “protecting” the United States serves as an overarching theme for this particular time period, from the 1850s to the 1920s. Though the Treaty of Guadalupe Hidalgo was supposed to guarantee the rights of the Mexican population in the newly acquired territories Mexican-Americans, in practice, were faced with drastic legal and social pressures. This altered the standing of the Mexican-American community, especially in places such as Texas and California. Both Texas and California would later serve as the first regions heavily patrolled by immigration inspectors. Issues such as high unemployment, the acceptance of low wages and harsh working environments by Asian immigrants and notions of Anglo-American superiority created a historical moment in which Asian populations faced blatant discrimination. The Chinese Exclusion Act and the Gentlemen’s Agreement changed the course of history in the sense that practices of exclusion, not inclusion, were executed in the name of progress and nation building. Though there were glimpses of inclusion in both cases (Mexican

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<sup>127</sup> preface, Richard Griswold del Castillo & Amoldo de Leon, *North to Aztlan: A History of Mexican Americans in the United States*. Twayne Publishers: New York, 1996

& Asian) the overwhelming majority of policies, laws and practices drew racial boundaries and helped solidify the Mexican and Asian populations of the Southwest in the late 19<sup>th</sup>-early 20th century as foreign and a threat to the Nation as a whole.

### **Chapter 3: The National Origins Act & the creation of the Border Patrol**

As Mae M. Ngai declares “immigration policy rearticulated the U.S.-Mexico border as a cultural and racial boundary, as a creator of illegal immigration.”<sup>128</sup> By establishing a border zone and enforcing federal immigration law the United States government was now dictating who would be considered “illegal”, policing the 2,000-plus mile long U.S.-Mexico border and certain portions of the interior. The Border Patrol now faced the overwhelming task of patrolling the vast border region and enforcing the law. But as Ngai and other scholars suggest the ways in which enforcement was practiced was not only based upon law but also issues such as labor and maintaining the nation-state’s “pure” racial stock. Who, how and when one was questioned and interrogated about their citizenship status was often determined by one’s presumed racial background. In this chapter I examine how such enforcement played out along the border during the early years of the Border Patrol. I also discuss how the patrol operated in spite of a number of problems that plagued the young agency. In the remaining portion of the chapter I consider how the introduction of the Bracero Program in 1942 initiated increased levels of unauthorized immigration and contributed to the growth of various small operation “wetback”(s), eventually leading to Operation Wetback in 1954.

#### **The National Origins Act of 1924**

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<sup>128</sup> Ngai, p. 67



In May of 1924 Congress passed the National Origins Act. The new act restricted immigration to 155,000 persons a year. Quotas were determined by allotting two percent of the total number of foreign-born persons of the 1890 census in an attempt to establish preference for Northern and Western European immigrants. The act mandated the secretary of labor, state and commerce to determine the quotas by 1927 and also excluded from immigration all persons ineligible to citizenship, reaffirming a ban on Asian immigration. No numerical restrictions were put into place for the Western Hemisphere, as anti-restrictionist forces such as agriculture in the Southwest pressed for a continual supply of “cheap” and temporary Mexican labor. The National Origins Act established particular preferences for certain types of immigrants. As John C. Box, a Congressman from Texas, boldly states the National Origins Act of 1924 achieved “the protection of American racial stock from further degradation or change through mongrelization” via a national quota system.<sup>129</sup> The most significant component of the act, in regards to this thesis, was the creation of the United States Border Patrol.

### **The Border Patrol**

Established in 1924 the United States Border Patrol was formed swiftly after the passage of the National Origins Act (NOA). Congress granted Border Patrol officers the jurisdiction to arrest without warrant “any alien who, in his presence or view, is entering or attempting to enter the United States in violation of any law, or

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<sup>129</sup> Kelly Lytle-Hernandez, *Entangling Bodies*. p. 22

regulations made in pursuance of law, regulating the admissions of aliens, and to take any such alien immediately for examination before an immigrant inspector or other official having authority to examine aliens as to their right to admission to the United States.”<sup>130</sup> Though no direct definition of who would be considered an “alien” under the NOA I conclude that alien means those banned from entry into the United States at the time, which included all “lunatics, idiots, convicts, those liable to become public charges, those suffering from contagious diseases,” Chinese immigrants and immigrants from the “Asiatic Barred Zone”.<sup>131</sup> The only Asian immigrants permitted during this time were Filipino and Japanese immigrants, although the exclusion of Japanese immigrants was to be phased in by 1925 as a result of the NAO.<sup>132</sup> I also conclude that alien defines any person attempting unauthorized entry into the U.S.

The Border Patrol had an initial force of 450 officers nationally. The agency originally covered only the U.S.-Mexico border, with three “Immigration Service Districts” which were the Los Angeles, El Paso, and San Antonio districts.<sup>133</sup> Clifford Alan Perkins, as former head of the Chinese Division under the Immigration Service, was placed in charge of building the organization. Perkins would face the challenge of recruiting and maintaining Border Patrol agents, facing high turnover rates throughout the 1920s and 1930s due to a number of causes. Perkins discusses the ups and downs

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<sup>130</sup> Ibid., p. 24

<sup>131</sup> Uma Anand Segal, *A Framework for Immigration: Asians in the United States*. Columbia: Columbia University Press, 2002. p. 134

<sup>132</sup> David Tichenor, *Dividing Lines*. p. 145

<sup>133</sup> Clifford Alan Perkins, *Border Patrol: With the U.S. Immigration Service On the Mexican Boundary 1910-1954*. p.91

of his career in *Border Patrol: With the U.S. Immigration Service On the Mexican Boundary 1910-1954*. He outlines a number of problems that the young agency faced during its early years. He faced the issue of establishing a sense of professionalism during the early years, as the some of the first patrolmen “were a little too quick with a gun, or given to drinking too much, too often, and had to be let out.”<sup>134</sup> Perkins also had to deal with the legacy of the Texas Rangers, an institution notorious for discrimination and violence against Mexicans at the border and throughout the state.<sup>135</sup> Time magazine (1977) notes: “By 1900 the force was notoriously corrupt, and during World War I the Rangers became little more than terrorists, a racist army supported by the state for purpose of intimidating Mexicans on both sides of the Border”.<sup>136</sup> Describing early patrolmen Perkins explains “many early Patrolmen were acquainted with the Texas Rangers and their activities and started to emulate them despite the fact that the Patrol was dealing with the general public, not criminals.”<sup>137</sup> Perkins goes on to describe an incident in which patrol agents had apprehended a Mexican man under “suspicious circumstances” but found no evidence of wrongdoing by the man. The agents tied the man’s feet together, dragged him into the water and repeatedly dunked him until he admitted to being a smuggler. Perkins even went so far as assigning ex-

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<sup>134</sup> Perkins, p. 95

<sup>135</sup> for an assessment of such anti-Mexican sentiment and violence see *Gunpowder Justice: A Reassessment of the Texas Rangers* by Julian Samora, Joe Bernal and Albert Peña (1979). Also see *With His Pistol In His Hand: A Border Ballad and Its Hero* by Américo Paredes (1970).

<sup>136</sup> cited from Julian Samora, Joe Bernal, and Albert Peña’s *Gunpowder Justice: A Reassessment of the Texas Rangers*. Notre Dame: University of Notre Dame Press, 1979.

<sup>137</sup> Perkins, p. 102

Rangers to a Border Patrol office that had been plagued with corruption, described as “experienced, well-disciplined fighters who knew the country.”<sup>138</sup> Perkins provides details about a number of developments during the early years of the agency that still occur today such as corrupt agents, the deporting of Mexican-Americans (by Perkins himself), violence against those apprehended, and getting information about the whereabouts of “illegal's” from the local African-American church by suggesting that “wetbacks” were undercutting their job opportunities.

A host of other issues such as a lack of central organization, lack of resources, and no clear strategy of enforcement created a situation in which agents, who were federal officers, had to rely on local resources in order to be effective. As Lytle-Hernandez states in regard to this local reliance “Border Patrol Inspectors depended upon borderland ranchers and farmers who could provide critical information about the movement of people through the region and could be mobilized to assist officers who were outnumbered, outmaneuvered or outgunned.”<sup>139</sup> But these same ranchers and farmers would soon stand in defiance of the increased enforcement of as the agency increased in size and as “old-timers” were replaced with new recruits. Perkins describes the opposition of farmers and ranchers as based upon the Border Patrol’s interruption of traditional labor patterns in which Mexican nationals would immigrate to South Texas to work in the agricultural sector. “Opposition to the Border Patrol in the Brownsville Sector”, stated Perkins, “was considerable and stemmed from

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<sup>138</sup> Ibid., p. 113

<sup>139</sup> Lytle-Hernandez. p. 52

ranchers and farmers in the Rio Grande Valley who had benefited greatly before the Patrol entered the picture by using Mexican wetbacks to plant and harvest their crops.”<sup>140</sup> Lytle-Hernandez builds upon Perkins example of ranchers and farmers using “Mexican wetbacks” in South Texas and contends that the organization of labor was based along racial lines, with White land owners as ranchers and farmers and Mexicanos as laborers. She states “Labor is a nexus of racial formation and in the U.S.-Mexico borderlands the agricultural economy was the pre-eminent race project...Whites held land or managed workers while Mexicanos harvested, plowed, picked, tended, reaped and migrated.”<sup>141</sup> Her assessment of the positions held by Whites and Mexicans should be viewed as an outcome of the re-appropriation of land and reduced opportunities of economic, social and political participation outlined in chapter two. Land ownership amounted to possibilities of economic growth, while solely owning ones own labor amounted to being at the mercy of those who needed such labor.

The situation was similar in California, with agriculture growing at an expansive rate. David Gutierrez notes that by “1930 California alone accounted for one-third of the United States’ fresh fruit, one-fourth of its vegetables, eight-tenths of its wine, and nearly the entire American output of almonds, artichokes, figs, nectarines, olives, dates, and lemons.”<sup>142</sup> An estimated 75,000 Mexican guest workers

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<sup>140</sup> Perkins, p. 106

<sup>141</sup> Lytle-Hernandez. p. 39

<sup>142</sup> David Gutierrez, *Walls and Mirrors*. p. 42

labored in the United States between 1917 and 1921, fulfilling some of the demand in states such as California and Texas. Restrictionists battled those who wanted increased numbers of Mexican laborers available to meet the demands of industries such as agriculture, as the Great Western Sugar[beet] Company of Colorado argued “you have to give us a class of labor that will do this back-breaking work, and we have the brains and ability to supervise”. In response to the possibility that White men may have to do the work, the company stated it did “not want to see the condition arise again when white men who are reared and educated in our schools have got to bend their backs and skin their fingers to pull those little beets.”<sup>143</sup> The overall argument for Mexicans as agricultural workers supported by farmers and others associated race with ability to perform menial labor, transitioning agricultural and other forms of manual labor from “White” jobs to “Mexican” jobs.

The historical creation of racial boundaries in the Southwest, particularly the Anglo-American versus Mexican-American, combined with increased immigration from Mexico during the 1920s helped fuel Border Patrol practices and enforcement. Lytle-Hernandez argues that “racial profiling unevenly distributed Border Patrol surveillance, interrogations and deportations.”<sup>144</sup> Joseph Nevins reinforces Lytle-Hernandez’ argument and establishes links between these early developments and more contemporary events, arguing “the state effectively helped to produce social boundaries between ‘Americans’ and ‘Mexicans,’ ‘citizens’ and ‘aliens,’ thus setting

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<sup>143</sup> Tichenor, *Dividing Lines*. p. 171

<sup>144</sup> Lytle Hernandez. p. 62

the stage for the ‘war on illegals’ in the United States that has emerged over the last couple of decades.”<sup>145</sup> Mae M. Ngai confirms both Nevins and Lytle-Hernandez’ points, stating that during “the 1920s, immigration policy rearticulated the U.S.-Mexico border as a cultural and racial boundary, as a creator of illegal immigration.”<sup>146</sup> The overarching theme is that of the Anglo “self” and the Mexican “other”, which developed out of the historical developments discussed in chapter two. I would argue that these dimensions of “self” and “other” translate into what Ngai calls “alien citizenship” (defined in chapter one) in that early practices of the Border Patrol and the reinforcement of the U.S.-Mexico border during this era fail to differentiate between Mexican nationals and Mexican-Americans. In other words Mexican bodies were racialized as “illegal” regardless of whether or not they were citizens of the United States, and this racialization process would continue to play an important role in immigration debates as Nevins points out in his comment. Though not directly mandated by the INS the numerous repatriations of those of Mexican-origin during the Great Depression serve as a prime example of “alien citizenship”. While labeled as Mexican “repatriation” during the 1930s, the reality of raids and mass deportations instilled a sense of distrust and fear of officials who only concerned themselves of “ridding” the United States of the Mexican “problem”. As Kevin R. Johnson sums up in his article titled “The Forgotten ‘Repatriation of Persons of Mexican Ancestry and Lessons for the War on Terror:

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<sup>145</sup> Nevins, Operation Gatekeeper. p. 59

<sup>146</sup> Ngai, Impossible Subjects. p. 67

The forced “repatriation” of an estimated one million persons of Mexican ancestry included the removal of hundreds of thousands of people from California, Michigan, Colorado, Texas, Illinois, Ohio and New York during the Great Depression. It is clear today that the conduct of federal, state, and local officials in the campaign violated the legal rights of the persons repatriated, as well as persons of Mexican ancestry stopped, interrogated, and detained but not removed from the country. The repatriation campaign also terrorized and traumatized the greater Mexican-American community.<sup>147</sup>

Of the hundreds of thousands of Mexicans repatriated an estimated 60 percent were children or American citizens by birth.<sup>148</sup>

By the 1930s the Immigration Service was apprehending almost five times more suspected illegal aliens at the U.S.-Mexico border versus the U.S.-Canada border.<sup>149</sup> Immigration raids and sweeps, increased numbers of interrogations, and increased numbers of deportations helped differentiate the situation of the U.S.-Mexico border from the U.S.-Canada border. In the San Diego sub-district (later renamed sectors) officials called for increased boundary enforcement due to the Great Depression.<sup>150</sup> Yet from February 1943 to 1940 the Border Patrol sub-districts of Southern California maintained their number of agents at forty per sub-district. Immigration was increasing, especially in the short staffed El Paso sector. The Immigration Act of 1940 transferred the Immigration and Naturalization Service from the Labor Department to the Justice Department and approved \$2million for the hiring

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<sup>147</sup> Kevin R. Johnson, ““The Forgotten ‘Repatriation of Persons of Mexican Ancestry and Lessons for the War on Terror’”. *Pace Law Review*. Vol. 26 Fall 2005 No. 1. p. 5

<sup>148</sup> Ngai, p. 72

<sup>149</sup> *Ibid.*, p. 70

<sup>150</sup> Nevins, *Operation Gatekeeper*. p. 50



of an additional 712 officers. In 1941 the Department of Justice created the Chief Supervisor of the Border Patrol position to address regional differences and local ownership by existing Border Patrol supervisors. The position, combined with funds for improving communication technology, allowed the new Chief Supervisor to thoroughly monitor and direct station activities.<sup>151</sup>

Changes were slow but forthcoming during the early 1940s. Between June of 1940 and December of 1943 the Chula Vista sub-district increased its number of Patrol from 40 inspectors to 60. The El Paso sub-district received additional cars equipped with radios and implemented the use of planes in order to synchronize their activities and achieve higher apprehension rates. The increase in agents and resources changed the Border Patrol, creating higher standards of professionalism and structure. Describing these changes Lytle-Hernandez states the “1940 appropriation dramatically increased the personnel and transformed the tactical possibilities of Border Patrol work, while the Chief Supervisor of the Border Patrol centralized the organization’s administration.”<sup>152</sup>

As the appropriation of the Border Patrol was taking place during the early 1940s World War II was unfolding. The bombing of Pearl Harbor caused the United States to join World War II in 1941. Soon a call for increased food production went out as supply increased for foodstuffs as a result of the war. In 1942 the government responded by passing the Emergency Farm Labor Act (later known as the *Bracero*

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<sup>151</sup> Lytle-Hernandez, p. 74

<sup>152</sup> Lytle-Hernandez, p. 76

Act) in collaboration with the Mexican government. The act allowed for the importation of temporary agricultural workers to help increase food production during wartime in California. The need for labor in the agricultural industry was always a recurring problem in the Southwest and the U.S. government hoped to ease the problem by allowing temporary guest workers to enter the U.S. Departing from the “repatriating” mood of the 1930s, the U.S. government dropped off its first *Braceros* in Stockton, California on September 27, 1942.<sup>153</sup> The Bracero Program was in affect from 1942 to 1964, with an average 200,000 braceros admitted a year.<sup>154</sup>

The program had the unintended consequence of also increasing unauthorized immigration. Possibly due to the social networking skills of participating *Braceros* unauthorized immigration increased parallel to the levels of *Bracero* workers. David Gutierrez notes that “as early as 1945 some observers were estimating that the flow of undocumented entries into the United States from Mexico already surpassed the number of workers who had entered the Bracero program.”<sup>155</sup> By 1944 apprehensions of unauthorized migrants was 29,176 and by 1947 the number of apprehensions increased to close to 200,000. Despite this increase in apprehensions the “catch and release” practice of the Border Patrol did little to deter the number of unauthorized entrants. Dropped off across the border Mexican nationals could re-enter without difficulty. As a result the Border Patrol established contact with

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<sup>153</sup> Ngai, p. 138.

<sup>154</sup> Ibid., p. 139

<sup>155</sup> Gutierrez, Walls and Mirrors. p. 142

Mexican officials in hopes of deterring re-entry by releasing Mexican nationals to Mexican officials. It was assumed that Mexican officials would “guide” returning migrants to the nearest train station and improve the possibility of returns migrants to the interior of Mexico. Lytle-Hernandez asserts that “U.S. Border Patrol officials believed that cooperation with Mexican officials to prevent re-entry would be necessary to reduce the flow of undocumented immigrants across the border.”<sup>156</sup> The INS and the Mexican Ministry of Labor announced a bilateral agreement in January of 1945 that addressed Mexican deportation by creating a working relationship that allowed Border Patrol officials to release Mexican nationals into the custody of Mexican officials. The Mexican officials would transport the deported national to the train depot and have them transported to the interior of Mexico to delay or prevent any hope of reentering the U.S.

U.S. officials also received Mexican cooperation during the initial stages of erecting fences along the U.S.-Mexico border. In 1949 funding had been secured by the Border Patrol from the International Water and Boundary Commission to erect fences in San Ysidro, California, Nogales, Arizona, and Calexico, California. The announcement of border fences faced immediate opposition from Mexican border communities, so the Governor of Baja California sent Mexican troops to the border to patrol and protect the fences during construction. The fences served more as symbols than as actual barricades, as many who wished to cross simply went around or under the fences. By 1949 apprehensions had increased to 289,402. Despite deportation to

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<sup>156</sup> Lytle-Hernandez, 94.

the interior and the erection of fences border enforcement was failing to deter unauthorized migrants. As Lytle-Hernandez summarizes “train-lifts, plane-lifts, and fences may have slowed illegal re-entry for those deported to the interior, but determined laborers often returned to the U.S.”<sup>157</sup>

Just as the realization that such efforts were not curbing unauthorized entry into the U.S. Border Patrol Agent Albert Quillin showed up on the scene. One of Quillin’s fellow agents described Quillin as “young, imaginative, eager beaver, all kind of ways of doing undercover work and having informers.”<sup>158</sup> Lytle-Hernandez describes Quillin’s entry into the patrol and his first year as a patrolman (1940) as a time of transition between seasoned agents and rookies such as Quillin. Due to a lack of supervision and Quillin’s vested interest in developing new techniques to apprehend unauthorized immigrants the “operation wetback” was created. These early operations would serve as the foundation for the implementation of Operation Wetback in 1954. Between February 1950 and July 30, 1952 Quillin rounded up his men and set out in teams and converged on specific locations, conducting mass sweeps of unauthorized immigrants. During one of his campaigns in 1950 he rounded up almost 1,000 unauthorized laborers in four days.<sup>159</sup> In July of 1952 he set a high mark of 5,000 apprehensions for one day.

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<sup>157</sup> Lytle-Hernandez, p. 103

<sup>158</sup> Ibid. p. 107

<sup>159</sup> Ibid. p. 108

The sweeps were renamed “task forces” and then coordinated into a number of “operation wetback”[s]. By 1952, Lytle-Hernandez notes, “operation wetback”[s] were “well-heeled” strategies used by a majority of Border Patrol stations in the Southwest. Surprisingly supportive of the efforts of the Border Patrol, groups such as the League of United Latin American Citizens and the GI Forum supported the increase in enforcement and encouraged further action. The outcome of the “operation wetback”[s] strategy, as a multiple operation scheme, would culminate into an intense campaign to “drive out” the wetback problem.

In March of 1954 Joseph M. Swing, a former Army general, was appointed commissioner general of the INS. In June of 1954 the INS conducted a full fledged assault against “illegals”, initiating the official “Operation Wetback” and conducting a series of “dragnet raids” in California and throughout the Southwest.<sup>160</sup> The campaign involved 750 immigration officers; 300 jeeps, cars and buses; 7 airplanes and “other equipment”<sup>161</sup> The Operation made it as far as Chicago and it had the familiar consequence of sweeping legal residents as well, recalling the repatriations of the 1930s. The question remains, which is not discussed in detail in the literature I reviewed, about how they determined who was legally in the United States and who was not. At the end of the operation the INS reported that more than one million illegal aliens had been deported. But as Lytle-Hernandez suggests such high numbers of deportations during the operation are questionable and the overall effectiveness at

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<sup>160</sup> Tichenor, p. 202

<sup>161</sup> Ngai. 155

detering further unauthorized immigration was minimal.<sup>162</sup> Furthermore Swing merely increased an already existing strategy of mass sweeps and interior deportations and brought no new solutions to the table in regards to how to restrict unauthorized immigration.

As one group of agents conducted raids that targeted the Mexican-origin population (including legal residents) another group of INS agents was distributing *Bracero* visas. Between 1955 and 1960 annual Bracero migration ranged from 400,000 to 450,000 workers.<sup>163</sup> One strategy of the INS was to raid fields and then “dry out” wetbacks. Massey, Durand & Malone describe the irony of the various events unfolding in regards to Mexican immigration: “At one point the INS was raiding agricultural fields in the southwestern United States, arresting undocumented workers, transporting them back to the border, deporting them into the waiting arms of officials from the U.S. Department of Labor, who promptly processed them as braceros and retransported them back to the very fields where they had been arrested in the first place!” The irony of the situation was the simultaneous pushing out and pulling in of Mexican immigrants during this period. Ngai describes the process as well, stating how the “drying out of wetbacks” gave growers no need to participate in the Bracero program. She states the INS “had also accommodated growers by legalizing their illegal workers on several occasions, some highly publicized, giving

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<sup>162</sup> Lytle-Hernandez. 156

<sup>163</sup> Massey, Durand, & Malone. *Beyond Smoke and Mirrors*.

them little incentive to participate in the bracero program.”<sup>164</sup> I argue that these examples highlight the nature of competing interests of lawmakers, growers, and the INS at the U.S.-Mexico border. Despite these competing interests the overall impact of the Bracero program was significant. From 1942 to 1964 an estimated 5 million Mexicans had entered the United States.<sup>165</sup>

Though no quotas had been established for the Western Hemisphere the Mexican immigrant had now been solidified as the “wetback”, the “alien”, and the “illegal”. A number of factors contributed the “making” of the “illegal” immigrant. Ngai discusses a number of these factors, explaining:

It was ironic that Mexicans became so associated with illegal immigration because, unlike Europeans, they were not subject to numerical quotas and, unlike Asiatics, they were not excluded as racially ineligible to citizenship. But as numerical restriction assumed primacy in immigration policy, its enforcement aspects-inspection procedures, deportations, the Border Patrol, criminal prosecution, and irregular categories of immigration-created many thousands of illegal Mexican immigrants.<sup>166</sup>

Lytle-Hernandez reaffirms the point I make regarding the “branding” of the Mexican as “illegal” and makes the historical connection between early perceptions of Mexicans in the Southwest U.S. She states: “By the early 1950s, the “illegal” as

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<sup>164</sup> Ngai, p. 153

<sup>165</sup> Massey, Durand & Malone. p. 39

<sup>166</sup> Ngai, p. 71

Mexican and the Mexican as “illegal” had become a “mindset” rooted in a four-decades-deep tangle of policing bodies and borders.<sup>167</sup>

To conclude chapter three we witness a number of shifts taking place in the Southwest. First the Border Patrol has expanded its reach and “successfully” conducted raids on interior points in the U.S., with Operation Wetback serving as the most intense operation to date. Though the operation did not necessarily change the strategies implemented by the Border Patrol or the Immigration and Naturalization Service the sheer enormity of the operation should be recognized. The act of “drying out wets” also serves as an interesting tactic of the INS, while dragnet raids conducted by authorities continued to take place. Second, for the first time in Border Patrol history relationships with Mexican officials to assist in the deterrence, apprehension and deportation of unauthorized immigrants takes place. In the 1930s during the repatriation of persons of Mexican-origin and in the mid-1950s Mexican officials cooperate with the Border Patrol, going so far as to guard the fence being put up at the border. Thirdly the enactment of the *Bracero* program created massive amounts of immigration, both authorized and unauthorized, and would impact the demographic makeup of the Southwestern United States significantly. Lastly, the classification of the Mexican migrant and sometimes American-born Mexicans, as “illegal” would later have a profound affect not only on future immigration legislation but also on ethnic-based or “identity” politics with the advent of immigrant-rights

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<sup>167</sup> Lytle-Hernandez. 186.



groups and Latino-rights groups. As I discuss in the next chapter the Immigration Act of 1965 would soon change the demographic makeup of new immigrants.

## **Chapter 4: The Border Patrol & Immigration Law from 1965-Present**

From 1965 to the present a number of considerable developments take place at the U.S.-Mexico border regarding immigration law and the Border Patrol and I discuss these events in chapter four. The 1965 Immigration Act fundamentally changed patterns of immigration and ended the National Origins Act of 1924 nation-based quotas. The Border Patrol still practiced policing the Mexican-origin population as evidenced by the Supreme Court case *United States v. Brignoni-Ponce* (1975), with the Supreme Court decision reinforcing the right of the Border Patrol to interrogate individuals that are “driving while Mexican”.<sup>168</sup> In 1986 the Immigration Reform and Control Act (IRCA) implemented increased funding for the Border Patrol and called for intensified efforts of employer sanctions for those who hired undocumented immigrants. But IRCA also legalized over three million unauthorized immigrants which created backlash in the 1990s. During the 1990s increased militarization was occurring at the border, with the onset of a number of operations to prevent unauthorized migrants from entering the U.S., a strategy labeled “prevention through deterrence”. Proposition 187, a state ballot in California, aroused sentiments of anti-immigrant rhetoric and was passed by voters in 1994. Following 187 the operations of the Border Patrol continued and expanded. After the terrorists attacks of September 11, 2001 the Immigration and Naturalization Service underwent a complete overhaul. In 2003 the Department of Homeland Security (DHS) organized the Border Patrol

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<sup>168</sup> See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-887 (1975). See Adalberto Aguirre, Jr.’s “Profiling Mexican American Identity: Issues and Concerns”. *American Behavioral Scientist* 2004; 47; 928. The idea of “driving while Mexican” refers to the racial profiling of those of Mexican-origin, whereas their “appearance” as being Mexican is the sole reasoning for interrogation by law enforcement (Border Patrol agents, police, etc.).

under the Customs and Border Protection branch of DHS. Since 2003 the Border Patrol has continually increased in size and funding and the construction of barriers and new technology implemented at the Border has also increased. I further detail these events in chapter four.

I also present interviews I conducted with eight Border Patrol agents in chapter four, a majority of whom are Mexican-American. Though the agency was policing the Mexican-origin population it was also recruiting Mexican-American agents to serve within its ranks. These interviews offer some interesting insight about how the agents view their job duties and help present a more personal picture of the Border Patrol.

### **The 1965 Immigration Act**

Yet the fact is that for over four decades the immigration policy of the United States has been twisted and has been distorted by the harsh injustice of the national origins quota system. Under that system the ability of new immigrants to come to America depended upon the country of their birth. Only 3 countries were allowed to supply 70 percent of all the immigrants. Families were kept apart because a husband or a wife or a child had been born in the wrong place. Men of needed skill and talent were denied entrance because they came from southern or eastern Europe or from one of the developing continents. This system violated the basic principle of American democracy--the principle that values and rewards each man on the basis of his merit as a man.<sup>169</sup>-President Lyndon B. Johnson, Speech at the Signing of the Immigration Act of 1965 (Hart-Celler Act)

President Lyndon B. Johnson signed the Immigration Act of 1965 amid fanfare and accomplishment, ending the national origins quota system while simultaneously

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<sup>169</sup> President Lyndon B. Johnson. "Remarks at the Signing of the Immigration Bill, Liberty Island, New York". October 3, 1965. Online Library of Texas. Stable URL:< <http://www.lbjlib.utexas.edu/Johnson/archives.hom/speeches.hom/651003.asp>>

establishing a precedent of equality that was in accordance with the supposed national “philosophy” that all men are entitled to equality regardless of race or nationality. Yet, as Mae M. Ngai points out, the inclusion of a numerical ceiling, which imposed limits on immigration, combined with the imposition of quotas on immigration from the Western Hemisphere, created new forms of restriction and did not address the Mexican “question” of immigration.<sup>170</sup> In other words unauthorized immigration from Mexico continued to increase, along with authorized entry, but no strategy for addressing the “question” was implemented. The Immigration Act of 1965 had a number of significant effects on the demographic makeup of immigrants, allowing for a large majority of new immigrants to arrive from Asia, Latin America, and the Caribbean.<sup>171</sup> The act also had the affect of restricting flows of legal migration to the United States from Mexico, imposing an annual quota of 20,000 migrants just as legal paths to immigration such as the Bracero Program had ended. I further discuss these impacts and the ways in which they influenced authorized and unauthorized immigration but first cover the main elements of the Immigration Act of 1965.

The most significant change brought by the Immigration Act of 1965 was that it repealed the National Origins Act of 1924. Based upon the 1890 census the National Origins Act imposed restrictions upon immigration from Southern & Eastern Europe, heavily limited Asian immigration, and placed no limits upon migration for the Western Hemisphere. The Immigration Act now placed global quotas that were

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<sup>170</sup> Ngai, *Impossible Subjects*. p. 260

<sup>171</sup> Tichenor, *Dividing Lines*. p. 219. Ngai, *Impossible Subjects*. P. 227

evenly distributed at 20,000 per country, raising the ceiling on admissions to a total of 300,000 immigrants per year. The Act also established preferences for family and occupationally-based immigration.

Family preferences would have a significant impact upon immigration levels throughout the 1970s and 1980s. In particular the Asian population in the United States would grow at a tremendous rate during the late twentieth century. Referring to how preferences for family reunification unfolded Ngai states that Congress “had not understood that each quota immigrant admitted into the country could open up a path for nonquota family migration, as well as for additional family migration in other quota-preference categories.”<sup>172</sup> In other words by not restricting quotas on family-based migration the Immigration Act of 1965 left the “door” slightly cracked open and set off chains of migration to the U.S. Restrictions on Asian immigration had been lifted in the 1950s, and with the emphasis on family reunification in the Immigration Act of 1965 the Asian population in the U.S. grew at a tremendous rate. Further contributing to this growth was the arrival of refugees from Southeast Asia as a result of the Vietnam War, with an estimated 400,000 refugees in the U.S.<sup>173</sup> The overall result was the growth of the Asian American population from 1.2 million in 1965 to 14.9 million in 2008.<sup>174</sup>

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<sup>172</sup> Ngai, *Impossible Subjects*. p. 262

<sup>173</sup> Lloyd Duong. “The Boat People: Imprints on History”, pg. 84

<sup>174</sup> Robert Bernstein, “Minority Population hits 100 Million”. U.S. Census Bureau News. Stable URL: <<http://www.census.gov/Press-Release/www/releases/archives/population/010048.html>>

The Immigration Act of 1965 changed the nature of immigration from Western Hemisphere countries to the United States. The estimated annual immigration ceiling for the Western Hemisphere was 120,000, representing a forty percent reduction from pre-1965.<sup>175</sup> The new restrictions upon Western Hemisphere immigration directly impacted the “illegality” of migration to the United States, particularly Mexican migration. Mexican migration has been and continues to be the most prolific type of immigration to the United States, both numerically and historically. Yet the 1965 Act failed to address the historical nature of Mexican immigration and the changing global economy that was impacting migration at the time and that continues to impact Mexican migration today.<sup>176</sup> Peter Andreas the way in which the elimination of the Bracero program, combined with the passage of the Immigration Act of 1965, allowed for the replacement of the formal Bracero program with an informal one. Andreas makes the case that “incentives for clandestine entry were further reinforced by the 1965 Immigration Act” because “as the front door of legal entry became more regulated, the backdoor of illegal entry became attractive.”<sup>177</sup>

The incentive for unauthorized entry allowed for a remarkable increase in apprehensions by the Immigration and Naturalization Service. As the Statistical Yearbook of the Immigration and Naturalization Service shows from 1961 to 1980 a

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<sup>175</sup> Ngai, *Impossible Subjects*. p. 227

<sup>176</sup> Mirande, *Gringo Justice*. p. 144

<sup>177</sup> Peter Andreas. *Border Games: Policing the U.S.-Mexico Divide*. p. 35

dramatic increase in “undocumented aliens” apprehended took place.<sup>178</sup> Before 1965 the apprehension rate never exceeded 100,000 per year. By 1970 the number of unauthorized immigrants reached 345,353. By 1977 over 1 million unauthorized immigrants had been apprehended and deported. Of those deported a large majority were Mexican nationals.<sup>179</sup> In 1968 212,057 unauthorized immigrants were deported, of whom 151,000 were Mexican nationals. By 1976 a total of 781,000 Mexican nationals attempting clandestine entry were deported, out of an overall total of 875,915 unauthorized immigrants.<sup>180</sup> As Joseph Nevins sums up, the “growing concerns of public officials and the public at large, as well as increased legislative activism surrounding unauthorized immigration, had real effects on the U.S.-Mexico boundary, leading to an unprecedented growth in federal resources dedicated to boundary policing beginning in the late 1970s.”<sup>181</sup>

### **The Supreme Court Case: United States v. Brignoni-Ponce**

On the evening of March 11, 1973 Border Patrol agents working at a checkpoint on Interstate 5 south of San Clemente, California viewed a “suspicious” vehicle passing by.<sup>182</sup> The agents interrogated the driver and his two passengers about

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<sup>178</sup> Immigration and Naturalization Service, Department of Justice, Statistical Yearbook of the Immigration and Naturalization Service, 1994 (Washington, DC: Government Printing Office, 1994).

<sup>179</sup> Ngai, *Impossible Subjects*. p. 261

<sup>180</sup> *Ibid.*, p. 26

<sup>181</sup> Joseph Nevins, *Operation Gatekeeper*. p. 67

<sup>182</sup> Aguirre, p. 934

their citizenship status and determined that the two passengers were undocumented immigrants. The driver was arrested for transporting illegal immigrants, and the passengers were detained for illegal entry into the U.S. During the trial the agents testified that they deemed the vehicle as “suspicious” because the occupants appeared to be of Mexican-origin.

The U.S. Supreme Court ruled that by stopping the defendant’s vehicle the Border Patrol had violated the Fourth Amendment because agents had based their stop on the “perceived” Mexican ancestry of those inside the vehicle.<sup>183</sup> Mexican ancestry alone was not sufficient for stopping persons and interrogating them about their citizenship status. But the court did rule that ancestry was still a relevant factor in stopping individuals. Justice Powell, who wrote the court’s opinion, left open the possibility of using Mexican ancestry as a determinant factor in the stopping of individuals by the Border Patrol. Powell states in his opinion: “The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens.”<sup>184</sup>

Kevin R. Johnson and Adalberto Aguirre both argue that this legal ruling helps perpetuate the notion that those of Mexican-origin are criminals, smugglers, or undocumented immigrants and that the adverse affects of such a ruling impacts all persons of Mexican-origin. Johnson states, by “emphasizing that a Border Patrol

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<sup>183</sup> Aguirre, p. 935

<sup>184</sup> Ibid., p. 935



officer may consider race along with other factors in deciding whether to conduct an immigration stop, the Supreme Court opened the door to Border Patrol reliance on race and little more than a hunch that a brown person is undocumented”, thus inviting “race to dominate immigration enforcement.”<sup>185</sup> Adalberto Aguirre argues: “In this case, the Supreme Court created the opportunity for the U.S. Border Patrol to use Mexican identity as a tool for profiling Mexican-origin persons. In turn, actions resulting from the profiling activities serve to legitimate public perceptions that Mexican-origin persons are likely to be aliens and also likely to be drug smugglers.”<sup>186</sup>

One main component of the U.S.’ argument for using racial profiling tactics was that a majority of “aliens” apprehended were of Mexican-origin. As previously stated by 1976 781,000 Mexican nationals attempting clandestine entry were deported, out of an overall total of 875,915 of unauthorized immigrants. But one of the major problems with all apprehension data is that such data records incidents and not actual persons attempting entry, therefore it is possible that apprehension numbers are inflated by the number of times a person has attempted entry.<sup>187</sup> Still, the data presented to the Supreme Court allowed the justices to leave open the possibility of using Mexican ancestry as a determinant factor in stopping people.

The 9<sup>th</sup> Circuit Court of Appeals would here a similar case twenty five years later in *United States v. Montero-Camargo* (2000), but would issue a different ruling.

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<sup>185</sup> Johnson, *Race Profiling in Immigration Enforcement.*, p. 2

<sup>186</sup> Aguirre, p. 935

<sup>187</sup> Dunn, p. 50.

Johnson states, in the U.S. v. Montero-Camargo “the U.S. Court of Appeals for the Ninth Circuit disregarded the contrary language in Brignoni-Ponce and held that the Border Patrol cannot lawfully consider ‘Hispanic appearance’ in deciding to make an immigration stop.”<sup>188</sup> The Appeals court found that ‘Hispanic appearance’ was a “weak proxy” for stopping someone to verify their immigration status. The decision was important because it reconsidered the language of the Supreme Court ruling, but unfortunately the Supreme Court standing overrides the Ninth Circuit’s findings.

### **1980s**

In 1980 the Border Patrol had 2,694 agents and received \$82.6 million in congressional funding.<sup>189</sup> Besides an increase in numbers the Border Patrol was also accused of mistreating undocumented immigrants. During a 1980 congressional hearing INS Commissioner David Crosland was questioned about the civil rights violations of undocumented immigrants and the convictions of two Border Patrol agents.<sup>190</sup> The initial investigation led to the discovery of an “organized brutality” ring and led to the conviction of the two agents. As Crosland responded to inquiries about the incident by Congress: “We are not satisfied this was an isolated incident to others whose activities are less than professional.”<sup>191</sup> Dunn states “that violations of

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<sup>188</sup> Johnson, p. 2

<sup>189</sup> Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border*. p. 40

<sup>190</sup> *Ibid.* p. 40

<sup>191</sup> *Ibid.* p. 40

undocumented immigrants' civil rights by Border Patrol agents were indeed not 'isolated incidents,' but instead rather commonplace" in reference to these abuses.<sup>192</sup> The incident of abuse did garner publicity but not enough to influence unrestrictive immigration policies.

The year 1986 marked a turning point in regards to immigration and boundary enforcement at the U.S.-Mexico border. Congress enacted the Immigration Reform and Control Act (IRCA) of 1986 while "Southwest border apprehensions were at an all-time record 1,615,844 in fiscal year 1986".<sup>193</sup> The high number of apprehensions at the U.S.-Mexico border had now cast unauthorized immigration at the Southwest border into the spotlight, further magnifying "hotspots" for clandestine entry such as El Paso, Texas and San Diego, California. IRCA was enacted to address issues such as unauthorized immigration, employer sanctions for employers who hired undocumented immigrants, the unauthorized immigrant population already present in the U.S. and the call for increased funding and infrastructure for the Border Patrol and other government agencies.

In essence IRCA granted amnesty/permanent residence to over 2 million undocumented immigrants, imposed employer sanctions, allowed for the creation of an immigrant antidiscrimination agency, and established a special agricultural worker program.<sup>194</sup> Furthermore, IRCA provided the Immigration and Naturalization Service

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<sup>192</sup>Ibid. p. 40

<sup>193</sup> Immigration and Naturalization Service, Statistical Yearbook 1997.

<sup>194</sup> Tichenor, *Dividing Lines*. Introduction, p. 5. Table 1.1 Overview of Major U.S. Immigration Law.

with new resources, allowing for expansion of the Border Patrol. IRCA authorized a 50 percent increase in the INS budget, with a \$100 million set aside annually for employer sanctions.<sup>195</sup> Consequently, after the passage of IRCA in 1986 apprehensions at the Southwest border declined for three consecutive years, reaching an all time-low of 852,506.<sup>196</sup>

What was most intriguing about IRCA was the unrestrictive nature of the legislation. David Tichenor explains: “While IRCA’s enforcement mechanisms were quiet limited in discouraging unauthorized entries, the law’s expansive features were striking: the largest amnesty program for undocumented aliens of any country to date, a seasonal agricultural program that granted laborers opportunities to become permanent residents and citizens, and new anti-discrimination rights for aliens at the workplace.”<sup>197</sup> The development of immigration law would continue to include provisions that favored immigrants. But Douglas S. Massey, Jorge Durand, and Nolan J. Malone acknowledge that IRCA was both expansive and restrictive, stating: “IRCA contained both deeply restrictive and wildly expansive provisions. Despite the increase in border enforcement and the imposition of employer sanctions, it ended up legalizing some 2.3 million formerly undocumented Mexicans.”<sup>198</sup>

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<sup>195</sup> Massey, Durand & Malone. *Beyond Smoke and Mirrors*. 2002

<sup>196</sup> INS Statistical Yearbook, 1997.

<sup>197</sup> *Ibid*, p. 243-244.

<sup>198</sup> . p. 49

The legalization of over 2 million undocumented immigrants through IRCA was intended to ease the number of unauthorized immigrants by regularizing their status. The result of the law instead increased the problem it hoped to decrease, and would later be seen as one of the major flaws of IRCA. Peter Andreas states: “rather than discouraging illegal immigration, the main impact of legislation under IRCA was to reinforce and expand already well-established cross-border migration networks. Many onetime immigrants who had gone back to Mexico returned to claim legalization papers. And those who were legalized under the program provided a more secure base for the arrival of new immigrants”<sup>199</sup> Massey, Durand & Malone add, although “border apprehensions fell in the period 1987 to 1989, by 1990 they were once again on the rise, increasing 26 percent over the prior year.”<sup>200</sup> They go on to describe how the legalization process of IRCA had a ripple effect of allowing now-legalized immigrants the opportunity to sponsor their relatives, and how the regularization of 1.1 million “Special Agricultural Workers” citizenship status was based upon fraudulent claims.<sup>201</sup>

The overall impact of IRCA was significant, with increased restrictions and a legalization program. IRCA had been the product of a number of parties working together in order to address the issue of immigration in the U.S. IRCA was enacted through the combination of bipartisan cooperation of Congress and Asian, Latino, and

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<sup>199</sup> Peter Andreas, *Border Games*. p. 86

<sup>200</sup> Massey, Durand & Malone, p. 91

<sup>201</sup> *Ibid.* p. 91

immigrant-rights groups. But the pro-immigrant tone set by IRCA would soon fade, as the push for increased border enforcement would take center stage. Operation Hold-the-Line in 1993, Proposition 187 in California in 1994, and Operation Gatekeeper in 1994 rapidly shifted the sentiment of “pro-immigrant” to an atmosphere of increased militarization at the border and a reassessment of immigrants rights (especially undocumented) in California and nationally.

### **Let the Operations’ begin**

“Today we send a strong and clear message. We will make it tougher for illegal aliens to get into our country.”<sup>202</sup>-President Bill Clinton,. July 27, 1993

Soon after President Clinton’s announcement a number of strategies would be used to increase border enforcement at the U.S.-Mexico border. IRCA had increased the number of “regularized” immigrants in the U.S. but also inadvertently increased the number of unauthorized immigrants in the U.S. As Peter Andreas suggests the IRCA’s fallout created a backlash of anti-immigrant sentiment. The after affects of IRCA led to an atmosphere of anti-immigrant rhetoric, and the federal government was called upon to respond to the failures of IRCA. As Nevins notes, reasons for “cracking down on unauthorized immigration, for instance, often took the form of proenvironment and neo-Malthusian analyses, blaming a supposed glut of immigrants for traffic congestion, air pollution, and overburdened schools.”<sup>203</sup> An environment of

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<sup>202</sup> U.S. Government 1994-Public Papers of the President of the United States. Book I. See Nevins p. 270

<sup>203</sup> Nevins, p. 115

restriction regained popularity regarding immigration, as fears of lost jobs, increased crime, and of a “broken” immigration system grew. David Gutierrez provides his observation of the situation in the 1990s, stating:

In a litany that can be found daily in virtually every newspaper in the country a new, vocal group of restrictionists argues that immigrants—particularly undocumented immigrants—are stealing jobs from Americans, undermining wage rates and working conditions, committing crimes, overwhelming the public education and health systems, and abusing welfare and other social programs. Insisting that the current rate of immigration threatens the very fabric of American life, these critics demand that strong action be taken to regain control of the nation’s borders by increasing enforcement efforts and by sharply limiting the number of immigrants allowed into the U.S.<sup>204</sup>

The Clinton administration had to respond. They initiated a major switch in enforcement tactics, changing how the Border Patrol operates. From a strategy of apprehension after entry to “prevention through deterrence”, the INS would now implement new strategies and tactics to keep unauthorized migrants from ever setting foot on U.S. soil. The idea changed the focus of enforcement from apprehending unauthorized immigrants after-the-fact and instead hoped to prevent immigrants from ever entering the U.S. The increased presence of Border Patrol agents and infrastructure during the 1990s cannot be understated. Operations took place throughout the U.S.-Mexico border during the 1990s and would be the subject of much investigation as to whether or not such operations were indeed effective or simply displaced traditional migrant routes into non-traditional areas. Massey, Durand and Malone comment:

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<sup>204</sup> Gutierrez, p. 207

Of course, throwing up blockades in El Paso and San Diego did not really stop undocumented migrants from entering the United States; it simply channeled them to other, less visible locations along the two-thousand-mile border. Passage through remote mountains, high-deserts, and raging rivers had been too costly and risky to undertake as long as San Diego and El Paso remained relatively open, but once Operation Hold-the-Line and Operation Gatekeeper made these sectors difficult to traverse, the prospect of crossing in more distant and dangerous areas did not look so bad.<sup>205</sup>

Wayne Cornelius finds that this strategy is not only meant to deter entry by concentrating agents in one area, as the operations did, but also to create risks that are so high that immigrants will not attempt to cross. He agrees with Massey, Durand and Malone's conclusion, stating "an indisputable consequence of concentrated border enforcement operations has been the spatial redistribution of illegal entry attempts."<sup>206</sup> The implementation of these operations drastically realigned the enforcement strategies of the Border Patrol. I begin with Operation Hold-the-Line.

### **Operation Hold-the-Line**

On September 19, 1993 Silvestre Reyes, the acting Border Patrol chief of the El Paso sector, initiated the first of a number of border patrol operations that would take place at the U.S.-Mexico border. Originally dubbed Operation Blockade and later renamed Operation Hold-the-Line the operation represented a "radical departure" from past strategies of pursuing and apprehending unauthorized immigrants after they had

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<sup>205</sup> Massey, Durand, & Malone. p. 95

<sup>206</sup> Cornelius, p. 667



crossed the international boundary and entered into the El Paso area.<sup>207</sup> Reyes sent four hundred agents to a twenty-mile stretch along the border dividing El Paso from Ciudad Juarez. Stretched along the border in their vehicles Reyes sent the agents to the border as a show of the strength and presence of the Border Patrol. Combined with increased inspections at official ports of entry Operation Blockade had an immediate impact upon unauthorized crossings in the area. Addressing this impact, Joseph Nevins states “within one week, in what had been the Border Patrol’s second-busiest sector (after San Diego), apprehensions fell from a daily average of about 800 per day to about 150 per day.” Indeed President Clinton’s message had rung true, at least during the duration of Operation Hold-the-Line in El Paso, Texas.

Operation Hold-the-Line soon received favorable media coverage and a positive reaction from politicians interested in curbing undocumented immigration. Joseph Nevins’ *Operation Gatekeeper: The Rise of the “Illegal Alien”* and the making of the U.S.-Mexico boundary details the early reactions and inquiries about Operation Hold-the-Line by San Diego operatives, which would eventually lead to the launching of Operation Gatekeeper in San Diego in 1994. One interesting result of Reyes’ operation was the concern held by other officials about Mexico’s reaction to Operation Hold-the-Line. Since Reyes’ had unilaterally launched the operation some INS and Clinton administration officials were weary of the concentrated approach of enforcement during Hold-the-Line. Though then Governor Pete Wilson and San Diego Republican Congressmen Duke Cunningham and Duncan Hunter were

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<sup>207</sup> Andreas, p. 91

inquiring about the implementation of a similar operation in San Diego, other concerned officials felt that the operation “sent the wrong kind of message to Mexico.”<sup>208</sup> San Diego was not El Paso, they contended, and the different geographic makeup of the two cities and their border counterparts, coupled with the notion that crossings into San Diego mostly occurred at night. Despite their contentions Pete Wilson and others pressed on. Operation Gatekeeper was in the works and would soon be implemented. The pressing of the issue of illegal immigration, especially from Governor Pete Wilson, should be seen in the larger historical context of Wilson’s career as a politician.

Republican Pete Wilson had a mixed record on immigration issues when President Bill Clinton came to office in 1993. He had previously signed on to legislation during the IRCA era that helped stop farm raids by INS agents and had complained to INS officials about raids on California companies. Yet, once Clinton, a Democrat, took office Wilson had bought out full page ads in the Summer of 1993 with “open letters” to Bill Clinton about the failures of the federal government to stop unauthorized immigration and the toll such failures had taken upon California taxpayers.<sup>209</sup> Wilson’s anti-“illegal immigrant” stance continued to show its face during Wilson’s 1994 reelection campaign. Wilson aired ads showing the San Ysidro-Tijuana port of entry being crossed by numbers of unauthorized migrants in midday in an attempt to show the “out of control” border. The ad announces: “They keep

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<sup>208</sup> Nevins, Operation Gatekeeper. p. 91

<sup>209</sup> Nevins, p. 87

coming. Two million illegal immigrants in California. The federal government won't stop them at the border yet requires us to pay billions to take care of them. Governor Pete Wilson sent the National Guard to help the Border Patrol.”<sup>210</sup> In the add Wilson affirms his support of Proposition 187, a state proposition that called for the elimination of public services such as public education, social services and health care for undocumented immigrants that was on the fall ballot. Also known as “Save Our State (SOS)”, the proposition passed in November of 1994. Contributing to the change-of-heart from IRCA to Prop 187 in California were an economic downturn during the early 1990s and a state budget crisis. Wilson's images of an out-of-control border helped solidify the message that if California could rid itself of the economic “burden” of “supporting” undocumented immigrants the economy, and the tax-payers of California would be better off. Another add aired during Wilson's reelection campaign reminded Californians, with an iconic image of Ellis Island and the Statue of Liberty in the background, “to reward the wrong way is not the American way”.<sup>211</sup> The pressures of anti-immigrant views would soon lead to the implementation of Operation Gatekeeper.

### **Operation Gatekeeper**

Operation Gatekeeper began on October 1, 1994, before Proposition 187 was passed. Attorney General Janet Reno announced the implementation of Operation

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<sup>210</sup> Pete Wilson Reelection Campaign Ad, 1994. Via Youtube.com. and cited in Peter Andreas' Border Games, p. 87

<sup>211</sup> Ibid.

Gatekeeper at a press conference in Los Angeles, bringing Silvestre Reyes' much lauded operation to San Diego. According to the Immigration and Naturalization Service the goal of Operation Gatekeeper was to "restore integrity and safety to the nation's busiest border" and to restore the rule of law to the California/Baja California border.<sup>212</sup> The passage of the North American Free Trade Agreement in January 1994 had freed the border from constraints inhibiting trade, but also contributed to the militarization of the border through campaigns such as Gatekeeper. The original goal of Operation Gatekeeper was to heavily target the fourteen westernmost miles of the border, and was later expanded to cover sixty-six miles in October 1996. The operation began with the Imperial Beach station area east to the San Ysidro port of entry and eventually shifted unauthorized immigrants eastwards towards more rugged terrain, lesser-populated regions and lesser-traveled routes. The Operation, in affect "pushed" unauthorized entry out of the public eye. Operation Gatekeeper also had the affect of increasing attempts at gaining entrance through official ports of entry through the use of fraudulent documents, which was countered with the increase of inspectors at the ports. Nevins states "beginning in January 1996 Gatekeeper saw the acceleration of the deployment of personnel and resources to the Border Patrol's San Diego sector and the expansion of partnerships with local law enforcement."<sup>213</sup> In fiscal year 1994 the San Diego Sector made up 46 percent of the total apprehensions of unauthorized migrants in the United States but due to Operation Gatekeeper by

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<sup>212</sup> Nevins, Operation Gatekeeper. p. 4

<sup>213</sup> Ibid. p. 126

fiscal year 1998 the San Diego Sector apprehensions were only 16 percent of the total apprehensions.<sup>214</sup>

In spite of the decreased apprehensions in the San Diego and El Paso due to the operations discussed a number of scholars have questioned their overall effectiveness at combating clandestine entry as a whole. Further, scholars such as Nevins and Andreas have brought up the question of the “perception” versus the “reality” of what takes place at the U.S.-Mexico border on a daily basis. Both Nevins and Andreas articulate upon the perception vs. reality issue and how the public, the media and the State work through the various “understandings” of unauthorized immigration at the border. First, Nevins argues:

Operation Gatekeeper is many things, one of which is a political sideshow designed for political consumption to demonstrate the Clinton administration’s seriousness about cracking down on unauthorized immigration. Efforts by the White House and the INS to maximize coverage of the implementation of the operation demonstrate that Washington D.C., was acutely aware of the importance of the operation for purposes of public consumption. In this regard, the U.S.-Mexico boundary became a stage with a national audience.<sup>215</sup>

Nevins goes on to say that it is not simply a media event and that the situation is a development influenced by a number of historical factors, but reiterates the effort on behalf of the State to publicize its operations in the face of continuing unauthorized immigration.

Secondly, Andreas contends that:

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<sup>214</sup> Ibid. p. 126

<sup>215</sup> Ibid. p. 92

(F)or those in charge of border enforcement, how Congress and the broader public feel about the integrity of the border is arguably as important as the actual deterrent effect on the border. The deterrence function of borders has always been as much about image as reality, a political fiction providing an appearance of control that helps reproduce and reinforce state legitimacy. Indeed, the very premise of the current push to ‘regain control of the border’ reinforces the myth that the border was actually controlled in the first place.<sup>216</sup>

The after effects of both operations sent unauthorized migrants in to more remote areas and increased apprehensions in Arizona and New Mexico. One of the major consequences has been the increased number of migrant deaths at the U.S.-Mexico border. An estimated (4-5,000) immigrant have died in the deserts and mountains of the U.S.-Mexico border since 1994.

Following the two major operations at the busiest apprehension sites, Operation Hold-the-Line and Operation Gatekeeper, a number of operations were implemented at other sites along the border. Operation Safeguard was launched in Nogales, Arizona in 1995. In January 1997 Operation Hold-the-Line was extended from El Paso ten miles west into eastern New Mexico. In August of 1997 the INS implemented Operation Rio Grande in Southeast Texas, setting up twenty-foot watchtowers, floodlights, video cameras and high-powered infrared vision scopes along a thirty-one mile stretch of the river. Operation Safeguard was extended to Douglas and Naco, Arizona in 1999 amid major increases in unauthorized immigration. In 1995 in Douglas, Arizona 3,000 apprehensions a month were taking place. By 1999 the number of apprehensions had increased to 27,000 in the month of

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<sup>216</sup> Peter Andreas, “The U.S. Immigration Control Offensive: Constructing an Image of Order on the Southwest Border.” p.343-356. In Marcelo Suarez-Orozco’s (ed.) *Crossings: Mexican Immigration in Interdisciplinary Perspectives*. Cambridge: Harvard University Press, 1998. p. 353

March alone.<sup>217</sup> The major change that these operations have caused at the border is a disruption of traditional methods of entry, creating more complex and what I would categorize as drastic measures for immigrants to gain entry into the U.S.

### **The changing “face” of the Border Patrol**

After thoroughly discussing the history of immigration law in the U.S and the major operations of the Immigration and Naturalization Service that accompany such legislation I would like to take a more in-depth look at who exactly are the agents of the Border Patrol. Agents such as Clifford Perkins, one of the first Border Patrol agents in the 1920s, have published memoirs and manuscripts that detail their careers as Border Patrolmen. His publication serves as a useful tool in understanding the early years of the agency and has allowed interested parties and inside look and perspective of the Border Patrol. But what originally sparked my interest for this project was the notion of Latino Border Patrol agents. More specifically Josiah McC. Heyman’s article titled “U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police” solidified my idea to pursue this interest as a scholarly project. Heyman’s article, as mentioned in chapter one, involves an in-depth analysis of citizenship, ethnicity, and the history of Mexican-Americans in the Southwest. Heyman contends that there exists a possibility for ethnic solidarity, or possibly what I would call “ethnic compassion” that would allow for a formal recognition by agents of Mexican ancestry of the situation that unauthorized Mexican

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<sup>217</sup> Andreas, *Border Games*. p. 94

immigrants face. The overall findings of Heyman's article suggest that no such solidarity exists. Although compassion or understanding of the plight of unauthorized Mexican immigrants can be found, Heyman finds the agents contend that they are "just doing their jobs". In this sense their job duties as agents of the state override any possibility for ethnic solidarity. Whether they believe that immigrant laws or policies are justified or not, the agents maintain they have a duty to uphold by defending the U.S.-Mexico border.

I wondered about the possibility of conducting my own interviews with Border Patrol agents. My particular focus was on Latino Border Patrol agents because of their unique position as agents and members of a historically discriminated-against population, but I wanted to speak to as many agents that would talk to me. The original goal of this thesis was to solely focus upon Latino Border Patrol agents. The challenge was that interviewing any government official would mean that I would have to endure the maze of bureaucracy that makes up our federal government. Furthermore, talking to Border Patrol agents as a student during an era in which undocumented immigration was a social, political, economic and cultural concern poses a challenge. Who should I contact and how?

The Border Patrol has Public Information Officers (PIO) at each station that are in charge of dealing with the media, academics, and other interested parties. I contacted a number of PIO's in the Southern California region but the initial response was dismal. I tried to use friends who might know an agent and I was assured that indeed certain friends knew agents or friends of agents and that contact could be



established. The initial goal was to interview 10-15 agents of any background or ethnicity. The final tally was 8 agents, 7 Latina/o agents and 1 Anglo-American agent, all from the Southern California region. My method of interviewing was the use of nine open-ended questions. The questions are listed as follows.

1. What do you consider your cultural/ethnic background to be?
2. What is your place of birth/upbringing?
3. What is your position at the Border Patrol and what are your responsibilities?
4. How long have you worked for the Border Patrol?
5. What was your reason (if any) for joining the Border Patrol?
6. Have you had any thoughts about being Hispanic/Latino or non-Hispanic/Latino and working for the Border Patrol?
7. How did people close to you respond when you decided to join the Border Patrol?
8. During your employment at the Border Patrol have you seen a shift in the demographic makeup of Border Patrol agents?
9. Do you find your Hispanic/Latino background or non-Hispanic/Latino background helpful and/or disadvantageous as a Border Patrol agent?

The questions were developed to inquire about how the agents themselves perceived their position as agents and how their ethnic background impacted their job capabilities. Some agents divulged a significant amount of information while others were blunt and provided brief responses. Though the main focus for these interviews was race/ethnicity the three female agents interviewed do briefly discuss how gender has affected their duties as agents. The issue of gender in the Border Patrol ranks warrants further investigation but do to the focus of this thesis the issue will not be covered in-depth.

I was fortunate enough to come across one particular officer that granted me an in-depth audio-recorded interview at the San Diego Sector office in Chula Vista, California. I was also able to make two informal contacts with agents who agreed to interview with me and allow me to audio-record, one in San Diego, California and the other in El Centro, California. Finally I was granted access to another office in the El Centro-Calexico area but would have to take notes and was not allowed to record our interview session. Before I discuss their stories I first would like to present some brief statistics about Latino Border Patrol agents.

Though there were instances of Latino (mainly Mexican-American) Border Patrol agents during the early years of the agency Mexican-American agents did not enter the Immigration and Naturalization Service (which includes the Border Patrol) in large numbers until the mid-1970s.<sup>218</sup> Latino, or to use the Department of Homeland Security's terminology "Hispanic" Border Patrol agents now make up a significant number of agents. My goal was to inquire about how the agents, as Mexican-Americans, viewed the Border Patrol and their job duties. An estimated twenty-eight percent of Hispanic agents now work for the Border Patrol.<sup>219</sup> The agency I argue polices Mexicans is now compromised of nearly one-third of its agents being of Hispanic background. Along the U.S.-Mexico border in some stations its estimated that over half the agents are of Hispanic background.<sup>220</sup>

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<sup>218</sup> Josiah McC. Heyman, "U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police". p. 484

<sup>219</sup> stats given to the author by the Public Information Officer of the San Diego Sector Border Patrol.

<sup>220</sup> Interview with BP Agent Arturo Jimenez

How did these agents make sense of the history of the Border Patrol and their role in the agency? In other words how could Mexican-American agents join an agency that was responsible for policing the Mexican-origin population? And what did it mean to the U.S. Border Patrol to have so many agents of Hispanic background? Was their employment a “shield” to deflect claims of racism and prejudice against the Border Patrol? These interviews serve to show how race and racism have impacted the Border Patrol, from an agency primarily staffed by Anglo-Americans to now a more diverse agency. I discuss these questions after I discuss the interviews and the process by which I obtained the interviews.

Unfortunately, my questions were screened by the agents at the San Diego and El Centro offices so I posed the questions in a non-controversial manner but was hoping that the officers would supply lengthy answers. The responses include a wide range of reasons why agents joined the agency, from sheer economic opportunity to a love of the outdoors. The agents tell their stories the best, as I merely facilitate the process. Here are their stories.

Agent Carlo Vila<sup>221</sup>, age 40, was from the El Centro-Calexico region he was responsible for patrolling. He attended college but had not graduated. He considers his ethnic/cultural background to be Hispanic and had been with the agency for 6 years. He briefly explained the process through which new agents must go through, serving as “line” agents before they can move up the ranks to other positions. Vila was describing the Border Patrol’s policy of placing all new agents at the U.S.-Mexico

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<sup>221</sup> All agents names used are pseudonyms to protect the agents identity and confidentiality. Furthermore no regions, sectors, or stations will be identified in order to protect anonymity.

border, serving on the “front line” His particular position was with the Public Information Affairs division, in which he was responsible for being a spokesperson for the agency. Vila in particular dealt with the Spanish-speaking media and now served as a “paper pusher”, holding a desk job instead of serving on the front lines. Vila cited the lack of industry in the El Centro-Calexico region and the possibility of a well paying job as his reasons for joining. When asked about how his ethnic background impacted his job duties his fluency in Spanish was identified as a significant help. Carlo said his family had no objections about his joining the Border Patrol. He went on to say that most agents don’t go out in uniform in order to protect their anonymity, and he said that he did not discuss his occupation with others. When asked about how immigrants reacted when he apprehended individuals he said that some would look at the nametag of the agent and ask for a break. In his words Vila said the attitude was a “hey, come on” type of attitude that the immigrants held. In regards to differences between Hispanic and Anglo agents Vila said he could not identify any major differences between the agents, but reiterated that Spanish fluency helped out quite a bit, especially at the Border Patrol academy and out on the field. Vila felt that language fluency was the principal reason more Hispanic agents were being fielded into the agency.

The next agent was energetic and eager to discuss her feelings and perceptions about being a Border Patrol agent. Agent Monica Barbados, age 40, was raised in Los Angeles area but was working in the El Centro-Calexico region. Barbados is a college graduate who had been with the Border Patrol for three years. She considers her

ethnic/cultural background to be Mexican. Agent Barbados provided valuable input and was forthcoming with her perspectives and viewpoints about her job and her perceptions of ethnicity and gender. She had always held an interest in law and had intentions of being a social worker or probation officer. She was swayed more towards law enforcement due to her previous employment as a security guard in a gated community. She felt that federal employment offered more for the female applicant based upon family members' accounts of being employed by the federal government, versus being employed by the state or city governments. Monica felt that her ethnicity had a significant impact upon her job duties, and believed that certain cultural values that she maintained were also important when she was performing her job duties. Though she did not discern exactly what values she was referring to I assume that she was talking both about what she considers "American" and "Mexican" family values. Fairness, justice and compassion are all important values in Agent Barbados life. She believed that she has a good understanding of who immigrants were and why they came to the U.S. She felt that the way one treats someone else needed to be valued; in essence that the golden rule of "treat others how you want to be treated" should be applied as a Border Patrol agent. She contended that she has an "innate love" for her ethnicity, and it allowed her to be biased towards the Mexican immigrants she comes in contact with. She said that "it's who I am as well" referring to the common ethnic background of both herself and the immigrants she interacts with. She was not apprehending individuals because of who they are but because of what mode of entry that have chosen to take. Barbados felt there were a

number of issues she had to deal with as a Border Patrol agent. She identified her ethnicity, gender, age, and marital status as issues to contend with, describing how being a married mother of five children was something that she had been questioned about. “How could she be a Mexican-American forty year old mother, wife, and agent all at the same time?” people had asked her. She described how she received consistent support from almost all of those around her, including her mother and father, but a few family members were concerned about her joining. These concerns stemmed from contact these individuals had with agents in the past, and this contact was mostly negative. The concerned individuals did not want her to inherit negative qualities or traits that they had witnessed in the Border Patrol agents they came in contact with. They wondered why she would want to belong to an agency with a negative history.

Agent Barbados felt that her gender, not her ethnicity, had been the largest obstacle she faced. As a married mother of five children people had questioned how she could be a successful and effective agent. Also, perceptions of agents as large and brute (male) further complicated the situation. In regards to the changes that she has seen within the agency Barbados said she saw a significant amount of Latino trainees on the track to becoming agents. She said personally she was pleased to see so many Latinos’. In regards to her language abilities Barbados stated she was not a native Spanish speaker and that she was not taught Spanish at home. But she felt her cultural upbringing helped her identify with the immigrants she interacted with. “They are my people”, she told me, and went on to explain the she understood why people where

attempting to come to the United States. She gave examples such as the hope of a better life in the United States and attempting to earn a better living as reasons for crossing. Agent Barbados pointed out that in regards to gender she felt Mexican men were not used to female authority figures and explained how she established her presence through using a commanding voice and following through on warnings. Yet she did not feel this was exclusive to Mexican-American female agents and believed that Anglo agents would receive the same response.

Barbados concluded by elaborating about her last job as a security guard in a gated community. The majority of residents were affluent Anglo-Americans and because of this she felt that her background and ethnicity generated tension with the residents. Her general feeling was that she was a “fish out of water” so to speak. She then went on to finish with the notion that “the look”, that is of the Mexican-origin population, reminded her that the people she was apprehending could be a family member (hypothetically) and because of this she showed renewed compassion. Barbados differed from many other agents, portraying a sense of compassion that many other agents did not display. She was directly responsible for allowing me access to the station and was more than helpful during my visit.

I waited patiently to interview the next agent. He did not clarify his position within the agency, but Agent Arturo Jimenez did have his own office unlike the other agents. Jimenez, age 50, is from Southern California and works in the El Centro-Calexico region. He holds a degree in Criminal Justice and says his ethnic/cultural background is “Hispanic” or “Mexican-American”. He has served as an agent for 19

years and joined the Border Patrol because they were the first to respond out of the various places that he had applied for employment at. He served in the armed forces and feels that the Border Patrol are the “lucky ones” because they received his close to twenty years of service. Jimenez believes that his ethnic background has been helpful in one major way. Due to the fact that the majority of people they encounter are of Hispanic descent one could easily communicate with them. “Aliens”, he said, find themselves more comfortable in settings in which they can communicate with somebody who speaks their language. In regards to those close to him and their reactions about his joining the Patrol he stated that only his wife knew and she was supportive. Agent Jimenez stated that he had definitely seen a change in the demographic makeup of agents in the agency. When he started he recalled that it was about half Anglo agents and half Hispanic agents. Slowly the makeup changed and the number of Hispanic agents increased. Now, Jimenez says, a great majority of agents are Hispanic.

When working border checkpoints Jimenez said that his fluency enabled to communicate with Spanish-speaking persons and because of this people he came in contact with were cooperative. He is thankful that he is fluent in Spanish. Agent Jimenez contends that to him being a Border Patrol agent is “just a job”. He state that even if he encountered his brother crossing illegally he would still give the same treatment to his brother as he would to any other unauthorized immigrant. He said in his 19 years that he has not experienced any problems in the agency due to his ethnicity. He discussed how certain individuals have had issues with being Mexican-



American as agents and detaining Mexicans, but believes that many Hispanics are missing out on the opportunities that the Border Patrol has to offer. Jimenez went on to say that people have perceptions of the Border Patrol as “bad”, and that ideas about “La Migra” have impacted people’s decision to either join or not join the Border Patrol. He felt that in general along border towns that it was difficult for the Border Patrol to establish working relationships with the Latino community and the entire community in general. Popular perceptions of the Border Patrol, combined with the need for undocumented workers, made establishing these relationships difficult in Jimenez’ view. Raids by Immigration and Custom Enforcement further created problems in many communities, according to Jimenez, who felt that the community members make no distinction between the Border Patrol and other agencies responsible for immigration enforcement. His overall perspective is that many people only here the bad news about the Border Patrol but emphasized that there is good that is done as well. Agent Jimenez concluded by discussing agricultural workers and other workers he sees in the region he patrols and how he draws inspiration from their hard work. He felt he had no reason to complain about his job because he was not performing manual labor like those workers.

I left Jimenez office and headed to my next interview. Agent Nancy Holdings, who identifies as Hispanic, lives in the San Diego, California area. She was close to graduating college but did not receive her college degree. She served in the El Centro-Calexico where she was originally from and has served in the Border Patrol for 10 years. She previously worked for a city government as a data entry technician and

cited her college major, Criminal Justice, and her liking of the outdoor experience as reasons for joining. She believes that if you want to come to the United States there are legal means of obtaining citizenship and feels that just because one is a “poor worker” trying to make a better life for them that does not excuse unauthorized entry. Holdings feels that her ethnic/cultural background helps her due to her understanding of the culture and language. Through her cultural understanding she said she was able to identify machismo, and that she would not put up with it. As a female Hispanic agent she believes that it is important to stand your ground and to not let your guard down. She felt that “aliens” test you and provoke you by asking questions to get reactions. Holdings echoed the same sentiment that Barbados discussed, describing how female agents had to stand strong and hold their ground. She, as did Barbados, also talked about how many male immigrants were not used to being instructed by female authority figures.

In regards to her family’s reaction to her joining she stated that they have been very supportive and that she doesn’t take her work home with her. When asked about whether or not she has faced adversity because of her ethnic/cultural background Holdings said that she had not. There have always been Latino agents, she said, and that the agents are all the same and are scrutinized because of their age (rookies) not race. She commented about the ethnic makeup of Border towns and pointed out that many Anglo agents adapt to the culture and surroundings, often marrying Hispanic women. She was the opposite and married an Anglo-American. In regards to language Agent Holdings stated she is a native speaker of Spanish. She concluded by

discussing how she learned Spanish at home and was not allowed to mix languages (English and Spanish). Because of this she was able to become fluent in both languages and didn't speak that "pocho stuff". I found Holdings statement about "pocho stuff" interesting in that she believed that those who were not raised as Spanish-speakers but were of Mexican-origin were culturally hindered by their lack of command over the language.

Next I went to sit down with the only non-Latino agent I interviewed. Agent Paul Quimby, age 36, was born and raised in the state of Virginia. He identifies his ethnic/cultural background as English/Irish and received an Associates degree in college. He served as a supervisor and has been working for the agency for 8 years. He previously worked for a marketing firm and then worked for a family business. One of the reasons he joined the agency was that he was looking for adventure and enjoyed the outdoors. He never imagined a career in law but his mother suggested that he apply. Six months later, Quimby says, he was at the academy training to become an agent. In regards to how his ethnic/cultural background may have helped him in his job duties Agent Quimby responded that being raised in a rural area and his upbringing outdoors prepared him for the U.S.-Mexico border region. He stated that his family was perplexed by his decision to join the Border Patrol. This was due to the fact, according to Quimby, that the Border Patrol is not well known in the interior of the U.S. and that people on the East Coast are not familiar with the politics of the border. Agent Quimby said some people didn't even know what the Border Patrol is. He said that many of the new classes of recruits are Hispanic, and that more women

are joining the Border Patrol as well. His viewpoints about the Mexican-origin population were interesting. Quimby stated that he never thought of or looked at Mexicans as a different culture. He feels that the economic situation of Mexicans attempting to enter unauthorized into the United States is what separates “us” from “them”, not religion, ethnicity, or culture. He concluded by discussing the challenges he has faced as a non-native Spanish speaker. He felt that agents that grew up in the border region and that were native speakers had a great advantage. Overall he felt that those who did not speak Spanish and did not attempt to speak any Spanish would be viewed as lazy, but for those who tried they would usually get the help they needed.

After leaving the office in the El Centro-Calexico region I headed to a friend’s home who had recently joined the Border Patrol. His name was Juan Barrera and he had been serving in the agency for just over a year. Originally from Northern California, Juan had moved to the Los Angeles area and was soon accepted into the Border Patrol. At age 28 he was the youngest agent I interviewed, and expressed some interesting perspectives. He had joined the agency out of economic necessity but his family highly disapproved of the job move. Barrera identified his ethnic/cultural background as Mexican. His father in particular was the most upset out of the family. “How could you do this?” Barrera’s father asked, wondering how his son could join “*la Migra*”. Juan went on to discuss how his father stopped communicating with him for some time and had just recently re-opened the line of communication with him. As he discussed his father’s contention against him joining the Border Patrol Barrera exhibited a sentiment of anguish and sorrow, expressing

how much his father meant to him and how hurt he was because of his father's perspective. The remainder of his family was open to the idea and was neither fully for his joining nor against his move to become a Border Patrol agent. Since he was a newer agent Barrera had not witnessed a great deal of demographic change in the agency. Barrera discussed how his first months were difficult, viewing the plight of unauthorized immigrants attempting to enter the U.S. But Barrera also quickly recognized that he had to be aware of his surroundings and safety at all times. After a number of encounters that led to physical force Barrera said he changed his view of sympathy to one of enforcement. He conversed about the lengths at which migrants and smugglers will go in order to enter the U.S. The All-American canal, a notoriously polluted and high traveling water channel, posed a serious problem in his patrol area. Immigrants would jump in the canal knowing that agents would not follow them in due to the high levels of pollution. He described his efforts in preventing people from entering the canal, not only because of the pollution levels but also because of their safety. Barrera felt that Spanish fluency was the biggest asset of his ethnic/cultural background and said he had not faced any scrutiny or problems within the agency.

The next two interviews were conducted with agents from the San Diego region. The first interview with Agent Adam Juarez was secured through a mutual friend. The second interview with Agent Laura Williams was secured by directly contacting the San Diego sector of the Border Patrol. Agent Adam Juarez, 36, was born and raised in the San Diego area. His reasons for joining the patrol were both

economic and personal. He needed an increase in salary and also viewed the job as diverse in its nature and exciting. He identifies as Mexican-American and stated the biggest asset that his ethnic/cultural background provides him with is his Spanish fluency. His family had no problem with him joining, though he did mention that he thought his grandmother may object to his joining, assumingly because she was born in Mexico. His girlfriend had no problems with him joining and fully supported his decision to join. Juarez serves in the Campo area and described his duties as securing the border from terrorists, drug smugglers, and unauthorized immigrants. He had been in the agency for two years at the time of the interview and had not witnessed any major changes in the demographic makeup of agents during his career. Juarez did describe how at first he was not sure whether or not he should join the agency when asked if he had any thoughts about being Hispanic/Latino and being in the Border Patrol. But after research and discussion with friends who were agents Juarez concluded that it was a job he would like to attain.

Agent Laura Williams serves in the San Diego region as a Public Information Officer. Her job duties include interacting with the public and the media, holding press conferences and tours, and being a spokesperson for the Border Patrol. She was 42 at the time of the interview and identified as Mexican. She was raised between Tijuana and Los Angeles and has family that lives on both sides of the border. Her family and husband were very supportive of her joining the patrol. She had served the agency for five years, originally beginning as a patrol agent on the front line at the U.S.-Mexico border. She eventually moved her way up in the ranks to obtain the

Public Information Officer position and now serves within the administration, performing non-patrol duties. Williams believed that her ability to understand Mexican culture and her Spanish-fluency were the two biggest ethnic/cultural traits she brought to the job. In her five years as an agent she witnessed increased amounts of Latino, Asian and Black Border Patrol agents and acknowledged that the number of female agents was rising. She stated that your age and experience, not your ethnic background, determined how others within the agency treated you. She said she had not experienced any forms of discrimination during her career as an agent. Williams listed economic reasons for joining the patrol. She hoped to secure employment as an agent in order to increase her salary and help her immediate family. Williams was very professional and informative and provided me with some statistics and pamphlets that had current Border Patrol statistics.

The interviews afforded me the opportunity to get an individual perspective of how Mexican-American agents view their ethnic/cultural background in relation to the Border Patrol. As I entered the headquarters I got to see the official workings of the station and how security was maintained. You always had to sign in, always had to have an escort. I was intrigued by the agents' perspectives and I am highly indebted to the United States Border Patrol for allowing me to share a part of their world. The overall responses of the agents are similar to Heyman's list of responses. The general tone of both Heyman and my interviews was that the agents were just performing their job duties and it was nothing personal against the immigrants themselves. A couple of agents went further, stating that their cultural knowledge and ethnic background

helped them “understand” the immigrants (Barbados and Williams). Juan Barrera discussed how his father, based on his experiences and perceptions of “*la Migra*”, despised his decision to join the patrol. No agents mentioned the history of the Mexican-origin population in the Southwest or the processes of racialization or illegalization I discuss. The main emphasis was on a personal level, as the agents hoped to improve their socio-economic mobility by securing employment within the primary labor market. From these interviews and changes within the agency I recognize that the racist tactics of the Border Patrol have changed. The agency could not be explicitly racist against the Mexican-origin population and expect Mexican-Americans or Hispanics to join their agency, or could it? The way that enforcement is carried out and how surveillance and interrogation are practiced are still based upon notions of race, as exhibited in the *U.S. v. Bagnoni-Ponce* Supreme Court Case.

The situation of unauthorized immigration is indeed dynamic and complex, and though I may have held my own reservations about the Border Patrol and their history as an agency after conversing with the agents themselves I realized that the situation is even more complex than I had first anticipated. I approached the interview with my own perceptions about the agency but once I encountered the agents I understood that they indeed “were just doing their jobs”. But were they just “doing their jobs”? As John Skrentny notes about the hiring process and race, certain companies or corporations hire to give off an appearance of internal diversity.



Skrentny calls this racial symbolism.<sup>222</sup> How can we make sense of the concept of racial symbolism in regards to the U.S. Border Patrol?

The increased hiring of Hispanic agents not only contributes to the socio-economic mobility of the agents themselves, it also boosts the number of minorities working for the agency. As the agency is a law enforcement agency in charge of patrolling the U.S.-Mexico border the agents often come in contact with undocumented Latino immigrants. Does this diversity also work to “ease” the process of detention and apprehension, as Hispanic Border Patrol agents may be perceived as more “understanding” or linguistically-speaking compatible with the immigrants themselves? I would argue that in a sense it does. Many of the respondents mentioned how their Spanish-speaking fluency allowed immigrants, from their perspective, to be more comfortable with agents who could “speak like them”.

Another way that we can make sense of racial symbolism in regard to the Border Patrol is through staffing the agency with persons of Hispanic background in order to deflect criticism about racial discrimination. How can the Border Patrol be racist or how can agents perform in racially discriminatory ways if the agents themselves are Hispanic? The chief of the Border Patrol is David V. Aguilar, presumably of Hispanic or Latino background based upon his surname. A large number of rank-and-file agents, as cited in the statistics mentioned earlier, are also of Hispanic background. But just as Heyman’s study suggests there is no apparent

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<sup>222</sup> see John D. Skrentny’s “Are America’s Civil Rights Laws Still Relevant?” *Du Bois Review* 4.1 (2007): 119-140.

“ethnic solidarity” between the agents and the unauthorized immigrants they come in contact with.

Unfortunately due to the screening of my interview questions I was unable to get to the “root” of discriminatory tactics used by the Border Patrol, as I was unable to inquire about discrimination against unauthorized immigrants or the “legacy” of discrimination by the Border Patrol. I was able to ask about how the agents perceived the reactions of persons close to them, such as immediate family, when they informed them that they were joining the agency. Reactions such as the one exhibited by Agent Barrera’s father suggest that a “anti-*Migra*” stance highlights the variety of perspectives about the Border Patrol not only within the Mexican-origin population, but between and within family units as well. Barrera’s father’s reaction was so intense that his father broke the lines of communication with his son, not backing off until he realized his son was still joining the agency regardless of what his father thought. The diversity and complexity of experiences of Mexican immigrants contributes to negative viewpoints about “*la Migra*”, as many immigrants, both authorized and unauthorized, have come in contact with the Border Patrol.

Also, the diversity of the Mexican-origin population as previously discussed complicates notions of ethnic or racial solidarity. Different socio-economic standing and generational presence in the United States (how long ones family has been in the U.S.) contributes to this diversity. Joseph Nevins describes this complexity, stating:

This speaks to the complexity and nonessential nature of social identity—especially among Mexican Americans in the border region. We should not assume Mexican Americans as a whole to be any less “American” than other ethnic group in the United States simply

because the United States shares a boundary with Mexico. Indeed, Mexican Americans, while opposing specific immigration and boundary-related initiatives in greater numbers than the general population (due to their discriminatory focus on people of Mexican descent), have historically supported immigration and boundary enforcement at levels similar to those of the white population.<sup>223</sup>

In conclusion though Hispanic agents may work for the Border Patrol I argue that there still exists the possibility for racial discrimination, even if perpetuated by agents of Hispanic background.

In the next section I discuss the contemporary state of affairs impacting the Border Patrol. Many of the issues have been recurrent throughout the existence of the agency.

### **Current State of the Agency & Issues facing the Border Patrol**

The terrorist attacks of September 11, 2001 directly impacted the organization of the now defunct Immigration and Naturalization Service. The Department of Homeland Security (DHS) was created in March of 2003 in an effort to reorganize federal agencies responsible for securing United States' borders. Under DHS the federal government created Immigration and Customs Enforcement and Customs and Border Protection, in which the Border Patrol was organized under the Customs and Border Protection (CBP) branch. The Border Patrol's objective has now shifted from deterring unauthorized immigration and deterring the smuggling of illegal drugs into the country to subsequently preventing terrorists and weapons from entering the

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<sup>223</sup> Nevins, p. 83.

United States. As CBP states “the priority mission of CBP, specifically including all Border Patrol agents, is homeland security—nothing less than preventing terrorists and terrorist weapons—including potential weapons of mass destruction—from entering the United States.”<sup>224</sup>

The new national strategy of the Border Patrol builds upon the established “prevention through deterrence” method enacted during Operation Hold-the-Line and Operation Gatekeeper and consists of five main objectives in order to achieve success. These objectives include: establishing substantial probability of apprehending terrorists and their weapons as they attempt to enter illegally through the ports of entry; Deter illegal entries through improved enforcement; Detect, apprehend and deter smugglers of humans, drugs and other contraband; Leverage “Smart Border” technology to multiply the effect of enforcement personnel; and reduce crime in border communities and consequently improve quality of life and economic vitality of targeted areas. The Border Patrol plans, according to the national strategy, to continue to increase levels of infrastructure and technology along the U.S.-Mexico border. The use of unmanned aerial vehicles, ground sensors, long-range cameras, infrared and night vision, stadium-style flood lights and watchtowers has established a militarized boundary in response to perceived threats of terrorism. As the Border Patrol states, regarding past successes and continued implementation of the national strategy:

The Border Patrol has experienced success in gaining operational control of the border in some of the highest trafficked areas, such as San Diego, El Paso, and McAllen. However, many other areas along the southwest border are not yet under operational control, and the

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<sup>224</sup>“National Border Patrol Strategy”. Office of the Border Patrol, September 2004.

daily attempts to cross the border by thousands of illegal aliens from countries around the globe continue to present a threat to U.S. national security. Some would classify the majority of these aliens as “economic migrants.” However, an ever-present threat exists from the potential for terrorists to employ the same smuggling and transportation networks, infrastructure, drop houses, and other support and then use these masses of illegal aliens as “cover” for a successful cross-border penetration.<sup>225</sup>

The actual possibility of terrorists clandestinely entering the United States is up for debate as the terrorists who committed the acts of September 11<sup>th</sup> entered the country through traditional methods of obtaining visas and “exploited” the legal means of entry.<sup>226</sup>

The continued expansion of the Border Patrol has led to a doubling of the number of agents during President George W. Bush’s tenure, with an estimated 15,300 agents patrolling our borders today.<sup>227</sup> The Intelligence Reform and Terrorism Prevention Act (IRTPA), signed by President Bush in December of 2004, authorized the hiring of an additional 10,000 agents and if fully executed would put the number of agents in the Border Patrol at an estimated 21,000 by 2010. These numbers include all agents patrolling all land and sea borders but the majority of agents are concentrated along the Southern border. Triple border fences combined with an array of technology has challenged the traditional methods of unauthorized immigrants and their coyotes and has caused an increase at attempts of gaining entry through official

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<sup>225</sup> National Border Patrol Strategy, 2004.

<sup>226</sup> “Entry of the 9/11 Hijackers into the United States”. Staff Statement No. 1. National Commission on Terrorist Attacks, U.S.

<sup>227</sup> Nicole Gaouette, “On the border with Michael Chertoff”. Los Angeles Times Online Edition. April 19, 2008.

ports of entry. Attempts at crossing sea borders along the Southern San Diego coast have also increased. As a recent newspaper article points out, “since October 2007, more than 16 vessels the size of fishing boats have been found along the coast from as far south as Imperial Beach up to Sunset Cliffs and as far north as Torrey Pines State Beach, said ICE spokesperson Lauren Mack.”<sup>228</sup>

The agents themselves face danger in the line of duty, as attacks on Border Patrol agents have increased during fiscal year 2007 in the San Diego region. According to an article discussing the increase of violence against agents in 2007, the “Border Patrol says its agents were attacked nearly 1,000 times during a one-year period along the Mexican border, typically by assailants hurling rocks, bottles and bricks.”<sup>229</sup> Accounts of wires being strung between fences and across rivers have sent the message that certain border dwellers have attempted to cause fatal injury to officers, and the Border Patrol has responded with vehicles equipped to absorb the impact of large rocks and other objects that have been thrown at agents vehicles.

As confrontations increase so do the need for new routes of entry by smugglers. One unintended consequence of increased enforcement along clandestine routes of entry has been an upsurge in Border Patrol and U.S. Customs agents being accused of receiving payments to smuggle immigrants through official pathways to enter into the United States. A recent New York Times article detailed the growth of

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<sup>228</sup> <http://www.sdnews.com/vnews/display.v/ART/2008/06/04/48470250e0d28>

<sup>229</sup> MSNBC Online. Associated Press. “Border Patrol’s counteroffensive riles Mexico”. Stable URL:<<http://www.msnbc.msn.com/id/22300821/>> 17 Dec 2007.

corruption cases by Border agents (both Border Patrol and Customs).<sup>230</sup> The article provides details about pending cases, stating “there are about 200 open cases pending against law enforcement employees who work the border. The most recent cases included employees in Arizona, Texas and California accused of smuggling unauthorized immigrants into the U.S. Discussing the growth of the cases in the recent years, the article shows that in “the 2007 fiscal year, the Homeland Security Department’s main anticorruption arm, the inspector general’s office, had 79 investigations under way in the four states bordering Mexico, compared with 31 in 2003.” Other agencies such as the Federal Bureau of Investigation assist with corruption cases. The FBI-led San Diego Border Corruption Task Force recently detailed the case of Michael Gilliland a.k.a. El Guero, a Customs and Border Protection agent at the Otay Mesa port of entry charged with receiving bribes for assisting immigrant smugglers.<sup>231</sup> Brothers Raul and Fidel Villareal, both Border Patrol agents who worked in the San Diego area, where subjects of an Immigration and Customs Enforcement investigation that suspects the pair of being involved with a smuggling ring that crossed Mexicans and Brazilians across the U.S.-Mexico border. Possibly tipped off by someone familiar with the investigation the pair abruptly quit their jobs and are believed to be on the run. These two cases are just a sample of the many cases pending investigation, and as patrolling, deterrence and enforcement at the

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<sup>230</sup> Archibold, Randal C. and Andrew Becker. “Border Agents, Lured by the Other Side”. 27 May 2008. Accessed 29 May 2008. Stable URL: <<http://www.nytimes.com/2008/05/27/us/27border.html?partner=rssnyt&emc=rss>>

<sup>231</sup> Frontline World. “Mexico: Crimes at the Border.” Accessed 29 May 2008. Stable URL: <<http://www.pbs.org/frontlineworld/stories/mexico704/history/gatekeepers.html>>

U.S.-Mexico border continues so to will the methods that smugglers will use in order to achieve their goals.



## **Conclusion**

The Border Patrol continues to change its methods of enforcement in the Southwest U.S. Established in 1924, the agency has now been in existence for 84 years. The initial number of agents serving in the Border Patrol in 1924 was 450. In 2008 over 15,000 agents serve in the ranks of the Border Patrol. A large majority of these agents are stationed in the Southwest U.S. From the early years of the agency many people have served, many more have been apprehended, and the recruiting of new agents will continue. But, according to the historical examples provided in this thesis, what will probably not change are the policing of the Mexican-origin population. There are a number of factors that contribute to the maintenance of discriminatory enforcement. As I discussed in chapter two the racial formation of the Mexican-origin population solidified perspectives about the population as a whole. In chapter one I discussed how often there is no distinction made between Mexican nationals and Mexican citizens, blurring the lines between citizen and “alien”. Mexican immigration continues to be the largest source of immigration in the United States.<sup>232</sup>

Through the implementation of federal legislation the United States government helped shape the definition of the illegal immigrant and the meaning of race at the U.S.-Mexico border, using race as a marker that dictated the entrance or deterrence of certain ethnic groups. Originally beginning with discrimination against

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<sup>232</sup> Jefferey Passel. “Mexican Immigration to the US: The Latest Estimates” states “Mexico represents the largest source of immigration to the United States. Of the 32.5 million foreign born covered in the March 2002 CPS, 9.8 million or 30 percent were from Mexico”. Stable URL: < <http://www.migrationinformation.org/feature/display.cfm?ID=208>>

Asian immigrants, more specifically Chinese and Japanese ethnic groups, changes were implemented to respond to a growing concern of European undocumented immigrants during the early 1900s with the passage of the National Origins Act. This act also established the United States Border Patrol, an agency responsible for patrolling vast amounts of land with minimal resources and a lack of central administration. Originally assigned duties to enforce the Chinese Exclusion act and to prevent alcohol smuggling during prohibition, the agency would soon respond to the overwhelming duty of enforcing immigration law to detain the “illegal alien”. But as Ngai and Lytle-Hernandez suggest this creation of the illegal alien and the “new” border was not evenly applied, and focused much of its efforts upon the Mexican-origin population in the Southwest.

The Border Patrol “functioned within an environment of increased racial hostility against Mexicans; indeed, its activities helped constitute that environment by aggressively apprehending and deporting increased numbers of Mexicans.”<sup>233</sup>

Through an understanding of the controversial beginnings of the U.S. Border Patrol we can better interpret the construction and maintenance of one of the largest law enforcement agencies in the nation and put into perspective the policy functions of the U.S. government in the name of immigration law. Also, by dissecting the ways in which race has been used to shape policy we can better understand the social consequences of policies implemented by the State.

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<sup>233</sup> Ngai, p. 70

From these early years of the Border Patrol to more current times much has changed. The Immigration Act of 1965 eliminated nationally-based quotas and substituted equal global quotas for all nations. But the act decreased the quota for Mexican immigrants, igniting high numbers of apprehensions at the border that continue today. The Immigration and Reform Control Act of 1986 both legalized undocumented immigrants' status and promoted undocumented immigration. The onset of Operations' Hold-the-Line and Gatekeeper revised existing policies from apprehension after crossing to "prevention through deterrence". The outcome has increased deaths along the U.S.-Mexico border, and some have argued that this was an intended outcome of the change in enforcement. As pressure mounts in areas such as San Diego and El Paso increased numbers of unauthorized immigrants are now attempting to enter through ports of entry and by sea along the Pacific Coast. A number of underground tunnels have been found, leaving the discoverers to wonder just how many pounds of illegal drugs or unauthorized immigrants entered the U.S.<sup>234</sup> As the methods of the Border Patrol change, so does the methods of those trying to "beat" the Border Patrol.

The policing of the Mexican-origin population too has changed over time. No longer does the U.S. government sponsor repatriation acts during times of economic hardship like the repatriation campaigns of the 1930s. Nor does the INS execute mass sweeps and raids like Operation Wetback in 1954. But here in the border region of

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<sup>234</sup> Onell R. Soto and Leslie Berestein, "2,400-foot tunnel 'beats them all'". Signonsandiego.com San Diego Union-Tribune Online. Stable URL:<  
<http://www.signonsandiego.com/news/mexico/tijuana/20060127-9999-1n27tunnel.html>>

San Diego and other regions they do continue to man freeway check points, even setting up checkpoints that survey vehicles leaving the United States into Mexico.<sup>235</sup>

The increasing number of agents, barriers, and infrastructure that the Border Patrol has received will continue to facilitate the policing of persons of Mexican-origin, even if such policing is by an agent of Hispanic background. As evidenced by the Supreme Court Case *U.S. v. Brignoni-Ponce* and the human rights abuses discussed the Border Patrol still has a long way to go in order to change the policy of policing Mexicans instead of policing the border.

I believe that recognizing the diversity within the Mexican-origin population would be the first step in addressing the discriminatory tactics of the Border Patrol and other law enforcement agencies at the U.S.-Mexico border. The size of the Mexican-origin population, as the largest ethnic/cultural Diaspora in the United States, and the unique history of the population as a “conquered” population in the Southwest must be recognized as a vital component of the history of the United States. Also, the history of Mexican immigration to the United States is important as well in understanding the history of the Mexican-origin population. The phenotypical variation within the Mexican population must be recognized as well along the U.S.-Mexico border. European, Indigenous and African (among others) ancestry within the Mexican-origin population allows for a variety of possible phenotypical features, as the Mexican-

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<sup>235</sup> Richard Marosi, “Border Busts Coming and Going”. *Los Angeles Times*. May 7, 2008. Stable URL <<http://www.latimes.com/news/printedition/front/la-me-checkpoint7-2008may07,0,3517339.story>>

origin population is racially mixed.<sup>236</sup> Equating someone's phenotypical features with their citizenship status is very problematic, as evidenced with the examples I provided about U.S. citizens being interrogated, apprehended, or deported for simply "looking" Mexican.

Due to the history of the Mexican-origin population in the Southwest as citizens, immigrants and residents the Border Patrol continues to apply discriminatory enforcement measures against this population. High numbers of Mexican unauthorized immigrants does not override the need to enforce the law equally against all persons. Although it is my hope that the Border Patrol recognizes the controversial history of the agency and its discriminatory enforcement measures, if the history of the agency thus far is any indication of the future of the Border Patrol than there is much work to be done. There must be changes made to the operational procedures of the Border Patrol that guarantee equal treatment for persons of Mexican-origin, regardless of citizenship status.

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<sup>236</sup> see Martha Menchaca's *Recovering History, Constructing Race: The Indian, Black and White Roots of Mexican Americans*. Austin: University of Texas Press, 2001.

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