

SUPREME COURT OF THE STATE WASHINGTON

IN THE MATTER OF THE SUGGESTED NEW
GENERAL RULE (GR) 38 AND SUGGESTED
AMENDMENT TO RPC 4.4 COMMENT 4

No. 25700-A-1274

COMMENT OF GRANT COUNTY
PROSECUTOR RE: NEW GR 38 AND
PROPOSED CHANGE TO COMMENT 4
OF RPC 4.4

The Grant County Prosecutor's Office opposes the proposal for a new GR 38 and the modifications to Comment 4 of RPC 4.4, as discussed below.

A. Civil vs Criminal enforcement

The proposed new rules, GR 38 and Comment 4, are based on a distinction that is not present in practice; and neither State officials nor WSBA members have any ability or authority to track and control. The proposed rules attempt to forbid any involvement in civil immigration enforcement, but do not, for the most part, address criminal immigration enforcement in Washington courthouses. Further, the line between civil and criminal enforcement is one neither state authorities nor WSBA members have any ability to monitor.

There are essentially two ways to come into the United States and be in undocumented (illegal alien¹) status. The first is to cross the border illegally. This is a criminal act. 18 U.S.C. §1325. The second is to overstay a visa. 8 U.S.C. § 1227. This conduct only subjects a person to civil enforcement.

Most everyone acknowledges the primary goal of most undocumented individuals is to obtain employment in the United States. This generally requires the use of false documents, e.g. phony legal permanent resident (LPR) cards, fake social security cards, etc. The use of such documents is both a state and federal crime. Fraud and misuse of visas, permits, and other documents 18 U.S.C. §1546; Forgery RCW 9A.60.020; and Identity Theft RCW 9.35.020.

According to immigration authorities we have spoken with, over ninety (90) percent of the undocumented individuals contacted in Grant County have crossed the United States border illegally. Thus, the vast majority of undocumented individuals have committed a criminal act. Grant County law enforcement and prosecutor's office do not have the time or resources to deal with the crushing number of felony false identity crimes. The use of false documents is so rampant law enforcement really has no ability to control it. Homeland Security officials advise our office that false identification cards (Mica)² can easily be produced with a computer and a printer on the black market for one hundred and twenty-five dollars (\$125). The majority of undocumented individuals can obtain false documents with little to no effort, because of the number of black market vendors in Grant, Chelan, and Douglas Counties. We estimate that Grant

¹ Please see attached speech of United States Senator Chuck Schumer at Georgetown Law School in 2009 – quote highlighted

² Mica: Spanish translation for identification.

County currently experiences hundreds if not thousands of these uncharged cases each year. Our County does not have the time or resources to prosecute these uncharged crimes.

We also understand that federal law enforcement similarly does not have the time or resources to investigate and charge these crimes. Congress, and most of society, turns a blind eye to this serious problem.

The chief of police in Mattawa, Grant County's fourth largest town, estimates that during certain times of the year, specifically during harvest season, the population increases from roughly five thousand residents to twenty thousand. The chief further estimates that ninety (90) percent of these residents are undocumented.³

For reasons of judicial economy and prosecutorial discretion, immigration authorities often choose to proceed through the civil process, rather than the criminal process, for immigration matters. However, that decision can change. State officials have no ability or authority to monitor federal use of prosecutorial discretion. The proposed rule gives absolutely no implementable guidance as to how state officers are supposed to distinguish between civil and criminal immigration enforcement activities. Immigration authorities have no duty to inform state authorities the legal theory under which they are proceeding. That theory can change for any number of reasons at a moment's notice.

B. Who would the writs be directed to?

³ Boston Globe Article January 5, 2015, **Immigration puts small town on cultural divide**. Of note, while this huge influx of undocumented people is attributable to harvesting and processing primarily apples and other crops, the town faces a substantial increase in violent gang activity mostly linked to the drug trade, domestic violence, drive-by shootings, and a myriad of other crimes. Local law enforcement is not equipped and/or staffed to handle all of these problems.

The new proposed court rule creates an immunity enforceable by writ. It is unclear who such court ordered writs would be directed to. State courts generally do not have authority to issue writs which would interfere with federal officers' execution of their duties. The proponents of the proposed rule argue that this rule does not conflict with any other statute, rule or case law. This is generally not true. It depends on the type of writ the court may issue. Given that the direct object of this rule would be directed to a federal government agency, it is not clear which type of writ would be used to enforce this rule. Presumably, the courts will be asked to issue writs that will directly influence the federal government's activities. Writs to arrest or somehow interfere with federal officers in the execution of their lawful duties would conflict with 18 U.S.C. §1505; Washington Constitution Article 1 Section 2; and Article VI of the Federal Constitution (The Supremacy Clause).

The civil arrest privilege outlined in this proposed rule directly conflicts with Washington case law. *Husby v. Emmons*, 148 Wn. 333, 339, 268 P. 886, 888 (1928), and *Anderson v. Ivarsson*, 77 Wn.2d 391, 392, 462 P.2d 914, 915 (1969) both reject a civil arrest privilege when the person is present for a criminal case. In addition, the proposed RPC change directly conflicts with the Keep Washington Working Act, Laws of 2019 Ch 440, §§ 5(3) and 9.⁴

C. Immunity from arrest is substantive law that should be left to the legislature

The Courts control procedural law; the legislature controls substantive law. *State v. Gresham*, 173 Wn. 2d 405, 429, 269 P.3d 207, 217 (2012). While the line between what is procedural and what is substantive is not always crystal clear, immunities have been treated as substantive law in Washington. Testimonial immunities are primarily controlled by statute. See

⁴ See discussion *infra*, page 12.

RCW 5.60.060. Arrest immunities are provided in the State Constitution, Wash. Const Art II sec. 16, Art VI sec. 5 and by statute, RCW 10.55.100, 26.27.091. GR 38 and Comment 4's proposed immunity creates a substantive right, something the Courts have left to the legislature. *State v. Gresham*, 173 Wn. 2d 405,429,269 P.3d 207, 217 (2012).

In order to make their case, the proponents of the proposed rule unfortunately misrepresent the history of the civil arrest rule in Washington. It was never a blanket privilege from arrest while traveling to and from court. The civil arrest privilege in case law was similar to the privilege from arrest for witnesses codified in RCW 10.55.100. This privilege only applies to those who come into the State, or pass through it, pursuant to a summons. It does not apply to those who are residents of the State. In *State v. Superior Court of King Cty.*, 111 Wash. 187, 189, 189 P. 1016, 1016 (1920) the court held that it is not concerned with "the privilege of parties to civil actions who are residents of this state." The privilege has only applied to people who do not reside in the State who come into the State for court proceedings. *Accord Anderson*, *supra*, 392.

The Supreme Court summarized the privilege as follows, "Suitors as well as witnesses, *coming from another state or jurisdiction*, are exempt from the service of civil process while in attendance upon court, and during a reasonable time in coming and going." *Page Co. v. MacDonald*, 261 U.S. 446, 448, 43 S. Ct. 416, 417, 67 L. Ed. 737 (1923) (emphasis added). Individuals that are arrested generally live in the jurisdictions in which they are arrested.

This court should take careful notice that Washington case law and history are contrary and in direct opposition to what the proponents of this proposed rule claim. "We feel that the weight of authority and the better reasoning are with those cases which hold that **when a person**

is present in a foreign jurisdiction by reason of arrest or detention in, or in connection with, some criminal proceeding, the rule of immunity from service of civil process does not apply,” (emphasis ours). *Husby*, Wash at 339; accord *State ex rel. Alexander-Coplin & Co. v. Superior Court for King Cty.*, 186 Wn. 354, 354, 57 P.2d 1262, 1262 (1936). The undersigned cannot find a case in Washington in the last century where the civil arrest privilege was successfully invoked. Clearly, the Supreme Court expressly rejected the civil arrest privilege applying in circumstances where the defendant faced a criminal charge in *Husby*.

There is no common law right of privilege from civil arrest in the jurisdiction where one resides. Washington courts have also rejected this privilege in cases where the defendant is present at court for a criminal case See, *Husby*. The proponents of the proposed rule are flatly misrepresenting the extent of the privilege. They seek to drastically expand the civil immunity privilege for arrest by applying it to residents of the State, while in the resident’s home jurisdiction, by relying on a case that is nearly a hundred years old. *State ex rel. Gunn v. Superior Court of King Cty.*, 111 Wash. 187, 188, 189 P. 1016, (1920) (non-resident civil party, present for purposes of civil suit may not be served with another suit). The above mentioned case law does not support the proponent’s argument in favor of the proposed rule.

Notably, in 1943 the Washington legislature codified this common law rule as it pertained to witnesses in RCW 10.55.100. Laws of 1943 Ch 218 § 4. The legislature **has never codified the civil arrest rule for parties**, (emphasis added) and it has fallen out of favor over the intervening century.

While it is clear federal authorities may not prohibit state officials from enforcing federal law, there is nothing which keeps the State from voluntarily doing so. Respectfully, it is not the

place of the Supreme Court, via court rule, to decide this policy. Proposed RPC 4.4 prevents any attorney except for those employed by federal immigration authorities, including those who may be employed by other federal government agencies that do not have a direct immigration mission, from potentially working with immigration authorities.

D. Grant County Experience

In reviewing our office's felony trials over the last four years, approximately half of the felony cases have involved undocumented defendants and/or witnesses. Our observation is that criminal undocumented defendants have little or no incentive to enter guilty pleas because they face deportation consequences. This creates a substantial and unnecessary burden on our judicial system's resources. Advocates of the proposed rule change fail to consider or take into account the huge burden undocumented criminal activity costs Grant County in terms of time, money, and effort.

Much of the supporting materials cited by the advocates of this proposed rule reference Grant County e-mails.⁵ Grant County treats Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) as they would any other State or Federal law enforcement agency. If those agencies request assistance or information from Grant County law enforcement agencies, assistance or information is provided as long as it can be done legally and does not unduly tax available County resources. Grant County receives the same courtesies in return from other federal, state and local law enforcement agencies. This is the most effective way to

⁵ The emails cited by proponents of the proposed rule were between members of the Grant County Prosecuting Attorney's Office and federal border agents and occurred before the passage of Senate Bill 5497. There was nothing illegal or inappropriate about the exchanged emails.

accomplish our mission of protecting the citizens of Grant County, which is our primary prosecutorial purpose, in addition to seeking justice for our citizens and all residents.

The following example is probably all that needs to be said in favor of the common sense and fundamentally necessary concept that local law enforcement absolutely needs to work with federal immigration authorities. Two former Grant County residents, who were senselessly and brutally murdered, would be alive today if federal agents had been actively working with local law enforcement.

One victim, Jill Sundberg, was kidnapped and driven to a remote area where she was forced to her knees and shot thirteen times in the back of her head. After shooting Ms. Sundberg, the defendant, Gustavo Tapia Rodriguez, and his four accomplices impaled Ms. Sundberg's back with a knife, which was used to attach a cardboard sign that read, **"This is what happens to snitches against the Gulf Cartel."**

After successfully convicting Mr. Tapia Rodriguez and two of the four of his accomplices of the senseless killing of Jill Sundberg, our office was forced to try a second aggravated murder case against Tapia and his co-defendants. The second aggravated murder trial involved the same five illegal alien defendants who were part of a group that held themselves out as Mexican cartel members and thugs for hire. These two aggravated murders occurred within two weeks of each other. In addition, the gang also committed at least one drive-by shooting and a property damage case that our office was not able to prosecute. These same defendants were also actively distributing drugs (meth, heroin, etc.) in Grant County for years. Applying this issue to the nation's drug epidemic, the Center for Immigration Studies found that in the Tucson Sector alone, border patrol officials seized enough fentanyl in the past year to kill the entire population

of the United States, twice.⁶ Grant County faces a similar crises with the growing number of undocumented individuals committing drug related crimes.

Sadly and shockingly, the lead defendant, Gustavo Tapia Rodriguez, was contacted by the Grant County Sherriff's Office approximately four months prior to the first murder. At that point in time, Mr. Tapia Rodriguez had a "civil" immigration warrant for his arrest after having been ordered removed by a federal immigration judge. He was living free in Grant County, having skipped bail on his federal deportation case. Our local law enforcement agencies had not been informed of the federal civil arrest order. Mr. Tapia Rodriguez, who now faces multiple life sentences, were not detained. The reality is that if local law enforcement had been working with federal authorities, two innocent residents of Grant County would be alive, and another victim who was shot and nearly killed would have been avoided.

In the second trial, Mr. Tapia Rodriguez and his crew shot and killed Arturo Sosa. Mr. Sosa was shot three times in the head after being kidnapped together with Jose Cano Barrientos as part of a gangland murder for hire. During that trial, Mr. Tapia Rodriguez's defense counsel attacked the credibility of the surviving shooting victim, and the State's cooperating percipient witness, who was also undocumented. Defense counsel attempted to introduce evidence he knew to be false⁷ trying to establish that Mr. Tapia Rodriguez was a U.S. citizen (Mr. Tapia Rodriguez was a citizen of Mexico and never entered the United States lawfully). Thankfully, the Grant County Prosecutor's Office had a working relationship with federal agencies and was

⁶ Center for Immigration Studies a Growing Border Crisis – A report from Arizona by John Wahala, May, 2019

⁷ This was known to be false, as the same defense counsel proved that the defendant was an undocumented (illegal) as part of a failed defense to bail jumping charges in a previous trial.

able to reach out to ICE to obtain the necessary evidence to rebut the defendant's claim and was able to keep false information from the jury.

As previously stated the surviving victim was also undocumented, as was at least one of the key witnesses.⁸ It can be inferred to a reasonable level of probability that several other witnesses and spectators of these trials, including two or three defense witnesses, were also undocumented. All came and went completely unmolested by federal authorities, even though the federal agents were fully aware of the trials and provided information to the State on short notice.

In Grant County's experience, federal agents target previously deported defendants or those who have criminal convictions or are repeat immigration offenders. We are unaware of witnesses or people coming to do general business at the Grant County courthouse, e.g. to file documents or obtain other services, being detained by federal authorities. Federal officers are as unobtrusive as possible and do not interfere with Court business. They do engage in standard law enforcement practices that ensure safe arrests, such as having multiple officers on hand to reduce any risk of violence. Our office is unaware and has no information of any arrests by federal law enforcement resulting in any violence.

Grant County did have immigrant rights groups come and speak to the County leadership, including the Board of County Commissioners, the Sheriff, and the Prosecutor in 2018. These groups made claims of violations of the law and abuses by federal agents. The County investigated these claims and found them to be embellished misstatements of the law or exaggerations of what occurred. Our belief, which is based on facts and observation, is that any

⁸ Both have applied for U-visas, thus we are aware of their status.

“fear” allegedly keeping undocumented people away from the Grant County courthouse is being generated by exaggerations of fact by the groups opposed to current immigration law seeking political gain.

Another reason this rule should not be implemented/adopted by court rule is that the Court does not have the resources or authority to accurately establish the legislative facts necessary to determine the scope and cause of any alleged problems. At the very least, a neutral investigator, not one with a political agenda, should investigate what is actually occurring before the Court creates rules such as this one.

We can unequivocally state, no court hearing in Grant County has been disrupted by federal agents making arrests or performing their necessary duties in our county.

E. This proposed rule will affect more than immigration arrests (if it affects immigration arrests at all)

The proposed rule creates a privilege against arrest for civil arrests. According to the proponents, it is aimed at immigration enforcement. Given that immigration enforcement is conducted by federal agents its efficacy is questionable. However, Washington also uses civil arrests in some circumstances. There is no analysis we are aware of which shows how this privilege would affect other State functions, such as child support enforcement. Until such information is obtained, it would be reckless and inappropriate to impose such a privilege.

F. The Court rule and the Rules of Professional Conduct are designed to support civil disobedience to immigration law. Whether or not civil disobedience in this context is a good thing, courts have no business engaging in it or condoning it.

Our country has a long history of civil disobedience. Our courts have often had opportunity to comment on it in the form of jury nullification. As courts have noted, it has been used in instances that history has judged both good and bad. *United States v. Thomas*, 116 F.3d 606, 616 (2d Cir. 1997) However, Washington Courts, along with many others, have been unanimous in rejecting civil disobedience as an activity to be condoned by the Court system. *Review denied* 179 Wn.2d 1012, 316 P.3d 495 (2014); *State v. Moore*, 179 Wn. App. 464, 466, 318 P.3d 296, 297 (2014) (Division One). *State v. Wilson*, 176 Wn.App. 147, 151, 307 P.3d 823 (2013) (Division Three), *State v. Brown*, 130 Wn.App. 767, 771, 124 P.3d 663 (2005) (Division Two), *State v. Meggyesy*, 90 Wn.App. 693, 706, 958 P.2d 319 (1998) (Division One).

Immigration laws, whether they be criminal or civil, are the law of the land under the United States Constitution. Some may disagree with them. It is hard to argue that reforms are not necessary. However, that is a decision for Congress, not Washington State Courts. While it is not state law enforcement's job to enforce federal immigration laws, that does not give the State the ability or right to hinder federal law enforcement in the execution of their duties. In dealing with criminal matters, the Grant County Sheriff's deputies and local law enforcement agents assist federal law enforcement and vice versa.

Washington Courts are courts of law, not courts of political expediency. Defiance of immigration law, like defiance of all laws, criminal or civil, comes with the risk of consequences. Courts should not be in the business of assisting avoidance of the consequences of the law. Nor should Courts be in the business of picking which laws are acceptable subjects for civil disobedience.

Many people face consequences, both civil and criminal, for coming to Court. Some come to court knowing they are going to be spending a lengthy amount of time incarcerated. The State has made it a crime for them not to appear. RCW 9A.76.170. Others face unpleasant civil consequences, such as loss of livelihood, loss of children, loss of money and many other reasons. Process servers sometimes use courthouses. County employees are served with lawsuits at court houses. Risk of unpleasant consequences are part and parcel of the justice system. Washington should not adopt a policy of allowing unpleasant consequences to serve as an excuse for not coming to court.

G. Proposed Comment to RPC 4.4

We agree that using immigration status to intimidate, coerce or prevent a person from participating in our justice system is improper. However, the restriction on assisting with civil immigration enforcement does not go to or achieve the same goals as the rest of the clause. First, it places Washington attorneys in the position of determining and policing whether federal authorities are proceeding civilly or criminally. This is inappropriate and beyond the authority of Washington Courts and attorneys.

In addition, this proposed rule attempts to regulate how executive branch agencies interact with the federal government. This is well beyond the scope of the Court's power, and appears to be an attempt to coerce executive branch officials in the exercise of their duties upon pain of sanctions to their law license. Executive branch officials are well aware of the tension between the need to ensure victim cooperation and access to justice on one hand, with the need for cooperative law enforcement on the other. This tension has been greatly exacerbated by groups exaggerating or embellishing and misrepresenting what the federal immigration agents

are actually doing, without knowledge of the facts. This proposed rule would prevent local law enforcement from sharing information about convicted murderers and other serious criminals with federal authorities.

This creates a dangerous reality and consequence which has, in fact, occurred in Grant County. In addition, because attorneys cannot advise others to do what they cannot, it restricts government attorneys from advising their clients on interactions with federal authorities. Courts do not have the authority to usurp executive branch communications with other government agencies under the guise of ethics rules.

Laws of 2019, Ch 440 contains exceptions related to maintaining federal funding in §§ 5(3) and 9. The proposed RPC would prevent attorneys from advising government officials on the impacts of these exceptions and how to implement them. Legislatures, by design, have to consider the fiscal impact of their acts. Courts do not. Legislating by Court Rule, as is proposed, eliminates balance struck by the legislature. The proposed RPC violates the separation of powers doctrine.

F. Conclusion

Grant County has no objection to a proposed rule that would forbid any actions which would intimidate, coerce or prevent anyone from participating in a criminal or civil matter. However, using Court Rules and RPC's to facilitate violations of federal law; requiring State officials to monitor federal agents to determine whether they are proceeding under civil or criminal laws; expanding civil arrest immunities far beyond any case law or historical practice; and restricting government official's communications with other government agencies is an *inappropriate* use of court rules.

Aside from making clear that immigration status should not be used to intimidate, obstruct or prevent a person from participating in a court matter, the proposed rules should be dismissed in their entirety.

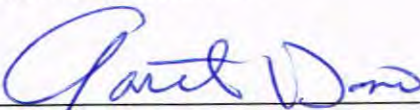
Grant County, alternatively, suggests that comment 4 to RPC 4.4 be modified as follows:

[4] The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry about ~~a third~~ any person's immigration status when the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil ~~any~~ matter. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. See *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is representing a client ~~in a civil matter~~, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer's purpose is to intimidate, coerce, or obstruct that person. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, lawyers, LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status).

Other than these slight modifications the proposal should be rejected in its entirety.

DATED: February 3rd, 2020.

Respectfully submitted:


GARTH DANO, WSBA No. 11226
Grant County Prosecuting Attorney

United States Senator Charles Schumer Speech at Georgetown Law School – October 8, 2009
Sixth Annual Immigration Law and Policy Conference

Thank you Dean and it is great to be here. I want to thank you and everyone here for coming. Uh, I can tell you I hope my speech goes a little better this morning than the one I gave in Brooklyn a few weeks ago because at the end of the speech a senior citizen who was in the audience came over to me and said, "Senator, I thought your speech was absolutely awful." But then someone standing next to him put his – put his hand on my shoulder and says, "Don't worry, he just repeats what everyone else is saying." Um, anyway it is good to be here. I want to thank my friend Doris Meissner, uh for inviting me to share thoughts. Doris and I go way back in these immigration uh struggles and fights. And she's done a great job both in and out of government uh in terms of moving reform forward and moving us to a rational policy of immigration. And, I want to just share with you today um some thoughts on immigration reform, the prospects of achieving it in 2009, and outlining the main principles that will be part of the legislation that will be introduced later this year.

First, as you know, Doris was a great public servant for many years in an agency that many of us old-timers still call INS, uh it is no surprise to me that she continues to serve her country uh through her cutting-edge research and publications at the migration policy institute and her research just makes tremendous contributions. Uh it's rare when somebody writes something and just about everybody in the immigration field says I must read that right away – that's Doris Miessner. And when she invited me to speak to you, uh I did not know by delivering my remarks before the White House's Summit on immigration reform. Uh, and while I can imagine, many of you would have preferred this speech occur the day after the summit. Uh rather than the day before in the hopes that I could tell you what transpired. I can tell you that there is no better time for this speech than today.

Today I want to share with you the core of what I will tell the president tomorrow during our meeting. And the very first thing I will tell the president is something I think will sound familiar. When the President asks me whether Congress can pass comprehensive immigration reform this Congress, I will smile and say, "Mr. President, Yes we can." I will tell him that all of the fundamental building blocks are in place to pass comprehensive reform this season, and even possibly, uh this session rather, and even possibly later this year. For the past several weeks, pundits, columnists, reporters have almost all been saying the prospects for comprehensive immigration reform look bleak. They say that immigration reform is an uphill battle and that there are not enough votes in Congress for reform and that the situation is all together dark. But to all of these nay-sayers and to all the people that are so desperately looking to their government for leadership on this critically important issue, I say this: It is darkest just before the dawn, and I promise you, we've been through the darkness already, and a new day is dawning.

First of all, I have no doubt that President Obama has an unyielding commitment to achieving comprehensive immigration reform and I truly believe that his leadership will be the critical difference in getting us over the hump this time around. I also want to take this opportunity of course to recognize the remarkable leadership that my predecessor on the immigration reform subcommittee, Senator Kennedy, provided to that subcommittee and to the nation for the last forty-six years. He served with great distinction on that committee and was at the center of all of the critical immigration debates of our time. His leadership will truly be missed and no one, no one, can fill his large shoes. Now when Senator Kennedy relinquished his post as chairman of the immigration subcommittee to focus on healthcare, I had to ask myself whether I truly believed we could accomplish immigration reform, or whether leading this subcommittee would be tantamount to embarking on a fool's errand.

At the time I made the decision to take over the immigration subcommittee there were several other subcommittees I could have chosen to chair instead, any of which would have presented an opportunity to make large changes for both New York and America. So if I didn't believe we could accomplish immigration reform in this session, I would never have chosen to accept the immigration subcommittee post. Committee's of inaction and legislative back orders are not the places in which I thrive. And since the day I became the chair of the immigration subcommittee, I have worked hard each day to achieve immediate positive results while never losing sight of the larger goal of building consensus for immigration reform. As an example, I did not believe that a bi-partisan bill can be enacted if my colleagues on the other side of the isle do not believe the democrats are serious about enforcement.

For this reason, I recently helped obtain a commitment from both Attorney General Holder and Secretary Napolitano to ensure that immigration and customs enforcement has the necessary title twenty-one authority to perform investigations and make arrests in order to assist our government's comprehensive efforts against the violent drugs, weapons, and human smuggling cartels at our border. For far too long, we've have three separate agencies, all with different missions – each trying to stop these cartel's individually. The cartel's that smuggle drugs and illegal aliens have integrated their activities and now our federal agencies will have a better integrated response to them.

This alliance with Secretary Napolitano will also soon yield additional positive results such as providing DHS with enhanced authority to seize real property used by human traffickers and to crack down on employers who knowingly hire and exploit illegal immigrants to perform cheap labor in atrocious working conditions. Other short term reforms are also critical for laying the groundwork for comprehensive immigration reform. For Instance, in conjunction with the attorney general, we are increasing funding for the EOIR legal orientation program. These funds will ensure that our immigration courts are correctly deciding as many cases as possible in the first instance. The savings created by this program will more than pay for the appropriations requested. Far fewer judicial and government resources will be expended because the courts will need to grant far fewer continuances and meritorious claims will be readily identified by all parties and quickly adjudicated without the need for unnecessary appeals.

Finally, I'm also asking appropriators to increase funding for refugee settlement – these funds will assist our most vulnerable and sympathetic immigrants to build new lives in the U.S. and many of these immigrants are Iraqi and Afghani refugees who risk their lives to assist our troops on the battlefield and live in the United States because they are no longer safe at home. But even as we accomplish these immediate goals, I assure you, we remain intensely focused on our ultimate goal – passing comprehensive immigration reform as quickly as possible.

The time for reform is now, and we all know – just about everyone knows, our system is badly broken. And as pastor Joel Hunter, one the leading evangelical ministers in our county eloquently told the immigration subcommittee last month, "Our broken system forces good people to break the law, because we give people no option to act lawfully." I encourage all of you to listen to his moving testimony on our judiciary subcommittee's, on our judiciary committee's website.

In furtherance of our efforts to pass immigration reform we have convened a series of hearings entitled: Road to Comprehensive Immigration Reform In 2009, clearing the hurdles. The first hearing examined whether Comprehensive Immigration Reform could be enacted in 2009. The answer of course, was yes.

The second hearing examined the current state of our border security and the remaining steps that need to be taken to achieve operational control over the entire border. I will also be holding two more hearings in July. The first hearing will consider all the existing ideas and solutions for achieving a simple and workable biometric based employment verification system. The second hearing will determine how to best structure our employment based immigration system for the future.

Well, during the last few months, I've thought long and hard about what an immigration bill must look like in order to obtain sixty votes in the Senate. After many meetings with Stakeholders and many members of congress, I truly believe that the fundamentals are in place for immigration reform if we coalesce against, around seven key principles that the American people overwhelmingly support. The main idea that underlines each of these seven principles is that the American people are fundamentally Pro-legal immigration, and anti-illegal immigration. We will only pass comprehensive reform when we recognize this fundamental concept.

The following seven principles are all based on this concept and comprise what I believe to be the framework for a bill that can receive overwhelming and bi-partisan congressional support.

First, illegal immigration is wrong. And a primary goal of Comprehensive Immigration Reform must be to dramatically curtail future illegal immigration.

Second, operational control of our borders through significant increases in infrastructure, technology, and border personnel must be achieved within a year of enactment.

Third, a biometric based employer verification system with tough enforcement and auditing is necessary to significantly diminish the job magnet that attracts illegal aliens to the United States and to provide certainty and simplicity for employers.

Four, all illegal aliens present in the United States on the date of enactment on our bill must quickly register their presence with the United States Government and submit to a rigorous process of converting a legal status and earning a path to citizenship or face imminent deportation.

Five, family reunification is a cornerstone value of our immigration system. By dramatically reducing illegal immigration, we can create more room for both family immigration and employer based immigration.

Six, we must encourage the World's best and brightest individuals to come to the United States and create the new technologies and businesses that will employ countless American workers, but must discourage businesses from using our immigration laws as means to obtain temporary and less expensive foreign labor to replace capable American workers.

And finally, Seven, we must create a system that converts the current flow of primarily low skilled illegal immigrants to the United States into a more manageable and controlled flow of legal immigrants who can be absorbed by our economy.

Let me elaborate. The first of these seven principles is that illegal immigration is wrong, plain and simple. Until the American people are convinced that we will stop future flows of illegal immigration, we will make no progress on dealing with the millions of illegal immigrants that are here now and rationalizing our system of legal immigration. That's plain and simple and unavoidable.

When we use phrases like, "undocumented workers," we convey a message to the American people that their government is not serious about combatting illegal immigration – which the American people overwhelmingly oppose. If you don't think it's illegal, you're not going to say it. I think it is illegal, and wrong, and we have to change it. Above all else, the American people want their government to be serious about protecting the public, enforcing a rule of law, and creating a rational system of legal immigration that will proactively fit our needs rather than reactively responding the future waves of illegal immigration. People who enter the United States without our permission are illegal aliens, and illegal aliens should not be treated the same as people who enter the U.S. legally.

To the advocates for strong, fair, effective comprehensive immigration reform – and I'm certainly one, I say to you, that the American people will never accept immigration reform unless they truly believe that their government is committed to ending future illegal immigration and any successful comprehensive immigration reform bill must recognize this fact. I have spoken to many advocates in the past several months and one of the main reasons I'm optimistic about achieving reform this time around is the advocates understand the need to embrace this principle during the current debate.

Second, any immigration solution must recognize that we must do as much as we can to gain control for all of our borders as soon as possible. But we also need to set the record straight. The American people need to know that because of our efforts in congress, our border is far more secure today that it was when we began debating comprehensive immigration reform in 2005. Between 2005 and 2009 a vast amount of progress has been made on our borders and ports of entry. The progress includes: 9,000 border patrol field agents in the last four years, construction of a six-hundred thirty mile border fence, or six-hundred thirty miles of border fence that create a significant barrier to illegal immigration on our southern land border, and third, the implementation of new border technologies which serve as force multipliers and allow the border patrol to maintain control of larger segments of the border, with fewer agents. All of these measures have contributed to what the New York Times reported on May 15th 2009, is quote: "An extraordinary decline in the number of Mexian immigrants going to the United States."

Those of us who support comprehensive reform have shown our commitment to tough and serious border enforcement. But opponents of comprehensive reform continue to repeat the same old argument that no conversation regarding immigration reform should even begin until we show that we're serious about securing the border. Well, to those people I say, the time has come to end the divisive rhetoric about our border. It's time for those who reflectively parrot the border first mantra reengage in the long promise yet long-delayed conversation regarding reforming our nations broken immigration system. All that is needed now to give the border patrol the additional infrastructure, technology, and personnel to insure that it's impossible to unlawfully cross the border without being detected and apprehended. This technology is available, will be deployed in the near future, while at the same time, more border personal is deployed in the short term until the technology is up and running. These measures for additional border security must be part of any comprehensive immigration bill.

Third, we must recognize that illegal immigration will never seriously be stifled unless and until we end the job magnet currently engendered by the seriously flawed i-9 regime. As we speak, any individual who steals a social security number and has access to a credible fake I.d. can get a job in the United States. The current system creates havoc for both employers and employees, and no one has any certainty. Employers who accept all credible documents in good faith are not guaranteed they will never be targeted by an I.C.E. by the I.C.E. for turning a blind eye toward illegal immigrants in their workplace. And employers who question suspicious documents face potential lawsuits from U.S. citizen employees who can rightly claim they were wrongly profiled as illegal immigrants. The E-verify system, as presently constituted can't completely solve this problem. In fact, all that is necessary to obtain employment using E-verify is to uncover a U.S. citizen's social security number and produce a credible fake i.d. with that U.S. citizen's name and address. Only by creating a biometric base Federal Employment Verification System will both employers and employees have the peace of mind that all employment relationships are lawful and proper.

The system will be our most important asset in dramatically reducing the number of illegal aliens that are living in the United States. There are many proposals for practical biometric based employment verification systems and the immigration subcommittee will be vetting each of these proposals during its upcoming hearing in July.

Fourth, the fourth principle is that we must create a mechanism whereby all illegal aliens presently in the United States on the date of enactment of comprehensive reform must quickly register their presence or face immediate deportation. Illegal aliens however, will never register their presence unless the government provides some mechanism for these individuals to eventually obtain legal status and a path to citizenship upon acknowledging they broke the law and agreeing to pay their debt to society. The people who advocate only enforcement approaches fail to understand that many illegal immigrants have risked their lives to come to the U.S. and will risk their lives to remain in the U.S. in order to provide financial support desperately needed by their families abroad. The majority of the American people understand that expelling tens of millions of people is simply not practical and will ultimately fail. Just as the American people are strongly against illegal immigration, they are also against turning the country into a round up republic – where they will be confronted by nightly news stories of sympathetic families being torn apart at gunpoint during harsh enforcement raids.

The American people prefer a pragmatic solution that works to empty rhetoric, however satisfying, that fails.

Fifth, we need to recognize that reuniting families is an important value of our immigration system, by dramatically reducing the number of illegal aliens who are able to enter the United States, we will create room for both families and employment based immigrants so that the total number of immigrants to our country is no greater than today. In the age-old fights as to how we structure future flow can really be muted so that both sides are happy.

Sixth, we need to recognize the important contribution that high-skilled immigrants have already made and must continue to make towards revitalizing and reinventing the American economy. No immigration system would be worthwhile if it is unable to attract the best and minds of the world to come to the United States to create jobs for Americans as has been the case for Yahoo and Google and Intel and Ebay and countless other companies – that being said, any reformed immigration system must be successful in encouraging the next Albert Einstein to immigrate permanently to the United States

while at the same time discouraging underpaid temporary workers from taking jobs that could and should be filled by qualified American workers.

Finally, any successful immigration system must include a process that channels the current substantial flow of illegal immigration of low-skilled workers into a more manageable and controlled flow of legal immigration tied to American economic needs. Any immigration system that seeks to dramatically reduce illegal immigration must be realistic. If we were to attempt end all future immigration into the United States – as some on both sides of the aisle might want, we'd simply create a system that encourages immigrants to seek to penetrate our weakest areas in order to enter illegally because no legal pathway would exist for those who only wish to create a better life for themselves and their families. A broken system produces crooked people. But if however, we give people who might otherwise immigrate illegally, especially people who are currently willing to risk their lives to make it to our country at all costs, a realistic hope that they will be able to immigrate legally but only when our country's economy will support their arrival here, we then create a truly, we would then truly create the ideal multifaceted system for combatting illegal immigration while remaining true to America's founding principle of being a nation that welcomes and is made richer by legal immigrants.

Now the road ahead won't be smooth and I can assure you it will certainly not be straight – I've been involved in the last two immigration bills and I know that well. But as you can see, I'm working as hard as possible to achieve the goal of comprehensive immigration reform and I'm convinced that we will soon have a bipartisan bill on the floor that incorporates these seven key principles – each of which the American people overwhelmingly support. I want to thank so many of you in the audience for your years of hard work and contributions to this debate. And I ask all of you for your much needed support as we proceed ahead toward the ultimate goal. I look forward to announcing positive developments in the upcoming days. Thank you.



Nation

Immigration puts small town on cultural divide

America's immigration impasse is a daily, dispiriting fact of life in Mattawa, Wash., and many places where noncitizens abound



JESSICA RINALDI FOR THE BOSTON GLOBE

The town of Mattawa's social hub is the Catholic church, where Spanish-language Mass is standing-room-only, even on a Thursday night.

By Maria Sacchetti

GLOBE STAFF JANUARY 05, 2014

MATTAWA, Wash. — Eloy Cervantes, a cattle rancher and father of four, has staked his family's future on this remote farming city in America's apple country — a city riddled by troubles he wishes he could help fix. Teen pregnancy. Grating poverty. And violent gangs that shot bullet holes into his neighbors' trailers.

“If I could do something,” Cervantes, 40, said of the troubles in town, “you can be sure that I would.”

But Cervantes is not a US citizen, so he is powerless to change a thing. In fact, the majority of people in this American town hundreds of miles from the southern border are not American citizens. Mattawa's longtime mayor, a white woman in a town of 4,400 mostly Latino residents, won the last election with a grand total of 37 votes.

Congress has battled over immigration for so long that it has come to this: Immigrants who are not citizens are now the majority, or close to it, in Mattawa and a handful of cities and towns nationwide, including Langley Park, Md., an unincorporated borough near the nation's capital; rural Mendota, Calif.; and the cities of Sweetwater, Fla., and West New York, N.J.

Nationwide, immigrants who are not citizens make up 20 percent or more of the population in more than 100 American cities and towns, US Census figures show. In Massachusetts, a third of the residents of Chelsea are not citizens, almost five times the national average. In Everett and Malden, 1 in 4 residents isn't a citizen. In East Boston, almost half the residents could not vote on the recent casino referendum because they were not citizens.

In New York and Los Angeles, the numbers are staggering. New York has more than 1.4 million people who are not citizens, the highest in the nation. Los Angeles has more than 877,000, almost a quarter of the city.

For much of its history, the United States steered new arrivals toward citizenship, and through the early 1900s, some states even allowed noncitizens to vote. The integration of immigrants has been transformative, from the massive waves of Irish in the 19th century who used the vote to wrest control of Boston from an unwelcoming Yankee establishment, to the Mexican immigrants who altered the political landscape of California.

But now, advocates for immigrants worry that federal officials and Congress are pushing citizenship increasingly out of reach, for legal and illegal immigrants alike. As immigration soared in recent decades, the share of foreigners who are naturalized citizens plummeted from 64 percent in 1970 to 44 percent today.

Roughly half of the 22 million immigrants who are not citizens are here legally, and most are eligible to apply for citizenship, but have not, for reasons that vary from the \$680 application fee, more than 10 times the cost in 1990, to the fact that many do not speak enough English to pass the citizenship test. Some simply are not interested because they plan to return home eventually.

Another 11 million are here illegally, and they are at the center of a bitter national debate expected to erupt again this year over whether they deserve citizenship and on what terms. Opponents say citizenship would reward lawbreakers with benefits reserved for Americans, including full access to government aid, the ability to bring relatives to the United States more quickly, and protection from deportation.

But advocates for immigrants say making citizenship harder to attain has a broader effect on American life. Many cities and towns are thick with residents who cannot vote, run for office, sit on juries, and otherwise hold governments accountable.

Chamblee, Ga., had to rearrange its electoral map about a decade ago because so few people in some parts of the city were eligible to vote. In Cactus, Texas, a federal immigration raid in 2006 upended the whole town, emptying apartments, streets, and shops. In Bell, Calif., city residents were outraged in 2010 when they learned that elected officials had given themselves lavish salaries. Even now, roughly 45 percent of the adults in Bell cannot vote.

“You get the sense that people remain outsiders for far too long,” said Demetrios Papademetriou, president of the Migration Policy Institute, a Washington, D.C., research organization. “All of the instincts that I have suggest that this is a problem, and certainly in the long term, it becomes potentially a very substantial problem.”

In Mattawa, as many as 80 percent of the adults are not citizens, and many have been here illegally for 10 or 20 years. The civic leadership does not reflect the town: 99 percent of

Mattawa's residents are Hispanic, but the mayor, the police chief, the school board, and half the City Council are white.

For now, Mattawa and the rest of the nation are anxiously awaiting a possible solution in the nation's capital. House Speaker John Boehner said this month that he is open to talks on immigration, but he has refused to consider a massive Senate bill passed last year that would allow illegal immigrants to apply for citizenship after a 13-year wait, the toughest requirement in more than 200 years.

The last time Congress made it that hard to become a citizen was in 1798, when they passed a controversial law forcing immigrants to wait 14 years to naturalize. An outraged Thomas Jefferson pushed Congress to repeal the law soon after he became president. In 1802, Congress restored the wait time for citizenship to five years, the same as it is today.

A town transformed

Thirty years ago, Mattawa was a fading town of 300 hardy white farmers on the banks of the Columbia River, which flows south through ocher-tinted gorges from the Canadian Rockies. City officials joked that Mattawa easily lived up to the meaning of its Native American name, "Where is it?"

But in the late 1990s, corporate farmers blanketed the brown hills with forests of apples, cherries, and grapes — with the government's help. They tapped water from a federal irrigation project and some leased land from the state. As soon as the crops ripened, farmers were desperate for workers.

Few Americans applied for the low-paying jobs, but Mexican immigrants from poor towns in Mexico and other US states poured into Mattawa. They camped along the river, rented crawl spaces under houses, and crammed into trailers until the septic tanks overflowed. Most crossed into the United States illegally, because they wanted to work.

Mattawa's population soon doubled and then tripled, transforming the little town into a full-fledged city. But with that came problems Mattawa lacked the political power, civic involvement, and money to fix.

Crime increased along with the population and quickly overwhelmed the small police department. Statistics are hard to find because the department fell into disarray, but city officials said the small town suddenly confronted big-city problems, including domestic violence, drive-by shootings, and gangs linked to the drug trade that took root in an area where it is easy to hide.

Two years ago, a 28-year-old woman, seven months pregnant, was shot and killed while unloading groceries. Also that year, alleged gang members fired shots at a high school soccer game. In August, a man was stabbed in a fight at home. In October, shots were fired at a car parked at a grocery store not far from City Hall.

Mayor Judy Esser, a woman who has run the town for 23 years, says Mattawa has severe budget issues that prevent the city from hiring more police officers or improving city parks. She said nonprofits, such as the public housing authority, do not pay property taxes, and they own more than half the housing in town. As a result, the city collects taxes from less than half the residents to cover basic services, such as a water tower.

“There isn’t anything we don’t need,” Esser said in an interview in the former gas station and car wash that is now City Hall.

The mayor, who is paid about \$6,000 a year, said Mattawa has tried to get state and county officials to address the funding issue. But the city attracts little attention from politicians — even though it has been one of the fastest-growing cities in Washington state.

“They quit doing stuff here because there wasn’t that many votes,” said Esser. “They would help, I suppose, if they were really pushed.”

But there is little political muscle to push them. Hardly anyone can vote, and few get involved in civic activities in a town that depends heavily on volunteers to get things done. Volunteers fight fires, screen candidates for the Police Department, and run civic activities, such as the annual Community Day parade and celebration.

Many immigrants shy away from civic duties in a town that has not always been welcoming. City Hall did not hire interpreters until 2007, when the Department of Justice investigated

Mattawa for failing to provide translators in a community where most people only speak Spanish.

Instead, the town's social hub is the Catholic church, where Spanish-language Mass is standing-room-only, even on a Thursday night.

Every week, immigrants crowd into the Our Lady of the Desert Catholic Church, spilling out the adobe sanctuary and into the rose gardens. In the summer, they kneel on the soft grass. In the winter, they come wrapped in wool blankets.

The pastor said he never lacks volunteers to sweep up or pray over the Virgen de Guadalupe. But over the fence, the dilapidated trailer parks and rutted roads are beyond his power, or his congregants', to fix.

"It's a third world in a first-world country," said the Rev. Jorge Granados.

Esser, the mayor, said she does not treat immigrants differently because they are here illegally.

"We don't know and I don't care," she said of residents' immigration status. "I'm here to help them."

But immigrants say it is time for more residents to take charge of the town.

A state audit a year ago revealed that the city's Police Department had failed to properly store evidence and track citations, effectively letting many criminals off the hook.

As a result, the chief resigned. The mayor then hired a new chief, John Turley, who speaks Spanish he learned as a Mormon missionary in Central America. But he is the only one of four officers who speaks Spanish.

While the schools have won praise for helping students prepare for college, many students still struggle with low achievement and test scores are well below the state average. In past years, controversies have erupted at school committee meetings over budget cuts and spending.

Cynthia de Victoria was the only Hispanic on the school board in 2009 when she was appointed to fill a vacancy. She urged Latino parents to attend meetings and prodded the white board members to learn how poverty affects learning.

But she did not last. When she had to run for the seat in 2011, she lost to a white man.

“Should they become legal citizens and be able to vote,” de Victoria said, “things would look very different.”

Who deserves citizenship?

In the early gray light before dawn, during the annual harvest, hundreds of men and women flock to the apple orchards in Mattawa with buckets strapped to their chests. The air tingles with anticipation. Farm workers earn less than a dollar a bucket, so they march up the ladders and pick as many apples as they can, flitting from tree to tree until the desert sun chases them out of the fields.

Almost everyone says they are here illegally from Mexico, putting them at the center of the coming debate over citizenship.

“These jobs are hard for Americans,” said one of them, a 45-year-old farm worker, in an interview late last summer.

That so many of the workers are here illegally rankles some, who say illegal immigrants should not quickly become US citizens.

“If you get across the border and you didn’t get caught . . . you shouldn’t go to the front of the line,” said Dave Hargroves, the fire chief for the district that includes Mattawa. “And I don’t want to be insensitive and all, but go get in line like everybody else.”

But immigrants say they are essential to the city and state’s economy. Washington is the nation’s leading apple producer, and none of the farmers in the Mattawa area was, as of last year, registered with E-verify, a free US government service that checks workers’ papers.

People who favor citizenship said it would help immigrants and the town. To become a citizen, immigrants must pay a fee and pass a test demonstrating that they know English and

how the US government works. And many immigrants in Mattawa say they want to be citizens.

“Everyone wants it,” said a 42-year-old woman, referring to citizenship, speaking on condition of anonymity because she is here illegally. “I pay everything, but without a right to anything.”

In the schools, the supermarkets, and the streets of Mattawa, immigrants say they have paid the price in other ways for coming here illegally.

There is the physics whiz who never went to college because he is ineligible for government financial aid. The minivan-driving married couple with children who could not get a home loan because they lacked Social Security numbers. The high school football player whose father was deported.

Some have not seen family in Mexico for years. Many live in decrepit trailers, like the one that caught fire in 2009 and killed a woman and two children.

Some say immigrants do not need access to citizenship because they do not plan to stay in the United States permanently. Instead, they say, the US government could give them a form of legal residency that would let them visit their relatives, work legally, and stop living in fear of deportation.

That would work for Javier Preciado, an aging farm worker in his 50s who pays \$150 a month to bunk with two other men in a run-down trailer. He stays until harvest ends, and then returns to Mexico.

But many others have American children who have no intention of moving to Mexico, and citizenship — or the lack of it — is constantly threatening to separate them. Their parents say citizenship would be a solution for what has become a permanent way of life.

Eloy and Flor Cervantes have been in America for almost 20 years. Three of their four children were born here. They pay taxes using legal numbers issued by the IRS, which does not care about their legal status, and worry that they will never see any of the Social Security

taxes they are paying toward retirement. They fret about crime, schools, and paying for college.

He works all day amid the stench of cow manure and also volunteers at the school, having taught himself English by jotting down words in a notebook and watching TV. She picks apples, weeds potato fields, and cleans houses — sometimes all in the same day.

At night, in their apartment decorated with ceramic apples and a small US flag, they dream of taking a little trip to Las Vegas, a vacation after so many hard years, for just the two of them.

“We’ve been here a long time,” she said.

Their children have bigger dreams, of college and careers.

One morning during the last harvest, Flor Cervantes took her 19-year-old daughter, Alicia, to pick apples as a summer job. Alicia dreads the orchards and their many hazards, the tall ladders, and the buzzing tractors.

Flor smoothed the straps of Alicia’s apple bucket against her back, and then turned to her own work. She marched to the top of the ladder and rifled through the branches with both hands until her bucket was full. She clambered up and down dozens of times.

Below her, Alicia stared glumly at the endless rows of trees.

“I wish it could rain,” Alicia said.

A day of community

With few solutions on the horizon in Congress, towns such as Mattawa are left to chart their own futures, amid divisions between workers and bosses, foreigners and Americans.

But on a Saturday morning in August, some volunteers tried to bring the town together for the annual Community Day.

Some were skeptical. A few years ago, the city had canceled the longtime celebration because there were too few volunteers. But Maggie Celaya, a city councilor, and her sister, Lola Cruz,

who teaches citizenship classes, decided to bring it back in 2012.

“It used to be fun,” Cruz said.

That morning, hundreds of people converged on Hund Memorial Park. The sun blazed in the sky. White farmers in plaid shirts arrived for the pancake breakfast. A handful of runners set off on a 5-kilometer race. Latinas in long aprons cooked piles of enchiladas and grilled corn for lunch.

De Victoria, the former school board member, gave a speech honoring the grand marshals and longtime residents, Paul and Bonnie Parker. The Cervanteses worked that morning but went in the afternoon. Children shrieked with joy in the dunk tanks and bouncy houses.

Not everything went smoothly.

The Chamber of Commerce, which most businesses do not belong to, struggled to find recruits. A festive parade reflected the community’s cultural divide: The Boy Scouts were mostly white, and the high school cheerleaders were mostly Hispanic.

At one booth, a job-training nonprofit disappointed many immigrants because it could only help legal residents of the United States.

At another booth sat Wendy Lopez, a 32-year-old farm workers’ daughter who now works as an outreach coordinator at the Mattawa Community Medical Clinic. A few months after the festival, she ran for City Council and won.

“It’s good to represent your people,” she said. “Not just your own people, but it’s good to represent every person where you grew up, where you live, a place you call your home.”

Her parents could not vote for her; they are here legally but not yet citizens. Still, she won the November election, with a total of 32 votes.

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Center for Immigration Studies

A Growing Border Crisis

A report from Arizona

By John Wahala on May 24, 2019

Amidst recent talk of growing caravans and states of emergency, the Center for Immigration Studies completed its eighth border tour earlier this spring, traveling in the Border Patrol's Tucson Sector, from Nogales, Ariz., to the New Mexico state line.

On the ever changing border, the latest national story is the exponential increase in the number of people making credible fear claims in hopes of getting asylum, something that was not happening a few years ago. While the Tucson Sector has yet to experience the crush of asylum seekers that are arriving in the Rio Grande Valley, the numbers are increasing, as are the number of overall apprehensions. To the west in Yuma, the mayor has declared a state of emergency to handle the growing influx. To the east, undeveloped parts of New Mexico are seeing large numbers of illegal crossers and drug smugglers for perhaps the first time. The pressure being exerted on the surrounding areas of the border has prompted authorities who lack detention space to bus apprehended migrants to Tucson for release rather than let them go in areas that are already overwhelmed.

Even the *New York Times* has acknowledged this growing crisis. A broadening interpretation of the asylum law coupled with the policy of releasing migrants with children has set off a new chain of migration extending deep into Central America and beyond. At a Catholic shelter in Agua Prieta, in the Mexican state of Sonora opposite the Arizona town of Douglas, a woman traveling with her sister and young son told us they came from the state of Guerrero, more than 1,000 miles to the south, where an uncle relayed news of his asylum in the United States. His successful claim set off a local movement north. When asked if she would be willing to settle in a safer part of Mexico the woman replied with an emphatic no, her goal was to move to the United States. Such intent, of course, violates the point of asylum law, which is to secure immediate protection for individuals who are fleeing specific types of persecution and have no other options. There were many other nationalities represented at the shelter, including a young couple from Russia who were vacationing in Cancun before deciding to head all the way to Agua Prieta to apply for U.S. asylum because they heard the lines were much shorter than at other ports of entry along the border.

Most of the families that are being released into the United States are simply not eligible for asylum. What is worse is that some of the "family units" are not families at all. A top Border Patrol agent told us they apprehend men traveling with children who have either been kidnapped or bribed along the way. The men know that showing up with a child improves their chances of avoiding detention. Authorities are left with the sad and unenviable task of figuring out what to do with these children.

No amount of border enforcement can stem this growing influx. Most migrants making asylum claims enter through the ports of entry or search for agents to process their requests. A recent court ruling upheld the Trump administration's policy of sending some of these migrants back to Mexico to wait for their asylum hearing. But absent a change in how these claims are adjudicated there is no stopping more people of taking advantage of current policy. And there is no shortage of people who want to come to America. A recent Gallup poll found that 158 million adults would immigrate to the United States if they could, meaning that a total of somewhere between 386 to 703 million people would likely come. Another recent survey found that nearly 40 percent of Guatemalans intend to

leave their country and most plan on coming to the United States. Federal authorities apprehended more than 200,000 illegal aliens in March and April and illegal border crossings have more than doubled in the past year, on a pace to exceed one million annually.

A series of very poor political decisions created the current crisis and there appears to be no easy political solution. The intractable and growing divide between the parties now extends to issues as fundamental as border security. In a sad irony, the only reason the Tucson Sector has yet to experience the volume of asylum seekers that are arriving at other areas of the border is because the local drug cartel on the Mexican side has started turning them away. Sources on both sides of the border told us that the cartel is redirecting the migrants who are heading north to Nogales and Agua Prieta because they do not want the attention on the area. Why this is the case in Sonora and not in other parts of Mexico is a question that no one seemed able to answer. But what everyone did acknowledge is that no institution in Mexico can effectively challenge the cartels. Drug money drives the local economy, creating wealth and corruption that has spilled over into neighboring Douglas, Arizona, where U.S. customs agents and others have been reportedly bribed over the years.

Those not involved in the illicit trade are largely insulated from the corruption and violence, which typically breaks out in internecine territorial disputes between rival cartels. Most residents can live relatively peaceful lives, even in high crime areas of northern Mexico. For example, our guide called Agua Prieta an "illegal universe" that remains "El Chapo Land" years after the infamous kingpin operated in the region. In spite of this, our guide was an American who fell in love with Mexican culture and decided to raise his family there. He said that most locals feel safe and many actually worry more about traveling in America because of the sensationalist reporting on gun violence in the United States. We heard a similar message from an American Presbyterian pastor, who has devoted himself to ministering to a local congregation and developing a coffee co-op that enables Mexican farmers to remain on their lands instead of migrating north.

This is the paradox that runs across the southwest border. On the one hand, many residents see the region as one binational community. We heard this from a businessman who travels back and forth from Mexico nearly every day and from the owner of a produce company whose livelihood is dependent on the daily transport of fruits and vegetables coming north. Some of his workers live in Mexico and others commute there for cheaper goods and services as important as health and child care. A Nogales, Ariz., public official, who emphasized the interdependency of the region in our briefing, told us that lots of children living in Mexico go to school in the United States and that most of these kids are anchor babies. The official acknowledged that cross-border relations have improved in recent years after a truce was reached between two rival drug cartels, who agreed to split the territory of Nogales, Sonora, by the train tracks that run through the city. He did point out, however, that the local maquiladoras, which are said to employ 60,000 people, are still experiencing a worker shortage because Mexicans living farther south are reluctant to move to the border region because of the persistent reports of violence, which may be overblown. Many who live and work in the region see no crisis.

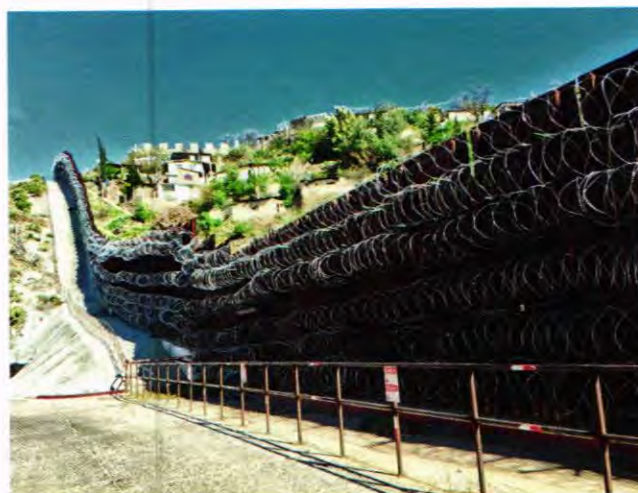


Montezuma Pass

On the other hand, there is the chaos on a 1,954 mile international border that is constantly being breached by human and drug smugglers. Stopping these incursions is a formidable challenge in the Tucson Sector, where the rugged terrain is flanked by the Sonoran Desert and several impressive mountain ranges. Temperatures are often extreme. These obstacles do not deter the cartels, who use the hills and valleys to elude detection. But not all of the loads make it through. Approximately 40 percent of drug seizures nationwide are conducted in this sector and, according to a top Border Patrol official, there was enough fentanyl seized in the past year to kill the entire population of the United States, twice. Since marijuana became legal in parts of the United States, authorities have increasingly been dealing with hard narcotics. The smugglers are aided by the Tohono O'odham Indian reservation, which, because of its partial sovereignty and reputation for corruption, is identified as the 62-mile weak spot on the southwest border. While there has always been a tension between governing authorities, the Border Patrol told us of a recent willingness to work together. The federal government is in the process of installing two towers on the reservation to assist in stopping the people and drugs heading north.

The Border Patrol station in Nogales is the most technologically advanced in the country, equipped with lots of cameras to monitor the hills and valleys. The surveillance equipment was installed as a response to the surge of illegal crossers that the sector experienced several years ago. The upgrades likely played a role in shifting the flow east, to places like the Rio Grande Valley. But now apprehensions are up again, as February saw the highest apprehension rate ever for the Tucson Sector. We were told that smugglers pay close attention to the enforcement techniques and adjust accordingly. For example, most of the crossings used to occur at night until the National Geographic "Border Wars" television show revealed how effective night vision was in spotting incursions. Smugglers realized that crossing during the day neutralized this technology, giving them a better chance to evade the apprehension. Now most of the crossings occur during the day.

Nogales, Sonora, has a population of about 200,000 people (compared to just 20,000 in Nogales, Ariz.) and spans 31 linear miles along the border, which are patrolled by 594 Border Patrol agents. Fencing, we were told, is essential in urban areas like Nogales, where a sizable portion of downtown already has a wall. The portion of that wall that separates the American side from the Mexican neighborhood of Buenos Aires Oeste, where El Chapo himself was said to walk the streets, is covered in Concertina wire. We were told that the wire was added to stop smugglers from dropping their customers over the wall and down onto a concrete slope, breaking many legs.



Border wall in downtown Nogales

The agents stationed in Nogales deal with a lot of problems. Years ago, they closed down sewage tunnels that ran under the border, which had been used, at various times, for both smuggling and a refuge for homeless children. The children would steal from stores on the American side to survive and return to the tunnels to escape

prosecution. It was said that dead bodies washed up from time to time. Today, agents encounter a high volume of illegal crossers and also "rip crews," which are armed groups of bandits who rob the migrants as they make their way north. Most of the bandits are American citizens but some are foreign nationals who come across the border to commit various crimes before returning to Mexico. All of this activity poses a danger to the agents and other law enforcement officials, whom we were told are more likely to get assaulted while making an apprehension the closer they are to Mexico because migrants know they can escape prosecution if they can just make it back across the border. Smugglers and other criminals often go right through the southbound port of entry with drugs and other contraband, easily bribing Mexican officials. There are no southbound checks by the United States.

The relentlessness of this illegal influx heading north can be defeating for those who have dedicated years of their life to securing the border. Even young agents, who signed up for the excitement of being out in the field, get discouraged. Their frustration stems mostly from the persistent lack of political will to enforce the law. Morale was excellent when President Trump took office but the agents have not seen enough change. They know the steps that are needed to stop the influx, which are more extensive than simply erecting a wall, but for complex social and political reasons these steps have not been implemented. This has led to cynicism and contributed to attrition within the ranks. We were told that five hundred new agents are being hired each year but eight hundred are leaving.

So the illegal influx continues in many ways as it has for years. A retired agent told us he once caught three generations of smugglers carrying marijuana who said they had been doing it for 20 years and that it was the first time they had been caught. We also heard an absurd story of an agent apprehending the same pregnant women five times over the course of a few months. The last time she was caught she was transported to an Arizona hospital where she delivered her baby, who became a U.S. citizen by birth.



Border fence east of Nogales

East of Nogales, we visited ranchers who deal with the fallout from the illegal influx every day. They explained that the situation is constantly changing and that things there are simply not normal. A theme of the discussion, which we have heard repeated elsewhere, is that the border region is a country unto itself with its own laws and customs. Illegality often goes unprosecuted and certain societal norms cannot be taken for granted. They gave us a string of anecdotes in support of this claim: vandalism and burglaries are common and there have even been murders; raw sewage flows from Mexico into the United States at several points along the border, a local hospital closed because it could not cover the costs of treating illegal crossers; a group of teenagers just got paralyzed by a batch of tainted cocaine; a group of men from India seeking asylum jumped on the top of one of their vehicles as they were driving down the road. One of the most poignant moments of our visit was when one of the ranchers asked rhetorically, "How do you raise a daughter in such lawlessness?"

The ranchers cited a study finding it costs 33 percent more to raise cattle on the border and another claiming it costs

75 percent more per animal. We did not get the details of this research but it is safe to say there is an added financial cost to ranching on the border. The federal government has allegedly spent \$54 million on a single rancher's property to stop the illegal influx but people keep crossing. That rancher told us that the cartels cut right through the steel border wall. In the last three years, 54 trucks have driven right through his land, ripping up pastures and destroying fences.



Ranchland near Naco

Some of the ranchers are ambivalent toward the Border Patrol because of the damage agents have done to their property. We were told they have started fires, left water running, and run over cows. One ranch hosts a class to teach new agents how to treat ranch lands. Another ranch made it more difficult for the Border Patrol to access their lands and installed their own security, which reportedly has been effective in deterring the crossers. Another point of contention is that the Bureau of Land Management allegedly limits Border Patrol access to waterways, creating a loophole for illegal crossers.

A group of sheriffs from Ohio were visiting one of the ranches while we were there. Their counties are experiencing rapid growth in illegal immigration and transnational gangs so they had traveled to southern Arizona to find out how these folks were getting into the United States. Talking with them was another reminder that, whether people can see it or not, failing to secure the border is not just a problem for overwhelmed federal agencies or migrant shelters or hospitals or schools or ranchers along the border. It is a moral, social, and political problem for the entire nation, one that threatens the very idea of nationhood.

Topics: Border Crisis 2019 - 2020, Border Wall, Migrant Caravans, Arizona

From: Laura A. Hewitt [<mailto:lahewitt@grantcountywa.gov>]

Sent: Monday, February 3, 2020 11:31 AM

To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>

Cc: Kevin J. McCrae <kmccrae@grantcountywa.gov>; Garth Dano <gdano@grantcountywa.gov>

Subject: Revised Comment of Grant County Prosecutor Re: New GR 38 and Proposed Change to Comment 4 of RPC 4.4

Good morning,

Please find the attached revised version, including attachments, of our comment to proposed new GR 38 and Comment 4 of RPC 4.4.

Thank you,

Laura Hewitt

Legal Secretary

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