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Threshold Order: Bilateral Law Enforcement and Regional Public Safety on the U.S./Mexico Border

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I. INTRODUCTION

The Mexican/United States border region presents a study in contrast and ambivalence in both countries as well as between them. The border marks the collision of international boundaries—the beginning and end of nations—as well as a merger of them. It composes a binational corridor and channel where currents of free trade, family ties, migration, cultural exchange, illegal firearms, and drug trafficking boil most actively in tandem. Cross-border perspectives and organizations that promote and share a sense of regional identity are, therefore, increasingly essential to a satisfactory working relationship between the United States and Mexico.

At their 1997 summit in Mexico City, Presidents Clinton and Zedillo affirmed a mutual “political will to strive to fulfill a vision of our shared border in the 21st Century as a place that supports and depends on building communities of cooperation rather than conflict.” Both governments have taken important strides in this direction, and nowhere along our common border has the collaborative effort yielded results more quickly than in Tijuana and San Diego. It is important, however, to remind ourselves where we started so that we may know where we are

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and what needs to be done to build a binational region; one that works satisfactorily from the two sides of its single shared border which itself was created in war and fixed by treaty.

II. THE LEGACY OF PAIN AND NEGLECT

One hundred fifty years after the Treaty of Guadalupe Hidalgo, Mexico and the United States have yet to recover fully from the effects of the U.S.-Mexican War of 1846-1848. The trauma of that event for our neighbors to the south should not be underestimated. The war's end disemboweled Mexico from the north, expanding westward an amputation of the country that had begun a decade earlier with the revolt and independence of Texas in 1836. Following a U.S. occupation of Mexico City, just under half of Mexican territory was ceded by treaty to the United States, which by this severance added fully a third to its own national land mass. Together with the Gadsden Purchase of 1853, this addition created the American Southwest purportedly as a matter of manifest destiny and ultimately accounted—through admission to the Union between 1850 and 1912—for the states of California, Arizona, Nevada, Colorado, Wyoming, Utah, Oklahoma, and New Mexico. From the Mexican perspective, however, these states represent a congenital defect in our republic and a constant reminder of their country's ignominious defeat in war. This sense of historical harm is magnified, in the perception of its victims, by the fact that most Americans have no knowledge of it ever having happened, and most Mexicans remain reluctant to remind them. This remains the essence of insult added to injury.

Accordingly, the U.S./Mexico Border was neglected by central authorities in both countries for most of American and Mexican history. In Washington, as in Mexico City, the region was a stepchild of policy and politics. Known during the 19th Century as the "Badlands," the southern borders of California, Arizona, New Mexico, and Texas—the northern borders of Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas—were characterized by defiant lawlessness and violence. The border remained a province and playground for outlaws and the workplace of bandits and smugglers. Citizens from both Mexico and the United States were at their mercy as goods, and people moved across the border in both directions, largely without regulation. While the contraband changed over the decades—from bootleg liquor to cigarettes, then to drugs and firearms—the culture of lawlessness and license remained constant. Border problems were deemed intractable and too far removed from the center of power in either country to be of concern except during isolated occasions of crisis.

Approximately two thousand miles of potential intersections, in effect, were left to their own devices.

The 20th Century border fared not much better. The rule of law, never actually present, evaporated entirely and an effective law enforcement presence was conspicuous by its absence. For Mexican migrants, the Southwest Border was unmarked, porous, violent, and unpoliced. For narcotics traffickers, it became the shipment route of choice as air and sea lanes into the Southeastern United States tightened up considerably during the 1980's. By the early 1990's, the U.S./Mexico border had become the principal corridor for the unlawful entry both of undocumented immigrants and illicit drugs into the United States and for the flow of firearms illegally south into Mexico. In the mid 1990's, the issues surrounding a border virtually out of control seized center stage of the U.S. political scene, particularly in California but also nationally. The simultaneous passage and implementation of NAFTA/TLC in 1993 furnished both an economic ballast and further fuel to the political polemic. This unaccustomed focus at once created significant friction but also served to furnish border communities with an historic opportunity to reverse the sorry legacy of political neglect common to both countries.

III. HEIGHTENED ENFORCEMENT NORTH OF THE BORDER

Dramatic changes in law enforcement profile and presence have occurred since 1993 on the Southwest Border. There has been a significant change in the attention and resources given to U.S./Mexico border areas. Buoyed by unprecedented support, the agencies have mounted intensive and sustained operations to control illegal immigration between and through the ports of entry and to detect narcotics smuggled into the United States. *Operation Gatekeeper*, engineered by the Immigration and Naturalization Service in October 1994, and *Operation Hard Line*, implemented by the United States Customs Service during the first quarter of 1995, represent firm commitments to border communities to bolster an enforcement presence.

The marriage of *Gatekeeper* and *Hard Line* has taken place with excellent results on the U.S./Mexico Border in California. By 1998, gone is the border of lawless badlands depicted so graphically in Joseph Wambaugh's *Lines and Shadows*.¹ That border was racked routinely by

1. See JOSEPH WAMBAUGH, *LINES AND SHADOWS* (1984).

murder, rape, robbery, and mayhem. By contrast, today's border in San Diego/Tijuana is well-lit in key areas and daily violence is conspicuous by its absence. The results here contribute to the region's plummeting crime rate.

These front line efforts have been backed up investigatively, and significant progress to date has been accompanied and accomplished in part by substantial coordination among police and prosecutorial agencies at all levels of government. Enforcement programs and federal prosecution policies operate to apply the most effective sanctions available where previously there were none. As a matter of increasingly well-established routine, there is significant operational cooperation among federal agencies and between them and state and local authorities, in strategic terms as well as for tactical purposes. True, rather than rhetorical, partnerships have been created and are being consolidated as the hallmark of these efforts. Joint task forces geared to the detection and prosecution of corrupt officials, to the dismantling of drug trafficking and alien smuggling organizations, to the protection of civil rights, and to the prevention and punishment of benefits fraud are contributing significantly toward the goal of a border that is nonviolent, lawful and orderly—a border that operates effectively for the benefit of law-abiding citizens from both countries living, working, and visiting in the region.

Continued enforcement fragmentation exists but its adverse consequences increasingly are overcome by working relationships among federal agencies, between federal and state authorities, and through cross-border cooperation of an unprecedented scope. Law enforcement regionalism, in other words, works on the border and the results are beginning to speak for themselves.²

Operation Hard Line, Operation Gatekeeper (and its companion INS-based border management programs, *Hold The Line, Safe Guard, and Rio Grande*), and *The Southwest Border Initiative*, instituted by the Drug Enforcement Administration, the Federal Bureau of Investigation and the U.S. Customs Service, including various initiatives with Mexican authorities, are in the process of transforming the enforcement posture of the United States government on the Southwest Border. The accelerated

2. To claim improvement—even by several orders of magnitude—neither discounts remaining challenges nor overstates the degree of progress made, measured as it is against a past record of sorry neglect and negligible achievement. The perspective underlying this essay accepts that heightened political focus of the type recently accorded the border generates both improvement and additional dissatisfaction at approximately equal rates. This paradox cannot erase the unalterable fact—as true as it may be politically unpalatable—that the Southwest Border is, and shall remain for the foreseeable future, a work in process.

investment of resources—injecting into the virtual enforcement vacuum that existed previously—has yielded impressive results in the near term that serve to confirm the policy direction that has been adopted and the value of the forward momentum that has been established.

IV. U.S./MEXICO CROSS-BORDER COOPERATION

Functional coordination extends to cross-border working relationships between law enforcement agencies in Mexico and the United States, although the two countries remain very much at the threshold of this development, and progress proceeds at a slower and less even rate. Nonetheless, concrete cooperation has taken root in a regional strategy for public safety that encompasses the border on its two sides. Notwithstanding the most intense level of U.S. immigration and narcotics enforcement ever achieved at the border, working relationships between U.S. and Mexican law enforcement officials are more constructive and positive than ever.

There has been significant movement toward a border that reflects more frequently binationally coordinated public safety functions. The escape valve or safe harbor of relative impunity that the border traditionally offered criminals operating on its two sides is shutting down. Concrete cooperation has allowed us to overcome differences in perspective that for too long paralyzed our ability to coordinate basic security activities. In sum, we have commenced that altogether crucial dialogue—engaging Mexican authorities and ourselves—to work toward a regional binational approach to common problems along the border. We have done so by recognizing those differences we cannot bridge—such as, for example, legal migration from Mexico which amounts to illegal immigration into this country—and concentrating on aspects of pure mutual interest. Recasting the focus in terms of public safety and security for the border region as a whole has furnished that heretofore elusive basis for concrete cooperative action that never before existed across the border.³

3. See Alan D. Bersin, *El Tercer País: Reinventing the U.S./Mexico Border*, 48 STAN. L. REV. 1413, 1419-20 (1996). The staggering number of Mexican nationals apprehended after entering the United States without authorization—until recently more than 10,000 per week in San Diego alone—has always precluded the government from prosecuting all of them. However, in the past, the prosecutions which were undertaken often were against economic migrants. Today federal policy recognizes that there are administrative alternatives to handle that group of entrants and that the U.S. criminal

Without minimizing our differences, we have looked beyond them. Rather than debating whether entry into the United States is "lawful" or "unlawful," we have acknowledged our differences and focused on aspects of regional and mutual interest. Without abandoning respect and responsibility for separate sovereign interests, we have concentrated on areas of agreement—of which there are many. Our collaboration has been based not on sentiment, but on hardheaded calculations of self interest from both sides of the border. It proceeds from the proposition that Mexico and the United States are "equal" at the border in the law enforcement context as nowhere else in the bilateral relationship.

Nowhere has this "common interest" been applied more constructively than in the Tijuana/San Diego border region. The cooperation in California/Baja California has been a benchmark and model for regional progress along our entire land border from the Gulf of Mexico to the Pacific Basin. On the law enforcement front, this includes important steps forward in a counter-drug alliance, cooperative public efforts to warn migrants away from dangerous areas of the border, the blocking of so-called "banzai rushes" north through the ports of entry, a limited exchange of information to identify and dismantle alien smuggling organizations, and close consultation with consular officials in San Diego regarding reports and complaints of civil rights violations in the border or port context, as well as the special needs of juvenile detainees.

A. *Cooperative Public Safety Patrol*

On the Tijuana side of the border in Baja California, a task force of federal, state, and municipal law enforcement officers was established in the 1980's to protect migrants against criminal acts committed by gang members and bandits. Mexican nationals overwhelmingly, but not always, were the victims of this incessant cross-border violence. More and more in recent years, these border crime groups—*Grupo Beta* in Tijuana, *Grupo Alfa* in Tecate, *Grupo Ebano* in Matamoros, and the recently commenced *Grupo Beta-Mexicali*—have begun to coordinate actively on a public safety agenda with Border Patrol and local municipal law enforcement agencies operating in the United States across the border from them. While jurisdictionally the U.S. and Mexican law enforcement groups are separate, collaboration between them includes coordinating radio frequencies to promote prompt response to crimes in progress, creating common border maps in order to

justice system is better utilized by focusing on border crossers with documented criminal histories. This focus, as a matter of general and specific deterrence, serves to spare border residents, north and south, from persons linked directly to violence and crime.

facilitate rapid responses operationally, and meeting routinely to exchange information and discuss common issues on border crime.

The cooperation of Mexican authorities, crucial to resolving the problem of banzai rushes across the border, offers further instructive illustration. The problem involved large numbers of people running north through the southbound port of entry from Mexico into the United States along Interstate 5 in the San Ysidro community. Designed to gain entry illegally, this human flight involved grave risks to the individuals attempting it. More than 100 Mexican nationals on foot were killed by vehicles during an eight-year period ending in 1994. Rather than viewing this as an issue of "lawful" versus "unlawful" immigration, authorities on both sides recognized this first and foremost as a public safety issue literally of life and death proportions. In 1995 they acted in concert to stop it. There has been no loss of life because of banzai rushes at San Ysidro since that collaboration commenced. This work to protect the safety of people—regardless of nationality and migratory status—in the border zone at points of most frequent crossing is in the highest tradition of law enforcement and provides a model for looking beyond our differences to find common ground.

B. Investigative Cooperation

Equally significant investigative activities are conducted more and more within a framework of transnational cooperation, implemented by the U.S. Department of Justice and the Mexican Attorney General's Office (PGR) in the regional border context. These include crimes of violence as well as drug trafficking. The spate of shootings at U.S. agents that occurred in May-June 1996 in the Imperial Beach area in San Diego, and the return fire in self-defense back across the border into Tijuana, present a case in point here.

These violent attacks represented a departure. Past patterns of border violence were generated by border banditry or "transactional" confrontations between border patrol agents and smugglers of aliens or drugs. In those cases, the violence—though it could be, and all too often was, deadly—was specific and contained. It was directed to a person who was either a victim of or a threat to the perpetrator. The 1996 incidents, triggered first by a cross-border sniper and then by gunmen in vehicles, in contrast, were both calculated and targeted anonymously. This type of violence has a terrorist quality to it and smacks of a gang drive-by shooting whose point it is to assert a claim of turf or to exact

revenge. Prudence dictated an operating assumption that we were confronted by an organized threat from criminals who, mildly put, do not approve of the binational collaborative activity occurring at the Tijuana/San Diego Border.

The incidents, in effect, created a testbed for binational cooperation that border authorities from both countries—officials of this region—rose to the challenge to meet. Representatives from the PGR and Gobernacion and the Departments of Justice and Treasury conferred promptly in the aftermath of the shooting. The officials jointly viewed the crime scene from the U.S. side in Imperial Beach—where the agent was shot—and then together traveled to Tijuana to the spot on the Ensenada Highway from which the weapons were fired across the border. Public officials from the two countries communicated jointly to U.S. and Mexican press and media representatives their mutual concern over the threat to regional public safety. *Grupo Beta* and the Border Patrol coordinated increased patrol activity along both sides of jointly identified potential “hot spots”; investigators from the FBI and the PGR shared access to witnesses, evidence, and locations in both Mexico and the United States.

U.S. and Mexican authorities cooperated as never before in investigating the shootings as well as in taking precautions to guard against risks of recurrence. Both countries understood that we could not permit our border to return to lawless ways. The cross-border discharge of weapons at law enforcement officers, north or south, jeopardizes the integrity of our border in a way that is intolerable to both nations. Those who sought to divide U.S. and Mexican authorities through anonymous targeting of law enforcement officers, in effect, miscalculated badly. It seems clear the criminal elements hoping to provoke a rupture in cross-border working relationships may well have accomplished precisely the opposite effect they intended. The “Camarena syndrome,” in short, does not now present in the scheme of bilateral law enforcement relations. To the contrary, the cross-border assassination of a U.S. police officer or federal agent would not lead, as it did a decade ago in the case of DEA Agent Enrique Camarena, to a hostile withdrawal from cooperative ventures but, rather, an intensification of them.

*C. Alien Smuggling, Human Rights, Migrant Exploitation,
and Consular Protection*

Border public opinion—ably assisted by regional media coverage—leads the way in acknowledging alien smuggling for the clear threat to public safety that it is and the binational crime that it represents. Whatever one’s view on the lawfulness of individuals entering the

United States, one cannot gainsay the clear threat to public safety posed by the methods used by many of the sophisticated and mercenary alien smuggling groups operating in the region. The victims are almost always Mexican migrants, while the perpetrators are citizens of both countries. Far too many cases have been documented where migrants were stuffed inhumanely into car trunks or under engine hoods, packed tightly into vans, or led innocently into dangerous mountain or desert terrain without clothing or provisions appropriate for the journey.

The frequency of these cases—and a tragic death toll of migrants—is escalating in response to the increased difficulty of entry because of stepped up U.S. border enforcement. Many migrants are sold, for substantial sums, counterfeit documents that are easily detected and therefore worthless. In some cases, migrants are persuaded by smugglers to carry in contraband in order to defray the cost of passage. This *quid pro quo* exploits the migrant and subjects him or her to severe prison sentences in the United States, while the drug supplier remains impervious to U.S. prosecution. In other instances, migrants who cannot meet the cost of passage may be abandoned, imprisoned in drop houses with barred windows, or, in some scenarios, subjected to involuntary servitude.

These activities warrant concerted crackdown by U.S. and Mexican investigative authorities, and prosecutorial policies targeting organized alien smuggling organizations remain in the mutual interest of both countries. In 1996 in Baja California, Mexican immigration authorities arrested 652 immigrant smugglers, a 100% increase over the previous year. This expansion of enforcement effort was paralleled on the U.S. side by a nearly tenfold increase in the number of alien smuggler-related prosecutions from 1994 to 1997. In summary, the border is no longer a safe harbor for alien smugglers operating its two sides in defiance of regional public safety.

At the same time the United States increased its border law enforcement capabilities, measures were taken to ensure that this enforcement did not proceed at the expense of human rights violations. Assuring that the civil rights of all persons are respected and upheld affects both the integrity of our system and the dignity due all individuals with whom the government interacts. In San Diego, a civil rights working group—comprised of federal law enforcement agency representatives, immigrant rights advocacy groups from both San Diego and Tijuana, the Mexican Consulate in San Diego, the U.S. Consulate in

Tijuana, the U.S. Attorney's Office, and the Department of Justice Civil Rights Division—was established. It brings together all those affected by, or involved in, the enforcement of the civil rights laws. Mexican authorities have been crucial to the investigations and prosecutions initiated by the United States by providing much needed assistance in locating evidence and witnesses in Mexico. The success of this civil rights program—a model for application across the entire Southwest Border in the United States—is due again in no small measure to the positive working relationship that exists among our countries' respective representatives in this region.

D. Beyond Public Safety

Changes in law enforcement perspective have been paralleled by an emerging cross-border consensus between Tijuana and San Diego that promotes and encourages cross-border binational work, shopping, social and recreational visits, and tourism. We know that our economic futures are bound together for purposes both of implementing NAFTA/*Tratado de Libre Comercio* as well as maximizing business opportunities generally on the Pacific Rim. Even now, nearly \$3 billion is spent annually in San Diego County by Baja residents on top of an equal amount exported by San Diego firms to Mexico. In addition, at least \$2 billion is spent by Southern Californians in the Greater Tijuana area. The multiplication of cultural, education, and recreational cross-border bridges are a further crucial source of regional integration.

The land border port of entry obviously plays a critical role in the flow of this legitimate traffic, both commercial and personal between San Diego and Tijuana. The San Ysidro Port of Entry is the busiest land border crossing in the world—inspecting nearly 50 million persons and 14 million vehicles annually. Inevitably this level of trade and exchange raises the issue of balancing law enforcement concerns with the need to manage efficiently the movement of traffic.

For far too long the issues of enforcement and facilitation were viewed as competing. It was thought that adequate vehicle inspection would so inhibit traffic flow that satisfaction of one demand could only be made by sacrifice of the other. We know now—because we learned largely from this region—that is not the case. Through the Binational Advisory Council, a coalition of civic leaders from “both Californias” organized by the San Diego Dialogue, we have demonstrated on the San Diego/Tijuana Border that effective enforcement and more efficient traffic management are not incompatible goals. They can be made to operate in tandem.

At the same time Customs and the INS heightened enforcement to

unprecedented levels, they also introduced various innovations which have helped to reduce waiting time at the San Ysidro port from as much as ninety minutes during morning rush hours to an average of twenty to thirty minutes today. These innovations include the opening of additional inspection lanes, the introduction of a high-tech dedicated commuter lane, the use of border crossing cards allowing pre-approved low-risk commuters to enter without full inspection, and traffic lanes for high occupancy vehicles. Crossing the border is no longer merely an exercise in patience: to the contrary, traffic management and enforcement go hand in hand, and a well-run and equipped port of entry serves the twin needs of commerce and security in a way we had not previously imagined.

V. CONCLUSION

In short, change along the border in the past few years has been immense from the vantage point of law enforcement, as well as from other perspectives. While our border region remains very much a work in progress, there is substantial evidence—for the first time in U.S. or Mexican history—that we are moving decisively toward a border that functions effectively, one that is a lawful and orderly gateway, and one that promises and routinely delivers handsome dividends from an investment in regional integration.

Under the auspices of the Border Liaison Mechanism supervised by the Consuls General in San Diego and Tijuana, regional authorities have established a Border Public Safety Working Group and a Working Group on Migrant Protection for the California/Baja California border region. In addition, a Border Port Council focusing on the development of port infrastructure is being developed, as well as a Binational Committee on Education and Culture. This institutionalization reflects the determination by both private and public sector organizations in the region to sustain the cooperation that has been achieved here and to maintain forward progress in areas of mutual concern in which concerted action benefits both sides.

In their joint communiqué following their summit, Presidents Zedillo and Clinton called upon us to expand upon the foundations of progress made through joint planning and cooperation during the last two years in border areas such as San Diego. We are committed, pursuant to bilateral presidential mandate, to intensifying efforts to encourage binational strategic planning activities, to supporting and expanding public and

private partnerships in developing cross-border interests and activities, to intensifying the dialogue on financing mechanisms that promote and implement cross-border development projects, to testing new ways to design infrastructure and community development projects, and to exploring new approaches to managing temporary travel between border communities at all levels—federal, state, and local.

There is a consensus that lawfulness instead of lawlessness is required as a predicate if we are to realize this binational future. The evolution of regional binational mechanisms to tackle specific border problems will help us unlock and capitalize on the treasures of our border regions for the benefit of all residents of both nationalities. Should the future evolve into this state of affairs on the border, and the border zone becomes a celebration of binationalism in the 21st Century, history will record that the foundation for binational cooperation developed first— bilaterally— in the arena of public safety. Introducing the rule of law to the border regions and insisting that it serve the interests of those who obey the law and observe the rules furthers not only the purposes of regional integration at the border. It also sets the stage for a bilateral reconciliation along the fault-line—“la linea”—of a set of U.S./Mexican borders created by war. In that context, paradoxically but suitably, our border would turn out to be a place of healing and synthesis rather than collision.