Narrating Peoplehood amidst Diversity
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Historical and Theoretical Perspectives

Edited by
Michael Böss
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Contents

Notes on contributors. .......................................................... 7

1. Stories of Peoplehood: An Approach to the Study of Identity, Memory, and Historiography
   Michael Böss ................................................. 11

2. Re-imagining a People: Towards a Theory of Peoplehood as Social Imaginary
   Bernard Eric Jensen ........................................ 25

3. Citizenship, Belonging and Identification: The State of Denmark
   Richard Jenkins ........................................... 41

4. Our Stories, Our Selves: Identities and the Dialogics of Narrative
   Martin O. Heisler* ........................................ 61

5. Identity and Nationalism in a Global World: Some Theoretical Reflections
   Mark Haugaard ........................................... 101

6. Nation, Region, and Immigration in US History, 1864-1924
   Eric Rauchway ............................................. 115

7. From the Shining City on a Hill to a Great Metropolis on a Plain?
   American Stories of Immigration and Peoplehood
   Rogers M. Smith ........................................ 127

8. From Workers to Enemies: National Security, State Building, and America’s War on Illegal Immigrants
   Desmond King and Inés Valdez ................................ 145
9 Narratives of Nation and Anti-Nation: The Media and the Construction of Latinos as a Threat to the United States
Leo R. Chavez .................................................. 183

10 Immigration and the Intersection of Ethnic and National Narratives: The Case of Ethnic Mexicans in the United States
Tomás R. Jiménez .............................................. 207

11 The Writing of History and National Identity: the Danish Case
Claus Møller Jørgensen ........................................... 231

12 Grand Narratives in Danish History: From Functional Identity to Problematic Identity
Ove Korsgaard .................................................. 261

13 Who Are We Now? A Multicultural Canada in the Twenty-First Century
J.L. Granatstein ................................................ 273

14 Canada’s Story: The Urgency of History
Andrew Cohen ................................................ 289

15 National Identity, American and Otherwise
Francis Fukuyama ............................................. 303

16 Narratives of Peoplehood, National History, and Imagined Nations amidst Diversity. A Conclusion
Michael Böss .................................................. 317
War and State Building

In this chapter we argue that since the mid-1980s immigration policy toward illegal immigrants has assumed the character of a war expressed in growing border militarization and fortification, expanded numbers of border guards, and an enhanced internal program of prosecution of “illegal aliens,” which today comprise an estimated 12 million people (see Graph 1). New agencies have been created and the number of security forces deployed increased substantially. Both Presidents Clinton and Bush supported building a wall against the foe of illegal immigrants, which if completed will constitute the longest barrier between two countries not undergoing violent conflict.

The fight against illegal immigrants is not an isolated event but fits onto a state-building trajectory rooted in quasi-military strategies and a language of war deployed increasingly since the 1960s. Once the language of war was embraced by the executive – notably in Lyndon Johnson’s “war on poverty” – its usage set a precedent for how subsequent presidents might approach apparently dramatic problems. Declaring war on human or inanimate enemies serves multiple purposes for presidents.³

1. We acknowledge comments and feedback on previous versions of this chapter by Michael Jones-Correa and Rogers M. Smith. Previous versions of this chapter were presented at the Conference “Stories of Nationhood in Plural Societies,” at Aarhus University (Denmark) in May 2009, at the Oxford University Centre for the Study of Inequality and Democracy Workshop Series (UK) in November 2009, and at the Institute for Government Quality University of Gothenburg (Sweden) in June 2010. We are grateful to the participants at those seminars who offered valuable comments on the paper; any errors remain the authors’ responsibility.

2. We are aware of the problems of the term “illegal,” and we agree with the reasons why some scholars eschew it. We employ it because in the context of our argument it is the most appropriate term – that is, it is the term of choice for naming an enemy. We nonetheless retain the quotation marks to remind the reader of its contested use.

Wars articulate and focus domestic policy agendas around an immediate priority. This agenda setting sends a message to bureaucrats about where resources ought to be concentrated and what sort of policy requests will receive favorable responses. A war also sends a signal to Congress about presidential priorities. For the president, employing the rhetoric and language of a quasi-war strategy facilitates a direct appeal to voters. It concentrates attention on the political center and justifies significant decisions about how to allocate and spend money to expand state capacity in a polity considered constitutionally hostile to enhanced state power. It empowers an executive in a polity whose fiscal constraints are constantly challenged, and in which the struggle between federal and state interests is dynamic and nonlinear.


Thus as a complement to waging real war, political executives controlling the American state have used similar language in respect to domestic problems for reasons elaborated upon below. In resorting to this strategy presidents find resonance in America’s distinct militarist and religious culture.

Militaristic aspects of US political culture accommodate the idea of a nation at war domestically and abroad. In the two decades after 1945 many events had the potential to make the Cold War turn hot, and resulted in such domestic measures as the construction of a national highway system for efficient movement of military weaponry, the development of dispersal population policies in large urban areas, civil defence, and the initiation of school children into the mores of hiding from nuclear attack. The Armed Forces— in its various branches including the National Guard and state troopers— were a powerful presence in US society throughout the 1950s, 1960s, and 1970s. They were called on to protect Black American children judicially entitled after 1954 to enter integrated schools, to restore public order in those impoverished urban centres which erupted into flames and mayhem in the 1960s, and to hold back white opponents of the Supreme Court designated busing programs in the 1970s. The end of the Cold War gave Americans only a putative breather from the salience of military preparedness, quickly pushed aside by an unwanted “war” against extremist terrorism and a potentially unctuous Americanism flamed by an expansive global anti-Americanism. Institutional executive power to engage in war has grown with President George W. Bush’s extended use of signing statements, an authority President Obama plans to retain but to use differently.

The US is also a religious society and polity. An apparently rigid constitutional separation of church and state sets an enduring barrier against the pursuit or institutionalization of theocratic tendencies in state law. But religious images and language permeate politics, stemming from John Winthrop’s famous “city on a hill” image of 1630 representing the US as a new nation, which is cited repeatedly by national leaders and was repackaged by Ronald Reagan as “a shining city upon a hill whose beacon light guides freedom-loving people everywhere.” This ubiquitous religiosity is conducive to the use of war as a metaphor in domestic politics. It has featured historically in hostile responses to immigrants in

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11. This separation is not complete, however. There are many exemptions, including tax exemptions enjoyed by religious organizations, which incur controversy. Nonetheless some politicians and commentators have complained about a “war on religion,” such is the discrimination experienced by religious organizations.
12. The Pew Research Center reports that among Americans, 70%, polled in 2007 agreed that the most important quality in a president was to “hold strong religious beliefs” comparable to results of public opinion about the same
the United States. Only a few decades after settling in America, Puritans feared the arrival of liberal members of Protestant sects from Europe and developed arguments for restricting their entry.¹³ In the nineteenth and twentieth centuries, revulsion toward Catholics – Irish and Germans in the nineteenth and early twentieth century, and Latinos afterwards – drove restrictionists’ advocacy of exclusionary national policies.¹⁴ Religion helped structure American attitudes during the Cold War, with both fundamentalist doctrine and high religious commitment prompting citizens to hold anti-Soviet attitudes and support greater spending.¹⁵ The connection between religion and foreign policy continued in the 1980s, when churches and synagogues provided sanctuary to Central American refugees who were routinely denied refugee status by the INS.¹⁶ These migrants, who were fleeing El Salvadoran death squads and Guatemalan counter-insurgency campaigns, were faced with American government reluctance to acknowledge that their home governments were violating human rights, because of their alliance with them as a proxy of anti-communist struggle. A revival of this movement has been launched by Protestant and Catholic churches to protect and protest the deportation of illegal immigrants, although its reach is not comparable.¹⁷ It was also in this era that Christian conservatives forged an alliance with secular conservatives, with President Reagan articulating the anti-communism of the Christian right, and announcing his moralistic and militant position against communism, the “evil empire,” in a convention of conservative evangelicals.¹⁸

The growth and increasing political involvement of the Christian right was salient

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¹⁴ John Higham, Strangers in the Land. Patterns of American Nativism 1860-1925 (New Brunswick, 1966) and Samuel Huntington, Who are We? America’s Great Debate (New York, 2004). In this chapter we use “Latino” and “Hispanic” interchangeably, as they are the most common descriptors for populations of Spanish-speaking ancestry in Latin America and the Caribbean. We are aware of the contestation that exists regarding these terms and we do not imply homogeneity in the groups described under these names. See Victoria Hattam, In the Shadow of Race (Chicago: University of Chicago Press, 2007) and Cristina Beltrán, The Trouble with Unity: Latino Politics and the Creation of Identity (Oxford: Oxford University Press, 2010).
during the presidency of George W. Bush, but the beginning of their activism can be traced to the post-Vietnam era, partly as a reaction to Christian liberals’ opposition to the war. Furthermore, Evangelicals have an active involvement with foreign policy, from the Middle East to the use that developing countries make of American aid.

Beyond social movements, groups as diverse as think tanks and university intellectuals, officials working in state and municipal administration, parts of the media and political parties all have some interest in “war as metaphor”-type mobilizations aimed at entrenching and strengthening the American state. The metaphor concentrates minds and political resources. We apply this proposition in this paper to the evolution of policy toward illegal immigrants.

**The New War**

“People came to me and said, ‘Father, when did we become the enemy?’”

*Rev Gary Graf, Roman Catholic from Waukegan (IL)*[^21]

In addition to enhancing executive authority and resources, the war on illegal immigrants accommodates the process of state building by structuring the definition of enemies of the state. The declaration and process of war obversely defines more clearly who belongs to the state. In the case of immigrants, the lack of citizenship status renders them an ideal enemy, in opposition to which citizens can define themselves. Illegals are an easy and legally vulnerable target and are supposedly clearly discernible from real citizens.

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While the legislative changes that suspended civil liberties and criminalized immigrants were in place before September 11, the febrile nationalism that followed these attacks proved empathic to the waging of war against immigrants. Immigration enforcement consumes substantial portions of the resources and manpower at the post-9/11 Department of Homeland Security; this allocation suggests that – just like the War on terror – the war on immigration is an unconventional one fought with all the tools available.

Given this antagonistic context, the massive immigrant marches on May 1, 2006 not only failed to achieve reforms including a path to citizenship, but exacerbated anti-immigrant sentiment, or at least such was the perception among the Latino community. The mobilization of thousands of people behind a discourse proclaiming their humanity and their claim to be included in the political community resulted in more rejection than a silent acquiescence would have done.

The outburst of violence and death in Mexico in the opening months of 2009, produced by drugs gangs putting pressure on the government, provoked dramatic policy responses from the US Department of Homeland Security. Fearful of a war which killed over 6,000 Mexicans during 2008 and in which organized criminal gangs parallel the power of the Mexican state, President Obama’s Secretary for Homeland Security, Janet Napolitano announced the deployment of an additional 360 agents, the doubling of specialist security forces from 95 to 190 and a further 100 new customs officers to the US’s southwest border. The Bureau of Alcohol, Tobacco, Firearms and Explosives deployed an additional 100 agents of its own to the same location.

This intensification of the American State’s efforts to keep the Mexican “wars” in Mexico continued in 2010 and 2011 and confirms the Mexico-US border as the frontier to be defended. The federal government has funded a wall along the US-Mexican border. It has expanded and upgraded the powers of US borders and customs officers, moving this agency into the Department of Homeland Security created in the wake of the 9/11 terrorist attacks on New York City and the Pentagon. High profile armed work raids have been conducted in which illegals are found and detained to be returned to their country of origin, with the responsible employers fined. Since 2003, the US Immigration and Customs Enforcement agency (ICE) has pursued a rigorous National Fugitive Operations Program with a budget of no

less than $218 million in 2008. Finally, state and local police have entered the struggle against *illegality* through agreements of cooperation with immigration authorities.

**The Internal War, Peoplehood, and Democracy**

The importance of the transformation in the fight against *illegal* immigration exceeds the hard facts reflected in the resources and manpower devoted to it. Our interest in this process turns on what it can say about the political process in which reified and exclusionary identities are utilized by the state to justify the drawing of a frontier that symbolically marks a certain group as external to the polity, and thus unable to engage in political contestation. In other words, the branding of an enemy and the militarization of the state’s struggle to stem illegals underlie processes of exclusion that both feed and are fed by narratives of national identity (or peoplehood) and in so doing intervene in the process of re-drawing the political boundaries of the *demos*.

To the extent that political struggle over immigration is one of the ways in which democracies contest the legitimate constitution of the *we*, it is important to investigate how these struggles are conducted. Electoral processes and naturalization laws affect the way in which immigrants are included gradually – or not at all – in the *demos*. However, laws and administration produce difference, and states can – and do – intervene in other ways, by shaping social definitions of difference.

It is in this spirit that the examination of the increasing criminalization of the immigrant population in the United States is significant. Moreover, it is a neces-
Sarcastically critical task because – as we show below – documented and undocumented immigrants have been gradually and increasingly identified as an illegitimate subject in democratic America, one that is fuzzily identified with a shadow economy of poverty, gang violence, drug activity, and national security threats. Once such a group is identified and its character of threat assessed, it becomes an enemy that is worth fighting against. The criminalization and legal disenfranchisement that took place in the last two decades exceeds previous historical instances in which the state focused exclusively on illegals. \(^{30}\) Today, the American state is invested in making all immigrants potentially deportable and their claim to political inclusion an illegitimate one. The state has mobilized ideological and material resources to back up this claim, prime among them has been the conflation of immigration on the one hand, and terrorism and national security threats on the other, which has resulted in a double strategy of sealing the border and raiding the interior for deportable aliens. In practice this policy renders Hispanic immigrants and Hispanic-Americans the main victims of the institutional expansion of the state’s detention, deportation, and surveillance capacities that took place in the last two decades.

The gradual removal of rights and the erosion of access to basic welfare for immigrants has been a state goal on its own, but also a consequence of the advance of the state against other “enemies,” such as drugs, welfare-dependent individuals, and, of course, terrorism. In this sense, we cannot see immigration as simply expressing the preferences of citizens towards the regulation of foreigners. Alternatively, we contend that the turn toward fortification and militarization in the realm of immigration needs to be evaluated as one component of a broader trend of exclusionary and punitive practices that the American state engages in, to the detriment of the quality of its democracy.

Finally, it must also be noted that the institutional dimension of these developments has narrowed spaces of democratic contestation, isolating the administration of immigration law from democratic processes by coupling it with national security, therefore making it more difficult for active civil society groups as well as the affected immigrants to engage. In contrast, right wing anti-immigrant groups and rhetoric have become part of the mainstream and hate crimes directed against immigrants have increased steadily, all evidence of the widespread rejection of pro-immigrants’ rights claims. The transformation of immigration enforcement into a war, then, has hindered democracy not just by bringing to a halt amnesties and naturalizations, but also by hiding their process of decision-making behind the increased executive powers that characterized the era of the war on terrorism.

The Seven Stage War on *Illegals* after 1986

We identify seven stages in the struggle over *illegal* immigration since the landmark legislation reform in 1986. This struggle has escalated into a conflict on the scale and with the trappings of a war. Features that we find today, such as employers’ sanctions, increased border control, and the criminalization of immigrants, are all aspects of measures prefigured and gradually enacted in Congressional and executive policies from 1986 into the 1990s (see Table 1).

### Stage I: Between a Path to Citizenship and Sanctions

On November 6, 1986, President Reagan signed the Immigration Reform and Control Act (IRCA). The content of this law was debated for more than a decade, often in the midst of nativist, anti-immigrant sentiment.³¹ The law provided immediate amnesty for undocumented workers residing in the country, a path to legalization for certain eligible individuals, a special path to legal residency for seasonal agricultural workers, employer sanctions, and increased resources allocated to the Border Patrol.³² The system of sanctions depended on employers’ participation, as they had to request designated paperwork but were not required to verify the validity of the documents presented by the worker.³³ Compliance was attained if the documents examined appeared “on their face to be genuine,”³⁴ thus making employer compliance potentially inconsistent with the intended effect of the law, namely, to reduce the hiring of unauthorized workers. The most enduring effect of this legislation was paradoxically the amnesty and paths to legalization it provided, through which approximately three million undocumented immigrants achieved legal status.³⁵ It was also the last instance in which significant steps to include *illegal* immigrants would be pursued.

During the Clinton Administration, the US Congress investigated and enacted further recommendations for immigration policy-making. The Gallegly Task Force on Immigration, appointed by Speaker Newt Gingrich, and the Jordan Commission established by the 1990 Immigration Act became forums for restrictionists whose

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<table>
<thead>
<tr>
<th>Ruling</th>
<th>Y</th>
<th>Origin of Rule</th>
<th>Main Target of Ruling</th>
<th>Effect over Immigrants</th>
<th>Stage</th>
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<tbody>
<tr>
<td><strong>Stage 1: Between a Path to Citizenship and Sanctions</strong></td>
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<tr>
<td>IRCA</td>
<td>1986</td>
<td>L</td>
<td>Immigration</td>
<td>Regularization Farm Labor Program Employment Sanctions</td>
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<td>Operation Alliance</td>
<td>1986</td>
<td>E</td>
<td>Narcotics</td>
<td>Border Militarization Inter-Agency Cooperation</td>
<td>1</td>
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<tr>
<td>Immigration Act</td>
<td>1990</td>
<td>L</td>
<td>Immigration</td>
<td>Deportation Visa Tightening (disease, crime, public charge, security) Compensation for States</td>
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<td><strong>Stage 2: Militarizing the Border</strong></td>
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<td>National Strategy for Border Patrol</td>
<td>1993-94</td>
<td>E</td>
<td>Immigration Narcotics</td>
<td>Fencing Border Militarization Alien Tracking</td>
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<tr>
<td>Operation Hard Line</td>
<td>1995</td>
<td>E</td>
<td>Narcotics</td>
<td>Border Militarization</td>
<td>2</td>
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<td><strong>Stage 3: From the Border to the Domestic Terrain</strong></td>
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<td>Abscondee Removal Teams</td>
<td>1995</td>
<td>E</td>
<td>Immigration</td>
<td>Domestic Enforcement</td>
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<tr>
<td>Illegal Immigration Reform and Immigrant Responsibility Act</td>
<td>1996</td>
<td>L</td>
<td>Immigration</td>
<td>Border Militarization Welfare Curtailment (for legal immigrants) Domestic Enforcement (on hold by DoJ) Inter-Agency Cooperation (idem)</td>
<td>3</td>
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<tr>
<td>Anti-terrorism and Effective Death Penalty Act</td>
<td>1996</td>
<td>L</td>
<td>(Domestic) Terrorism</td>
<td>Alien Tracking Deportation (for legal immigrants too)</td>
<td>3</td>
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<td><strong>Stage 4: The 9/11 Dynamic</strong></td>
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<td>Patriot Act</td>
<td>2001</td>
<td>L</td>
<td>Terrorism</td>
<td>Detention (for legal immigrants too) Deportation</td>
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<tr>
<td>“Absconder Apprehension Initiative” (later “National Fugitive Operations”)</td>
<td>2002</td>
<td>E</td>
<td>Terrorism Immigration</td>
<td>Domestic Enforcement Inter-Agency Cooperation</td>
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<td>Reversal of restriction of enforcement by state and local police/sheriff, etc.</td>
<td>2002</td>
<td>E</td>
<td>Immigration</td>
<td>Domestic Enforcement Inter-Agency Cooperation</td>
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<td>Homeland Security Act</td>
<td>2002</td>
<td>L</td>
<td>Terrorism Immigration</td>
<td>Bureaucratic expansion</td>
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<td>SC Ruling 01-1491</td>
<td>2003</td>
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<td>Immigration</td>
<td>Detention (indefinite no bail, for legal immigrants too)</td>
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<td>Identity Theft Penalty Enhancement Act</td>
<td>2004</td>
<td>L</td>
<td>Identity Theft</td>
<td>Deportation</td>
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<td>Ruling</td>
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<td>Origin of Rule</td>
<td>Main Target of Ruling</td>
<td>Effect over Immigrants</td>
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<td><strong>Stage 5: The Secure Border Initiative</strong></td>
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<td>Secure Border Initiative</td>
<td>2005</td>
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<td>Terrorism</td>
<td>Border Militarization</td>
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<td>Narcotics</td>
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<td>Immigration</td>
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<td><strong>Stage 6: The Expansion of the Wall</strong></td>
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<td>Secure Fencing Act</td>
<td>2006</td>
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<td>Terrorism</td>
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<td><strong>Stage 7: Failed Legislation and Backlash/Intensification of the War at Home</strong></td>
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<td>Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (never passed)</td>
<td>2003</td>
<td>-</td>
<td>Immigration</td>
<td>Domestic Enforcement Mandate</td>
<td>7</td>
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<td>Border Protection, Antiterrorism, and &quot;Illegal&quot; Immigration Control Act (never passed the Senate)</td>
<td>2005</td>
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<td>Terrorism</td>
<td>Border Militarization</td>
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<td>Immigration</td>
<td>Border Fencing (feasibility study of northern fence)</td>
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<td>Alien Tracking</td>
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<td>Detention/Deportation (including immigration violations)</td>
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<td>Criminalization of action directed to aid re-entry,</td>
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<td>Affirms Domestic Enforcement Authority Bars Sanctuary Provisions</td>
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<td>Reduces reach of immigration judges Further strips deportation form procedural rights</td>
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<td>Operation Streamline</td>
<td>2005</td>
<td>E</td>
<td>Immigration</td>
<td>Channels into criminal prosecution all border crossers detained by the Border Patrol</td>
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<td>Secure Communities, DHS</td>
<td>2008</td>
<td>E</td>
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<td>Detention (immigration checks at local/state jails)</td>
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<td>2008</td>
<td>E</td>
<td>Civil Rights</td>
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<td>2009</td>
<td>E</td>
<td>Immigration</td>
<td>Procedural Rights</td>
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</table>

Sources:
political salience and stridency had grown. The change in mood was stark. Only five years after legislation had expanded the number of annual visas and created the lottery system, these commissions recommended reducing authorized immigration and devising punitive measures for unauthorized immigrants.  

### Stage 2: Militarizing the Border

In 1993 and 1994, following an initiative by El Paso Border Patrol chief Silvestre Reyes to heighten border enforcement, the Clinton administration launched a new border strategy. It consisted of twin operations focused on urban areas along the border. Border states could draw from a growing largesse of Federal allocations for enforcement intended to physically reinforce the Southwest border through augmented armed manpower, expanded surveillance technology, and the building of physical barriers starting at the Pacific Ocean Coast. Operations included Gatekeeper in California, Hold-the-Line in Greater El Paso, Texas (originally called ‘Blockade’ but renamed after complaints by the Mexican government), Rio Grande in Brownsville, Texas, and Safeguard in Arizona.

This new strategy of “prevention through deterrence” included multiple and complementary means to deter illegal crossings, thus avoiding having to apprehend illegals after the fact. Among the strategies were efforts to concentrate enforcement resources in each major entry corridor, including increased fencing, surveillance equipment, harsher penalties, and the expansion of law enforcement. California had parallel fences permitting a patrol strip in the middle, and accompanied by klieg (stadium) lighting and surveillance cameras; its southern side was built with surplus US military landing mats, some of them dating back to Vietnam.

Success was measured by a reduction in the number of crossings (and apprehensions). The implementation of these policies was supposed to make it more difficult

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for immigrants to cross near urban areas, thus shifting them toward deserted spaces that the Border Patrol could control more easily.\footnote{Palafox, Jose, “Introduction to “Gatekeeper’s State: Immigration and Boundary Policing in an Era of Globalization,” Social Justice 28, no. 2 (2001):132-148.}

Congress supported these initiatives. Between 1993 and 1997, the enforcement budget of the INS increased by 100\%, as well as the staffing and budget approved for the Border Patrol (see Graph 2).\footnote{Ibid.} While part of the border was already fenced, particularly in the area starting at the Pacific Ocean and extending eastward, the fencing increased from 19 to 52 miles between the beginning of these operations and late 1999.\footnote{Ibid.} Moreover, in 1996, President Clinton authorized the deployment of “up to 350 Marine Corps, Army, and National Guard soldiers to conduct aerial and ground surveillance along the US-Mexico border.”\footnote{Palafox, “Introduction,” 3.} This showed some continuity with the inter-agency collaboration between the Border Patrol and the military that became common in the 1980s, after the former assumed subsidiary functions in the “war on drugs.”\footnote{Timothy J. Dunn, “Border Militarization Via Drug and Immigration Enforcement: Human Rights Implications,” Social Justice 28 (2001): 7-30, 8.} In May 1997, Esequiel Hernández Jr., an American citizen, was shot dead by a US Marine Corporal deployed in Redford, Texas, as part of the Joint Task Force Six,\footnote{Now re-named Joint Task Force North, and described on its site as a “joint service command comprised of active duty and reserve component Soldiers, Sailors, Airmen, Marines, Department of Defense civilian employees, and contracted support personnel.” Joint Task Force North, “Mission,” Joint Task Force North Website (n/d). Available at http://www.jtfn.northcom.mil/subpages/mission.html, accessed 03/12/2011.} an inter-branch command unit providing operational and intelligence support from the Pentagon to federal, regional, state, and local counter-drug efforts.\footnote{Joseph Nevins, “Death as a Way of Life,” counterpunch Weekend Edition, July 26-27 2008. Available at http://www.counterpunch.org/nevins07262008.html; and Sam Howe Verhovek, “After a Marine on Patrol Kills a Teen-ager, a Village Wonders Why,” The New York Times, June 29, 1997. Available at http://www.nytimes.com/1997/06/29/us/after-marine-on-patrol-kills-a-teen-ager-a-texas-border-village-wonders-why.html?scp=5&sq=esequiel%20hernandez&st=cse, accessed 03/29/2011.} This death was the first one inflicted by armed forces on an American civilian since the 1970 Kent State University massacre, and the first since the troops were stationed on the border in the late 1980s.\footnote{Verhovek, “After a Marine”; and Monte Paulson, “Soldiers on US Borders: What Could Go Wrong? Start with the killing of Esequiel Hernández Jr.,” The Tyee May 18, 2006. Available at http://thetryee.ca/News/2006/05/18/Soldiers/, accessed 03/12/2011.}
Stage 3: From the border to the domestic terrain

Mirroring the militarization of the border, in stage three of the war on illegals the fight against immigration became a struggle that was not only waged at the borders, but also domestically. The 1996 immigration laws, Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), and the Antiterrorism and Effective Death Penalty Act (AEDPA) enacted important changes in the crimes and misdemeanors that made documented aliens deportable, and made these rules retroactive. The laws automatically created a new pool of deportable criminal aliens, the target of internal operations, detention, and eventual deportation.

The enactment of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) enhanced and legitimated inter-agency cooperation both horizontally at the federal level and vertically between the local, state, and federal authorities. This law included section 287(g) which authorized agreements between the federal level and the state and local level, permitting the latter to collaborate in the enforcement of federal immigration law.

#### Graph 2


54. The initial application of this section was obstructed by an opinion of the Office of Legal Counsel from the Department of Justice, which denied this authority; the decision was reversed in 2002. American Immigration Lawyers Association et al., State and Local Police Enforcement of Federal Immigration Laws.
By the close of the twentieth century, as stage three of the war on illegal immigrants unfolded, the strategies of border fortification and domestic enforcement consolidated. The main consequence of the increased border security was the re-channelling of the border crossings away from the urban areas targeted by the border initiatives and toward more remote areas. This geographic shift increased the physical risk and cost associated with illegal entry, as measured by the fees charged by coyotes (professional people-smugglers) and the number of deaths among hopeful migrants, as well as a higher rate of permanent settlement among undocumented immigrants in the United States (see Graph 3).

An effect of the emphasis on internal (as opposed to border) enforcement was

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Graph 3


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the increased number of detained and deported immigrants. This trend was in turn facilitated by new laws which retrospectively criminalized the immigrant population, as well as by the de facto enforcement of immigration law by local and state police.

**Stage 4: The 9/11 Dynamic**

The terrorist attacks on the Twin Towers and the Pentagon on September 11, 2001 created the conditions for wide legal reforms contained in the Patriot Act which were passed shortly thereafter, affecting the rights of all American citizens. This law and other legislation also had important consequences on immigrants, particularly those residing in the country without papers. Nationally President Bush placed the US on a war footing, a condition which helped the enactment of tough anti-immigrant measures considered improbable only a few months earlier. Indeed, prior to the 9/11 attacks a political coalition positive toward immigration reform seemed on the brink of success; its proposals included the potential legalization of about 3 million undocumented migrants already in the country.

Instead, the US Patriot Act contained draconian measures directed toward immigrants that, unlike other measures affecting American’s civil liberties, were approved to be permanent. Measures contained in this act gave extensive and unchecked powers to detain (documented or undocumented) non-citizens suspected of having terrorist ties for up to seven days without charges or access to a lawyer. Undocumented immigrants could be summarily subjected to detention and deportation solely for immigration violations. The law authorized deportation hearings to be held in secret and without access to a lawyer.

The most significant innovation in state building in the federal war on illegal immigrants was the creation of the Department of Homeland Security (DHS) by the 2002 Homeland Security Act, and the transfer of all immigration functions to this department a year later. This transfer solidified the identification of legal and illegal immigrants with national security threats. Within the DHS, service and enforcement activities were divided, the former assumed by the US Citizenship and Immigration Services (USCIS), and the latter assigned to the US Immigration and Customs Enforcement (ICE). ICE, which self-defines as the “largest investigative agency of the Department of Homeland Security,” took over functions previously

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discharged by the US Customs Service (in the Treasury), Immigration and Naturalization Service (in the Department of Justice), and Federal Protective Service. At DHS, the ICE has five operational divisions and is in charge of domestic enforcement and coordination with local and state law enforcement on immigration matters.

### Stage 5: The Secure Border Initiative

In 2005, DHS Secretary Michael Chertoff launched the Secure Border Initiative (SBI). It collected many of the existing DHS anti-immigrant programs together with the border fence, a program “designed to consistently slow, delay and be an obstacle to illegal cross-border activity.” Concurrently, this program provided the political support for significantly stepped-up domestic enforcement programs, detention, and deportation of undocumented immigrants based on pre-existing legal tools.

The relocation of immigration administration into DHS introduced military terminology and rhetoric into the management of immigration operations, with terms such as “surge,” “deterrence,” and “national security” showing up often in their reports and descriptions of their activities. In a recent statement at the Subcommittee on Homeland Security, the ICE Assistant Secretary Julie L. Myers claimed that unauthorized workers employed at critical facilities constituted serious “homeland threats” for being “vulnerable to exploitation by terrorists and other criminals given their status.”

The emphasis on homeland protection and national security in the management of immigration issues is maintained despite the fact that national security-related ICE removals have usually constituted less than 0.01 % of yearly ICE removals (see Graphs 4 and 5). Additionally, if one focuses on the charges that the DHS has

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60. See Graphs 3–9 and discussion below.


brought to immigration courts, only 12 of the 814,073 individuals ever charged by the DHS in immigration were connected to terrorist claims.\(^{64}\)

Aiding the trend toward tougher domestic enforcement is the failure of all com-

prehensive reform attempts during the administration of George W. Bush. Enforcement is the prime tool of state intervention for the American government, enabling a quasi-military approach that operates within a blockaded country and in fact provides a free zone for enforcement officials at all levels to detain immigrants. Relying on the tools of criminalization enacted in 1996 and 2001 legislation, as well as on administrative directives supporting and increasing enforcement powers, the numbers for border apprehensions, worksite arrests, and deportations show a clear upward trend (see Graph 3, above, and Graph 4 for border apprehensions and removal numbers, respectively).

The average daily population of immigrants in detention increased from around 5,000 in 1994 to around 20,000 in 2001 and more than 30,000 in 2008 (see Graphs 7 and 8); deportations by the ICE grew from around 70,000 in 1996 to 190,000 in 2001 and more than 300,000 in 2009 (see Graph 6, above). It must be noted that criminal convictions can refer to immigration violations, such as “Re-entry of deported alien.” Moreover, since the establishment of “Operation Streamline” in 2005, even first time border crossers can be criminally prosecuted. According to a recent report by the Transactional Records Access Clearinghouse at Syracuse University, the Department of Homeland Security refers the great majority of cases for immigration convictions.

65. Graph 4 includes both expedited and total removals to convey approximately the amount of non-border, or “domestic” removals, given the lack of release of specific data by the DHS. Expedited removals are those that are done without referring an immigrant to an immigration judge and tend to be removals that follow border apprehensions. US Department of Homeland Security, “Definition of Terms,” Department of Homeland Security Website September 10, 2009b. Available at http://www.dhs.gov/files/statistics/stdfdef.shtm#4, accessed 03/12/2011.


Stage 6: The Expansion of the Wall

In October 2006, President Bush signed into law the Secure Fence Act to establish operational control “over the entire international land and maritime borders of the United States” with such control understood to be “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” According to the SBI site, in September 2007 there were 154.7 miles of pedestrian fence built, with the plan to build an extra 300 miles of vehicle fence by the end of the 2008 fiscal year. The border fence requires contracts for maintenance, as well as complementary contractor services for the provision of surveillance technology, and even virtual border fences. The “construction” of the virtual border fence, named the SBI Network, has $2.5 billion of funding; its construction was allocated in 2006 to Boeing Co., and renewed in 2008.

The technologies utilized are adapted from those used in the battlefield, such as a camera-mounted drone that has been used by the Australian and Israeli armies, or various ground-based sensors that “have been used to thwart

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Graph 6

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164
Graphs 7 and 8
insurgents in Iraq and Afghanistan.” The construction of the physical fence ignited complaints from environmental organizations, and was eventually granted waivers of several environmental and land management laws, covering 470 total miles, in the areas of California, Arizona, New Mexico, and Texas.

Civil society organizations such as the Border Network for Human Rights have emphasized the human costs of the fencing, arguing that between the beginning of the construction of the fence, in 1994, and the end of 2008, approximately 4000 people have died trying to cross the border. Numerical accounts of the deaths vary, but all agree in pointing out the increase in avoidable deaths resulting from the movement of crossing areas away from urban areas and toward the desert, in which physical effort and the extreme climate take their toll on migrants (see Graph 2, above). The concern with increased human deaths moved the Border Patrol to create the Border Safety Initiative (BSI), a program to prevent deaths and injuries among illegal crossers (USGAO 2006, 1). A recent report by the US General Accountability Office has established that the BSI’s claims to have reduced deaths at the border is unsupported; the GAO also concluded that, compared with other sources measuring the number of fatalities amongst attempted immigrants, the BSI’s statistics consistently underestimate the deaths they report.

A different kind of civil organization has also been prominent in accompanying and complementing the growth in border security. Minutemen, or civilian border patrol groups, have grown out of anti-immigrant organizations, with the goal of patrolling the southwest border and engaging in other activities that seek to disrupt hiring sites for day laborers. The most prominent of these groups, the Minuteman Project, was officially founded in April 2005 by retired California businessmen Jim Gilchrist and Chris Wincox. As Roxanne Lynn Doty notes, private citizens

71. Hsu and Witt, “Plenty of Holes.”
have devoted themselves to protecting the Southwest border before: the Hanigans in Arizona in 1976; the KuKluxKlan Border Watch in San Ysidro, California, in 1977; and even an anti-communist paramilitary group acting on the Arizona area in 1986.\(^7\)

The growth in these groups and of the resources contributed to them are as much a feature of the post-9/11 period as the building of the border fence, and one that collaborates in creating the war-like atmosphere that has enveloped the American fight against immigration.

### Stage 7: The Intensification of the War at Home

The militarization of the border has been accompanied by the increased militarization of domestic enforcement. The budget has accompanied these trends, with the allocations for the Fugitive Operation Program multiplying 23-fold in the 2003-2008 period, that of the Border patrol multiplying fivefold between 1993 and 2007, and its staffing swelling proportionally (see Graph 2 above).\(^7\)

As explained in the previous sections, the rise in detentions and deportations has been concomitantly stark. The operations that feed these numbers fall in one of three categories: the Fugitive Operations Program (FOP); the 287(g) agreements with state and local enforcement organizations, which authorize them to implement immigration law; and worksite raids. These three categories constitute the essence of stage seven of the war on illegal immigrants.

(a) The ICE-led Fugitive Operations Program was set up to locate and remove “dangerous fugitive aliens.”\(^7\)

A legacy of a 1995 decision by Attorney General Janet Reno, the program acquired increased importance and resources in 2002, when it was re-named and then made part of the Office of Detention and Removal Operations (DRO) under ICE in the Department of Homeland Security, and later of the Secure Border Initiative, the scheme established by DHS Secretary Chertoff in 2005.\(^7\)

The main consequences of these transformations were the increased visibility and budget allocations of the program, as well as the explicit inter-agency collaboration built into the program since 2002, when the FBI and the US Marshals Service started cooperating formally with the INS (later ICE).\(^7\)

The cooperation between agencies was expanded by the creation in 2006 of the Fugitive Operation Support Center (FOSC), in charge of supporting the work of Fugitive Operations

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77. Ibid.
79. The discussion in this paragraph is based on the Migration Policy Institute: Mendelson et al., “Collateral Damage.”
80. Ibid.
81. Ibid., 7.
Teams by investigating and coordinating partnerships with federal, state, and local enforcement agencies. The character of the program allowed ICE officers to issue civil warrants, thus bypassing the approval of a judge, as well as the standards of review of evidence and probable cause that accompany this process.

Contrary to the program’s mandate, almost three-quarters of the detainees have “no criminal conviction.” The program faces multiple lawsuits for carrying out home raids without reasonable grounds, and conducting a campaign of intimidation, illegal search, and seizure. There is evidence that the imposition of a minimum quota of arrests indeed gave incentives for the fugitive teams to conduct searches in residential environments and to expand their searches to residences and passersby in areas where immigrants concentrate (see Graph 9). The new Secretary of Homeland Security Janet Napolitano has ordered a review of the program.

(b) A second high profile program of domestic enforcement is commonly known as 287(g), after the relevant section of the 1996 Law that regulated agreements between federal and state and local law enforcement agencies. The main innovation of this regulation is to erase the line between civil and criminal immigration laws. While state and local police forces have always had the right to enforce the latter, the decision by the Department of Justice made it possible for the first time for these agencies to prosecute civil charges such as illegal entry, undocumented work, or visa overstays.

Signing agreements of this type was encouraged by the Attorney General to make state and local authorities “assist with counter-terrorism efforts.” Regardless of the

84. Ibid., 3.
87. This authority was initially denied by the Department of Justice, a position that was reversed in 2002, when the “inherent authority” of state and local police to implement federal immigration law was recognized. American Immigration Lawyers Association, Mexican American Legal Defense and Educational Fund, National Council of La Raza, National Immigration Forum, and National Immigration Law Center, State and Local Police Enforcement of Federal Immigration Laws.
fact that these programs target undocumented Hispanic immigrants, most defenses of these agreements rely on a rationale of national security. The trend to channel measures supposed to prevent terrorism through the realm of immigration law is not unique to the United States; it has become widespread for developed countries to do so, mostly due to the reduced amount of due process and other legal obstacles to state action that characterizes this realm.

The signature of these agreements, which currently number 67, coincided with local initiatives of immigration legislation in what was perceived as the local and state reaction to the inability of Congress to pass a comprehensive immigration reform. These agreements and the complementary laws enabled local agencies to

90. US Congress 2009, 8.
implement immigration policy by checking immigration status at diverse instances, from traffic violations to the ending of criminal prison sentences. Critics argue that these agreements generate fear among Hispanic communities, and make them reluctant to seek help from local authorities. Moreover, the implementation of immigration checks has been said to rely on racial profiling, thus violating discrimination provisions.

Additional concerns about the implementation of these agreements have been raised by civil society, and are echoed in a recent report by the US General Accountability Office (GAO), which asserts that ICE lacks internal controls over the implementation of 287(g).

(c) A third component of the domestic enforcement of immigration laws are the worksite raids and arrests; these have grown in frequency and public profile in the second half of the 2000s. As Graph 10 shows, the growth in worksite arrests was not accompanied by a concomitant growth in sanctions toward employers, which were in clear decline until 2006, and then increased only slightly, settling at levels less than half of those of 2003. These arrests reflected an overall strategy of targeting immigrants rather than employers, smugglers, or other aspects of the infrastructure that supports and attracts undocumented migrants. This strategy, however, is consonant with our argument about the marking of illegal immigrants as the war-enemy to be combated, increasing the numbers of detentions and deportations, as well as those labelled as criminal, without being consistently oriented to the achievement of results or the reduction of the war’s “collateral damage.”

Moreover, as numerous reports have argued, the sources for the investigation of employers’ violations are still based on databases such as E-Verify or records by the Social Security administration, some of which are flawed and rely on directives that are potentially in violation of non-discrimination laws.

A novel feature of worksite enforcement has been the criminalization of the detained workers by charging them with identity theft, thus moving the case from the civil to the criminal realm and getting access to the set of expediting legal tools.

95. Meissner and Kerwin, DHS and Immigration 32.
96. Meissner and Kerwin, DHS and Immigration, 27-31; Calavita, “The Contradictions.”
established in the 1990s and 2000s (see “Worksite Arrests (criminal)” in Graph 10). These measures are sometimes complemented by having immigrants waive their right to the hearing that they otherwise have.⁹⁷ A particular instance of this general procedure was applied at the largest ICE raid in US history, in which 900 agents took part, directed at Agriprocessors Inc., a large kosher meat packing plant located near Postville, Iowa in May of 2008.⁹⁸

The 983 undocumented immigrants apprehended were summarily tried and either deported or incarcerated for identity theft, to be deported thereafter.⁹⁹ The trials were conducted in secret, and the official strategy was to convince immigrants to plead guilty to identity theft in order to obtain shorter sentences. The prosecutors successfully converted civil violations (such as working without a permit) into felonies, thus facilitating deportation procedures. The use of these measures has

been consistently challenged in court, and was recently deemed inappropriate by unanimous decision of the US Supreme Court.¹⁰⁰

In sum, the post-9/11 scenario of immigration enforcement has relied on the militarization of the border, aided and complemented by the criminalization of immigrants. While the former has relied on the construction of a physical and virtual border fence and has been advanced without concern of its human costs, the latter consists of a complex array of enforcement initiatives at the federal and local level. The prosecution of immigrants has relied on different and sometimes contradictory legal and administrative instruments, with the common goal of facilitating the expedited and unaccountable action of immigration officials. The relocation of immigration enforcement under the aegis of Homeland Security, the enactment of laws even more punitive than those approved in the 1990s, the non-legislative decisions targeting immigrants, and the rhetorical pairing of terrorism and immigration have further legitimized the de facto war against illegal immigrants, visible in the unprecedented violence at the border and armed operations in local communities.

President Bush left office in a style that was highly consonant with the orientation of his administration. On January 8, only 12 days before the inauguration of President Barack Obama, Attorney General Michael B. Mukasey ruled that immigrants do not have a “constitutional right to effective legal representation in deportation hearings,” thus closing off one common avenue for appealing deportation decisions.¹⁰¹

An End to the War? President Obama, Democratization, and Illegal Immigrants

Initiatives to reform immigration policy faltered in the final years of the George W. Bush administration and the issue has recurred to confront the Obama presidency. Facing an estimated population of 12 million undocumented immigrants, President Obama has little option but to address the problem (and the strong electoral support he received from Latino voters in 2008 also makes reform imperative to consolidate this support).

For those concerned about the war on illegal immigrants – its drift into greater violence, increased expenditure, and militarization of the US-Mexican border – the


hope is that President Obama will propose an expansive policy which connects immigration policy with the traditional language and practice of democratization.

Obama has instructed the Department of Homeland Security’s immigration policing agencies to renew their focus on prosecuting employers who knowingly employ immigrants without legal papers, and to back away from the exclusive use of mass raids targeted on alleged illegal workers. This change signals a real switch towards targeting employers. President Obama accepts criticism about the limited efficacy of mass raids and the damage they inflicted on Latino communities, but he has not vowed to stop the detentions at worksites. Indeed, as the graphs above show, detention and deportation have reached record levels since President Obama took office.

Concurrently, President Obama is expected to announce an immigration policy with two familiar components: some sort of path to legal citizenship for illegals in the country combined with rigorous deterrence and exclusion of new illegal immigrants through enhanced border enforcement and further surveillance of employers hiring illegal immigrants. Thus as part of his proposed reform package the “war” as expressed by the border police and the US-Mexican Wall will continue. Furthermore, critics of the war on illegal immigrants are disappointed that President Obama’s team have opted to expand the 287(g) program of national-local partnerships (though measures to improve supervision of the program have also been announced). Eleven new partnerships between local law enforcement agencies and Homeland Security signal the scheme’s expansion, not its retrenchment; this expansion is not warmly supported by the local agencies, many of whom consider it a scheme which sits uncomfortably with community policing. Obama’s team have also retained the Bush-era practice of requiring federal contractors and subcontractors to use E-Verify, a much-criticized electronic system that checks whether people are eligible to work.

However, a thorough democratization of immigration policy should involve more than just a path to citizenship for those residing in the United States. Rather, there should be a discussion and critique of the processes through which the war on immigrants was undertaken, including both the narratives of national security threat and the bureaucratic and physical transformations that they supported. These processes will have to come to terms with the militaristic features that we have identified in this chapter, and with the groups that support them inside the public bureaucracy, in civil society, and in the media.

The effects of the war on immigrants are society-wide, first by militarizing border communities, and later by taking the war to the domestic areas in which immigrants live and work. Moreover, this was accomplished by symbolically marking the whole Latino population, delegitimizing their claim to belonging, and devaluing their contributions to the American economy and society.
How do we deal with this kind of coercion? Democracies engage in coercion against citizens and non-citizens, but their democratic character imposes certain requirements to provide spaces of deliberation to revisit and rethink these instances of coercion. Our concern about the process of state building around the war on illegal immigrants derives from its negative effect on these spaces of contestation. While the lack of political rights makes immigrants a population ill-equipped to fight for their rights, they have increasingly done so. There has been a remarkable mobilization of immigrants, sanctuary parishes, and human rights advocates campaigning against the legislative transformations we describe. It is this mobilization that provides reasons for optimism about the continuing dialectic between immigration and democratization in American political development.

To date, the expansion of the war on illegal immigrants is proving a significant exercise in state building – not democratization. The beneficiaries of the resources predicated on national security needs are the US Department of Homeland Security’s various sub units and bureaus, which are supposed to deal with the security risks posed by lax immigration and labor market imperatives. Consistent with the “war-like” strategy deployed by previous executives, considerable bureaucratic resources have been invested in creating enforcement teams, fortifying the border, and crafting federal, state, and local liaisons to identify, detain, and deport immigrants. Marking the end of the “war” on illegal immigrants will require quite deliberate policy statements from the White House and administration. Without purposeful action, scenes evoking the human tragedy captured in the conclusion of Thomas McCarthy’s recent film The Visitor will endure.

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