

## **THE LEGAL INNOVATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE IN THE U.S.-MEXICO BORDERLANDS, 1917-1946\***

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In 1928, Grover C. Wilmoth, the El Paso district director of the Bureau of Immigration, instructed Border Patrol officers to suspend their operations in the border town of Nogales, Arizona. In issuing this order, Wilmoth responded to the demands of the Nogales Chamber of Commerce, which for nearly a decade had opposed the passage of federal immigration restriction laws, alleging that they resulted in the loss of trade and commerce in the region and threatened cross-border social ties. Border towns from Texas to California echoed these claims and called for the modification and even elimination of the nation's most prominent immigration restrictions, including the Chinese Exclusion Act of 1882, the Literacy Test of 1917, and the national origins quota system of 1924, among others (*U.S. Stat*, 1882, 1917, 1924). As their frustrations mounted, local residents went so far as to call for the relocation of the international boundary, a move that would have created a zone free from any federal economic and social regulations (Bristol, 1928a; 1928b; Hunt, 1927; Hull, 1926). While Wilmoth scoffed at these proposals to redraw the map of the U.S.-Mexico border, he used his administrative discretion to address the needs of Nogales residents and temporarily exempted the town from Border Patrol surveillance.

Wilmoth's directive constituted one of many moments in which he re-fashioned federal immigration restrictions in response to the transnational economy, society, and even geography of the U.S.-Mexico borderlands. Even though these legal innovations often departed from the exclusionary outlook that inspired the passage of early twentieth-century immigration laws, they reflected his view that the borderlands were different. Wilmoth recognized

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that the region presented a unique set of enforcement challenges that would render his officers unable to replicate the achievements and approaches of their peers at Angel Island and Ellis Island, the most restrictive immigration stations in the country prior to World War I (Schneider, 2011: 79, 102). He subsequently explained the need for a distinctive approach to immigration law enforcement in a 1934 training manual: “While the Immigration Service of the Mexican border, of course, conforms to general practice, the wide differences in physical conditions, in the local situations, and in the nature of our contacts with various foreign peoples make imperative noticeable departure from the general practice in several material respects” (Wilmoth, 1934). For much of the twentieth century, immigration officials in the Southwest followed Wilmoth’s example by creating numerous local departures from federal immigration laws.

This essay traces the ways in which the Immigration and Naturalization Service (INS) on the U.S.-Mexico border made and re-made the nation’s immigration laws. In so doing, I argue that the INS in the borderlands functioned not only as a law enforcement agency but also as a lawmaking body: the agency not only implemented the nation’s immigration laws, it also made them. These lawmaking endeavors furnished local agency officials with the means to endure the numerous challenges surrounding immigration law enforcement on the U.S.-Mexico border. These included a lack of support from policymakers in Washington, D.C.; intra-agency conflicts and debates; tremendous opposition from border residents, including Asian, European, Mexican, and U.S. American nationals living on both sides of the line; and the seemingly unachievable task of policing the rugged terrain of the 2,000-mile international boundary. In the face of these obstacles, southwestern agency officials amended, nullified, and even drafted the nation’s immigration legislation, producing new laws and policies for the border region. As early as 1920, the agency’s resort to legal innovations was so extensive that one local immigration leader observed that a “sectional” immigration policy existed in the borderlands (Bureau of Immigration, 1920).

Since the mid-twentieth century, scholars have highlighted the long history of the abuse of power by the nation’s immigration bureaucracies (Calavita, 1992; Balderrama and Rodriguez, 1995; Goodman, 2020; Gutiérrez, 1995; Lytle Hernández, 2010; Ngai, 2004; Sanchez, 1993). Yet, while their work provides essential insights into how immigration officials often violated

the law in the service of their border enforcement mission, I argue here that the INS also played a key role in defining immigration law and policy in the first place.<sup>1</sup> In some cases, the agency's lawmaking activities promoted the social and economic interests of border communities. In others, its legal innovations enabled the INS, particularly the Border Patrol, to obfuscate, legitimize, and, ultimately, perpetuate its longstanding reliance on highly aggressive and even violent policing tactics on the U.S.-Mexico border. This account of INS history reveals that the source of the agency's authority rested not only in the frequency with which it violated legal and constitutional norms, but also in its ability to define and redefine its own regulations, policies, and laws to its own advantage.

Although the scope of the agency's lawmaking activities was broad, they were not conducted in a vacuum. Instead, these legal innovations responded to the unique environmental, social, and economic conditions in the U.S.-Mexico borderlands and resulted in the creation of an immigration policy tailored for the region. Despite their own attempts to defend the nation-building enterprise of immigration restrictionists, INS officials stationed in the Southwest came to realize that the region's multiracial population, transnational social world, and global economic forces defied the literal implementation of federal immigration laws.<sup>2</sup> In this complex world, INS border enforcement efforts were characterized not by strength but by struggle.<sup>3</sup> Exasperated by the difficulties of exerting any control over the border, some immigration inspectors simply gave up and neglected their enforcement responsibilities altogether. Dissatisfied with their lack of autonomy and political legitimacy, members of the Border Patrol vented their frustrations in acts of racial violence, whereby Mexican immigrants and Mexican-Americans became the focus of the unit's aggressive enforcement campaigns (Lytle Hernández, 2010:

<sup>1</sup> On the origins and scope of the lawmaking functions of state bureaucracies such as the INS, see Kang (2017: 5-7).

<sup>2</sup> For an account of the nativist attitudes of early Bureau of Immigration officials see Lee (2003: 47-74). On the multiracial and multinational character of the borderlands in the early twentieth century, see Lim (2017); St. John (2011); Benton-Cohen (2011); Romo (2005); and Truett (2008).

<sup>3</sup> Many of these efforts were so haphazard that the INS in the Southwest came to resemble a Rube Goldberg agency. In using this term, I am referring loosely to Elisabeth S. Clemens' notion of the Rube Goldberg state in which complexity and disorder, rather than expertise and rationality, characterize the state-building process. Clemens specifically focuses on power-sharing arrangements between federal and state officials as well as public and private entities in the arena of public subsidies to illustrate the messiness of U.S. governance (Clemens, 2006: 187-215).

5, 21, 45, 67, 126, 129, 132, 145). Meanwhile, other INS officials resorted to the law to address the challenges of border enforcement. This essay focuses on these agency administrators, describing how they created a multifaceted set of immigration policies that closed the line to unwanted immigrants, opened it for the sake of the regional economy and society, and redefined it for the benefit of the Border Patrol.

Prior to 1917, geography, institutional weaknesses, and local custom all contributed to the lax enforcement of immigration laws on the U.S.-Mexico border. Few appeared troubled by the unfettered crossing and re-crossing of thousands of Mexicans at points all along the border each day. Indeed, the opposite attitude seemed to prevail, as recounted by an El Paso community leader and lifetime resident in the early 1900s: “There were no restrictions as to crossing the bridge, or passports or anything like that. Everyone was happy, coming and going without any customs restrictions, any immigration restrictions, any health department restrictions” (Martínez, 1972). Those crossing the border not only included ethnic Mexicans who lived and worked on both sides of the line but also Armenians, Syrians, Japanese, Spaniards, Italians, and Chinese who had established their own businesses in the United States and Mexico.<sup>4</sup> Anglo-Americans also contributed to the bidirectional flow of traffic at the border as residents of Mexico who worked in the United States, service providers based in the U.S. with clients in Mexico, and, most commonly, as casual visitors to border towns south of the line (Harris, 1918a; Wallace, 1918; Romo, 2005: 145; St. John, 2011: 151). Taken together, these cross-border demographic, economic, and social ties led local residents to construe the border as an “imaginary line” (Calexico Chamber of Commerce, n.d.).

World War I transformed this orientation toward the border, raising concerns about a foreign invasion along the southern line and compelling southwestern Bureau of Immigration officials to take their jobs more seriously. In response to this wartime threat Congress passed a set of laws, specifically the Immigration Act of 1917 and the Entry and Departures Control Act of

<sup>4</sup> For an account of these mercantile establishments see Romo (2005: 198-200) and Vanderwood (2004: 105). For an account of Chinese migrants in the borderlands, see Delgado (2004 and 2013); Camacho (2012: 23-25); Walz (1997); Fong (1980); Du-Hart (1980); Estes (1978); Romero (2010); and Burnett (1920). For an account of Japanese-owned farms in the outskirts of El Paso and San Diego County, see Estes (1978); Romo (2005: 201-02); and Bureau of Immigration (1917: 230, 408). For an account of Middle Eastern immigrants in the borderlands, see Alfaro-Velcamp (2007).

1918 (also known as the Passport Act), which created a new tapestry of regulations along the U.S.-Mexico border (*U.S. Stat.*, 1917, 1918; hereinafter referred to as the Passport Act of 1918 or the Act of May 22, 1918). Initially, the new immigration restrictions had a significant impact on immigration, specifically on individuals seeking entry for permanent admission across the U.S.-Mexico border. The literacy test and an increased head tax mandated by the Immigration Act of 1917 created serious obstacles for Mexican immigrants, particularly agricultural workers who, for the most part, were poor and illiterate (Cardoso, 1980: 46). For the first few months that the new law was in operation, Mexican immigration declined sharply from the same period the previous year. Historian Lawrence Cardoso reports that only 31,000 Mexicans emigrated to the United States in 1917 whereas 56,000 had entered the year before (Cardoso, 1980: 46). By 1918, 1,771 Mexicans decided against emigrating due to the literacy test, and the Immigration Service rejected the applications of 5,745 for failure to pay the head tax (Reisler, 1976: 24).

While the new immigration and passport laws closed the border for some, other border residents refused to accept the new restrictions. Some expressed their discontent by crossing and re-crossing the line without an official inspection. As a result, the bureau reported that the undocumented entry of Mexican nationals, an issue the agency had mostly ignored prior to 1917, had become one of its greatest concerns; as the supervising inspector for the Mexican Border District wrote in his annual report, "The suppression of attempted illegal entry of countless aliens of the Mexican race, excluded or excludable, under what they deem to be the harsh provisions of the immigration act of 1917, has constituted one of the most difficult problems with which this district has had to contend in the past year" (Bureau of Immigration, 1918). At the same time, thousands of local residents, as both the State Department and Bureau of Immigration reported, protested repeatedly and vehemently about the ways in which the Immigration Act of 1917 and the Passport Act of 1918 disrupted the transnational character of their daily lives.

Locals complained about the new laws in a variety of ways: writing letters to state and federal politicians; sending telegrams, letters, and petitions to local and federal Bureau of Immigration and State Department officials; publishing editorials in opposition to the new regulations; and arguing with immigration inspectors at the gates. The sheer volume of these protests led one local immigration official to observe in 1917:

No regulatory measures could possibly be devised on this border in any way affecting the freedom of movement of the people living on the border or touching their financial interests which would not be the object of attack and criticism. Every innovation of such a character, of which the Public Health Quarantine measures, head tax, and illiteracy provisions are notable examples, have evoked similar protests. (Harris, 1917; Johnson, 2003: 72)

In the Southwest, those industries reliant on Mexican labor were the most vocal and politically powerful opponents of the restrictions imposed by the immigration and passport acts.<sup>5</sup> Southwestern farmers, for example, repeatedly called for exemptions to the new laws, knowing that they would bar the entry of Mexican workers (Totten, 1918:17).

In addition to southwestern industries, ordinary individuals—including those traveling from Mexico to shop, work, patronize entertainment venues, or socialize with friends and family—all protested, either in writing or in person (Blocker, 1917; Unsigned memorandum, 1918; Ruiz, 2008: 12). Among the protesters were U.S. citizens who lived in Mexico but worked in the United States as well as Asian nationals, Asian-Mexicans, and Asian-Americans, domiciled in Mexico, who sought a relaxation of the immigration and passport laws for business reasons (Adee, 1918a, regarding Japanese merchants living on Mexican side of border wishing to cross border to purchase goods; Adee, 1918b, on U.S. American border crossers; Berkshire, 1918; Burnett, 1920, on Chinese, with U.S. support, seeking crossing privileges between Calexico and Mexicali). The bureau's detractors also included those domiciled in the United States with business and personal interests in Mexico. Despite the bureau officials' authority, many border residents, as one inspector reported, did not hesitate to criticize the new laws and even verbally abuse immigrant inspectors at the gates (Wilmoth, 1923). Long accustomed to crossing the border in relative freedom, locals construed the new border control measures of the 1910s and 1920s in highly negative terms. Indeed, even though many may have subscribed to the nativist tenets that informed the passage of these laws, they also thought about their pocketbooks, arguing that such border controls damaged a flourishing binational economy.

Border residents' concerns compelled local INS officials to grapple with the question of how to simultaneously close the nation's borders to the en-

<sup>5</sup> On the supporters and opponents of immigration restriction in the Southwest, see Montejano (1987: 182-86).

try of undocumented immigrants and security threats and open them to the free flow of tourists and trade. Local immigration inspectors addressed this dilemma by resorting to the law or by exercising their administrative discretion to create an immigration policy for the borderlands. In shaping an immigration policy for the Mexican border, the Bureau of Immigration relied on the language of the Immigration Act of 1917, specifically the Ninth Proviso of its third section. This proviso stated that the “Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission” (Husband, 1923). In other words, the Ninth Proviso authorized the Secretary of Labor to waive the immigration laws for migrants who would not pass an immigration inspection (and thereby qualify for permanent residence in the United States), but who demonstrated a need to be in the country for short periods of time. Thus, while nativism inspired its drafting and passage, the Immigration Act of 1917 afforded Bureau of Immigration officials the administrative discretion to suspend the restriction laws and sustain the transnational economy and society of the borderlands.

The most famous invocation of the Ninth Proviso occurred during World War I when the secretary of the labor created the nation’s first Mexican agricultural labor program. Due to enormous pressure from southwestern growers who claimed wartime labor shortages, between 1917 and 1921, the secretary of labor temporarily admitted Mexican farm workers, exempting them from a formal immigration inspection and, more specifically, waiving the literacy test, head tax, and contract labor clauses. Since immigration officials in the Southwest administered the farm labor program, they also deployed the Ninth Proviso to suspend the literacy test for the benefit of local residents. Between 1917 and 1924, what I refer to as the literacy test waiver enabled thousands of Mexican nationals domiciled south of the border to cross the line to meet their subsistence needs or, as one immigration inspector explained, so that they could purchase a “loaf of bread, a cake of soap, a pound of starch, a quart of kerosene, a pound of sugar, a pound of flour, a pound of lard, etc.” (Harris, 1923). To further assist border residents, local immigration officials developed an exemption to the Passport Act of 1918.<sup>6</sup> In

<sup>6</sup> For an account of these interagency disputes see Kang (2005: 44-45).

lieu of a passport, U.S. citizens and foreigners who lived in close proximity to either side of the border and who frequently crossed the border for “legitimate pursuits” could receive a temporary pass or border crossing card (Confidential Instructions..., 1918).

Although southwestern immigration officials created new policies for the benefit of border communities, they were not beholden to local interests. They had their own administrative reasons for pursuing alternative policies, believing that these would spare inspectors from hearing on a case-by-case basis the thousands of daily pleas for exemptions to the new laws. But instead of making things easier, the literacy test waiver, border crossing card, and farm labor program only made things worse. The border crossing card and temporary admissions program placed a huge new population under the administrative supervision of the Bureau of Immigration. Migrants, including agricultural laborers, border crossers, and U.S. citizens, among others, that the bureau once ignored, now had to be processed, surveyed, and policed (Berkshire, 1920). Under the farm labor program 72,862 Mexican farmworkers were admitted (Reisler, 1976, 38).<sup>7</sup> Upon the inception of the Passport Act, one State Department official estimated that 100,000 to 200,000 border crossers would need to obtain appropriate border crossing identification, be it in the form of passports or border crossing cards, among other documents (Totten, 1918: 12). Bureau figures further attest to the heavy workload created by the Passport Act. Between September 15, 1918 and June 30, 1919 alone, the El Paso district office issued 65,515 border crossing cards to U.S. and Mexican nationals living on both sides of the border (Harris, 1919a, 1919b).

While the bureau undertook extensive efforts to implement the Immigration Act of 1917, the Passport Act of 1918, and the exemptions to both statutes, it conceded that those efforts could not succeed without more money, manpower, and materiel.<sup>8</sup> This is not to say, however, that southwestern immigration officials gave up (Kang, 2005: 45). Instead, those who administered the passport laws and the border crossing cards, inspectors who issued literacy test waivers, and inspectors who tried to enforce the provisions of

<sup>7</sup> The bureau, however, doubted the accuracy of these figures. Lacking the personnel to keep track of agricultural admissions, the bureau relied on the accounting of employers who were believed to be lax in their administration of agricultural laborers (Bureau of Immigration, 1920: 427).

<sup>8</sup> For an account of the Bureau of Immigration’s efforts to enforce the Passport Act, see Kang (2005: 35-38).



the agricultural labor program independently concluded that a roving patrol unit—a border patrol—was necessary for effective immigration law enforcement. The U.S. Department of Labor (USDOL, 1918) reported the need for more manpower to track farmworkers once they have been admitted to the United States; Assistant Supervisor Harris (1918b) proposed a mobile immigration force in response to problems created by passport law enforcement; the Bureau of Immigration (1918: 319) issued a general call for border patrol; the Bureau of Immigration (1919: 26) called for a “patrol service” in response to illegal Chinese and Japanese immigration; and the Bureau of Immigration (1921: 12) called for a border patrol to assist in enforcement of the Act of May 19, 1921 (popularly known as the Quota Act of 1921). This consensus reflected their shared understanding that taken literally, the task of closing the nation’s borders to unwanted immigrants was not feasible. As a result, in the minds of these immigration officials, immigration law enforcement needed to take place at the border itself and beyond it.

Created in 1924, the Border Patrol would assume a major role in the enforcement of the immigration laws along the U.S.-Mexico border. As the agency’s inspection force manned the ports of entry, the Border Patrol would monitor the spaces between and beyond them. Yet, like their counterparts in the immigration inspection force, patrol officers faced numerous challenges to achieving their law enforcement mission. The sheer expanse and harsh environmental conditions of the southwestern borderlands, as well as a persistent lack of money and manpower, rendered the mobile surveillance of the borderlands a daunting task. The new unit also faced tremendous opposition from border residents who, as they had during World War I, continued to protest the passage of new immigration laws, including the Immigration Act of 1924, which created the national origins quota system; the Appropriations Act of May 28, 1924, which created the Border Patrol; and the Act of March 4, 1929, which created the first criminal penalties for undocumented immigration (*U.S. Stat.*, 1924a and 1924b; 1929). These measures, border residents argued, threatened a regional economic boom that resulted from the emergence of leisure industries in Mexican border towns that catered to thirsty U.S. Americans escaping the strictures of Prohibition.<sup>9</sup> In

<sup>9</sup> On the economic impact of Prohibition on the borderlands, see St. John (2009, 2011); Langston (1974); Klein (1990); Martínez (1978); Kearney and Knopp (1995); Buffington (1994); and Kang (2017: 37-44).

response, immigration inspectors at the gate, once again exempted border residents from these measures and helped to transform the border into a binational socioeconomic zone demanded by local residents (Kang, 2017: 41-44). Faced with these enduring obstacles, the Border Patrol recognized that it would have to assert its own vision of the border. Through the exercise of its administrative discretion and legislative reform, the unit redefined the border in its own terms as a vast policing jurisdiction in which it could exercise sweeping powers to pursue, apprehend, and expel immigrants.

For much of its history, Border Patrol officials from the Southwest actively participated in national debates regarding the scope of the unit's authority and, on occasion, its very existence. In the process, the patrol, as well as its supervisors within the INS, lobbied federal policymakers to modify the nation's immigration laws to the unit's advantage. Indeed, shortly after its creation in 1924, the Bureau of Immigration discovered that the statute creating the Border Patrol, the Appropriations Act of May 28, 1924, neglected to confer upon the unit the authority to enforce the laws regarding undocumented entry. On this problem, the commissioner general wrote, "If the Bureau is right in its understanding of the matter, the border patrols are now without the slightest authority to stop a vehicle crossing the border for the purpose of search, or otherwise, nor can they legally prevent the entry of an alien in violation of law" (Bureau of Immigration, 1924). In this context, rank-and-file officers in the borderlands devoted the bulk of their days to enforcing the nation's Prohibition laws vis-à-vis U.S. citizens. Alarmed by the possibility that overzealous officers might face lawsuits from U.S. citizens, bureau leaders worked with members of Congress to amend the statute in 1925 and thereby redirect the focus of the Border Patrol from citizens to immigrants (Kang, 2017: 46-51).

Yet, the 1925 statute raised more questions for the Border Patrol than it answered. For twenty years, policymakers and the patrol disputed the extent to which the new statute gave the unit the ability to enforce the immigration laws not only at the international boundaries but also in the nation's interior. The law's drafters conceived of the patrol's authority under the new statute in restricted terms. Recognizing that the 1925 law allowed the patrol to pursue, arrest, and detain undocumented immigrants without a warrant, they quelled apprehensions that the measure might enable officers to skirt the Fourth Amendment prohibition against arbitrary arrests, searches, and seizures,

a stipulation that protected all individuals, including immigrants, on U.S. soil. More specifically, they stressed that the patrol's new authority only applied to non-citizens detected as they crossed the international borders where the federal courts had justified the suspension of the Fourth Amendment in the interest of national security and national sovereignty (Kang, 2017: 51-52). This authority, however, would not apply to citizens or immigrants already present in the United States, as Senator Reed of Pennsylvania explained to the members of Congress:

It applies only to the arrest of aliens in the act of entering the country. There has been some doubt about the authority of those men to make arrests. We want to make it very clear that they have no right to make arrests except on sight of a violation of the immigration law as to illegal entry. They have no right to go into an interior city and pick up aliens in the street and arrest them, *but it is just at the border* where they are patrolling that we want them to have this authority. . . . It must be in sight of the officer himself; otherwise he has to get a warrant. We are all on the alert against granting too much power to these officials to act without warrant. (U.S. Congress, 1925: 3202) [Emphasis added.]

By defining the patrol's authority in this limited way, policymakers clearly aimed to deter the potential abuse of power by the mobile unit and protect the rights and well-being of immigrants and citizens.

For contemporaries, the idea that the Border Patrol's jurisdiction rested at the international boundaries would not have been novel. Indeed, as the Border Patrol interpreted the 1925 statute to its own advantage by engaging in warrantless pursuits, arrests, and detentions hundreds of miles north of the border, policymakers demanded restraint once again (Ngai, 2004: 290; Kang, 2017: 52). Concerned about the negative impacts of the patrol's operations on immigrants and citizens, congressional legislators proposed multiple bills that would drastically trim the boundaries of its turf and, in effect, eliminate the Border Patrol (Kang, 2017: 58-61). In the late 1920s and early 1930s, they specifically called for the transformation of the Border Patrol into a U.S. analogue of the Royal Canadian Mounted Guard or a police force that would enforce all federal laws—but only at the international borders (U.S. Congress, 1926: 12-13, 19-20). As one lawmaker explained, “You will not have a border patrol operating twenty miles inside the United States. You will have a border patrol where it belongs, and that is on the border” (U.S. Congress, 1930: 4-5).

Although none of these bills passed due to disagreements about their funding, the Immigration and Naturalization Service (INS) would revamp the Border Patrol in the 1930s. In response to the domestic and international outcry regarding the deportation drives conducted by the Hoover administration, the Roosevelt administration commissioned a series of external and internal investigations of the INS (Kang, 2017: 63-77). One internal study of Border Patrol operations in the Southwest concluded that these officers were “as a whole a different type than the immigration inspectors” (Coleman, 1933). They frequently resorted to aggressive interrogation tactics, including verbal and physical assault, to force migrants to confess that they had engaged in the act of illicit entry (Coleman, 1933). Meanwhile, the INS also requested an opinion regarding the legality of the unit’s interior enforcement operations. It concluded that while the Border Patrol could conduct warrantless arrests at the international borders, the same conclusion did not apply to the nation’s interior, where “there is no authority under existing law to arrest or detain an alien prior to the receipt of a proper warrant” (Winings, 1933).<sup>10</sup> Taken as a whole, these investigations of the Border Patrol led the INS commissioner general to conclude that it often conducted apprehensions “without due regard for our constitutional procedure and that there is, in many of the cases, distinct lawlessness.” As part of his broader effort to reform the INS and protect agency employees from liability, the commissioner ordered the Border Patrol to end its practice of arresting immigrants without warrant (except in certain cases) and its vehicular stops beyond the border (Bureau of Immigration, 1933).

In the 1930s, local patrol officials paid lip service to the commissioner general’s reforms and curtailed their interior operations. But by the 1940s, these reforms gave way in the face of the unprecedented logistical demands of the Bracero Program. Initially conceived as an emergency guest worker program that would only last the duration of the war, at the urging of southwestern agribusiness, it lasted for twenty-two years and employed 4.5 million Mexican nationals. The program also provided the stimulus for the undocumented entry of another five million Mexican workers. Lacking the money and manpower to manage the sheer volume of new arrivals, local Border

<sup>10</sup> Even the bureau’s internal procedures, published as the *Immigration Laws and Rules*, explicitly prohibited the detention of foreigners without an arrest warrant.

Patrol officials used this predicament to enhance their enforcement capacities once again.

Key to this campaign was Grover C. Wilmoth, the El Paso Immigration and Naturalization district director, who, in 1941, began pursuing legislative amendments on behalf of the Border Patrol. For several years, Wilmoth worked with the attorney general's office to plan and draft what would become Public Law 613, the first revision of the Border Patrol statute since 1925 (*U.S. Stat.*, 1946). While the measure was the subject of little debate in Congress, the INS correspondence files document the extensive role played by southwestern agency officials in shaping the law.

Through legislative reform, Wilmoth aimed to reverse the changes instituted by the INS in the 1930s. Indeed, by the 1940s, southwestern INS officials openly criticized the Depression-era attempts to make the Border Patrol follow the letter of the law; before the 1944 Annual Service Conference, a gathering of leaders from across the country, Wilmoth himself remarked, “[I do not] think there were as many inequities perpetrated under our system as they would have us believe” (Wilmoth, 1944). The warrant requirement was a particular focus of their attacks; since it cut Border Patrol apprehensions in half, local INS leaders argued that it reduced the effectiveness of the agency as a whole (Wixon, 1933; Berkshire, 1934; Wilmoth, 1934b, 1934c; Kelly, 1934; Bureau of Immigration, 1934). At the same time, Wilmoth fought for legislative amendments that would allow the Border Patrol to skirt the Fourth Amendment—specifically, its prohibitions against warrantless arrests and unreasonable searches and seizures—on private property and the nation's highways. In broader terms, Wilmoth aimed to settle the ambiguities of the 1925 law; if adopted by Congress, Wilmoth's proposed statutory language would clarify and enhance the legal authority of Border Patrol officers to enforce the immigration laws in the nation's interior.

Wilmoth pursued amendments to the 1925 Border Patrol statute not only to augment the legal authority of his agents but also to provide legal cover for what he and other Border Patrol officials had openly and repeatedly characterized as dubious legal practices. Although the patrol designed and initiated an aggressive interior enforcement strategy shortly after the passage of the 1925 law, in 1930 INS leaders testified before members of Congress that the legal authority for such operations was unclear (Hull, 1930; Harris, 1930). The internal and external investigations of the Border Patrol conducted in the 1930s

further underscored the questionable legal status of the unit's practices. Finally, by the 1940s, Border Patrol officials admitted that they ignored the law while conducting their vehicular stops and checks beyond the border. As Border Patrol Supervisor Kelly wrote to the INS leadership, "[patrol] officers' authority to stop vehicles promiscuously on the highways leading away from the border has been questioned innumerable times, yet we have continued to act without proper authority" (Kelly, 1941). He further observed that even though the Border Patrol statute stipulated minimal standards for car searches—Border Patrol officers had to have some reason to believe that the vehicle was transporting undocumented immigrants—in practice, Border Patrol officers stopped cars with little or no cause or suspicion in an area 100 miles north of the border: "As you are aware, our methods of operation have been such during the past ten years, and from the period between 1924 and 1931, that in no one case out of one hundred could our officers show reasonable cause to believe that the vehicles they stop contain aliens who are being brought into the United States" (Kelly, 1944). In response to this admission, Wilmoth and the Border Patrol could have chosen to train officers to abide by reasonable cause standards, but they did not. Instead, they sought a legislative amendment to legitimize standing procedures, despite their uncertain legality.

Southwestern INS officials took comfort in the fact that Public Law 613 restored the former status quo. It terminated the reforms of the 1930s and sanctioned practices that agency officials themselves once characterized as lawless. The new statute specifically authorized immigration officials to engage in the warrantless arrest of undocumented immigrants beyond the border. It also freed Border Patrol officers from determining probable cause or reasonable suspicion prior to a car stop. Instead, they were given broad authority to conduct stops and searches within a "reasonable distance from any external boundary of the United States." By the following year, INS officials used their administrative discretion to define this reasonable distance to be 100 air miles from the border (Kelly, 1947). Yet, this definition was negotiable rather than fixed. If southwestern immigration officials could establish the existence of "unusual circumstances" in their districts, INS leaders in Washington, D.C. would authorize the extension of the reasonable distance rule beyond 100 air miles. As a result, cities such as Austin, San Antonio, Phoenix, and Albuquerque, among others, were declared to fall within a reasonable distance of the U.S.-Mexico border.

Wilmoth had hoped that Public Law 613 would include language that secured the Border Patrol's ability to conduct warrantless searches of private property, particularly the farms and ranches next to the international boundary. But he withdrew this proposal due to concerns that it would trigger the opposition of southwestern farmers who, in turn, would block the passage of the measure in its entirety (Winings, 1945). A few years later, the INS continued to lobby for the amendment, and by 1951, it achieved the passage of a federal law authorizing immigration officials to search private land (but not dwellings) without a warrant in a 25-mile zone adjacent to the border and nested within the 100-mile zone (Kang, 2020: 144-150).

Over the course of the twentieth and twenty-first centuries, the Border Patrol's own vision of its jurisdiction and authority continued to face challenges. Legislators tried to check the agency's aggressive policing practices and defend the rights of immigrants and citizens by proposing bills that would shrink or even eliminate the 100-mile and 25-mile zones (Eddington, 2019). Meanwhile, from the time of the foundation of the Border Patrol in 1924, federal courts heard scores of lawsuits filed against it, reminding the public that, despite the language of the Border Patrol statutes, the Constitution still applied to immigrants and citizens at the international boundaries and beyond them (Kang, 2020). Yet, the 100-mile zone remained intact because the U.S. public came to take its existence for granted and often unwittingly adopted the Border Patrol's longstanding view that the zone as well as the agency's highly aggressive policing practices were the law of the land. Given that the Border Patrol's lawmaking activities often remained out of sight, many forgot or never even knew about the contested and troubling origins of Public Law 613. Policymakers created the 100-mile zone not to serve the will of the people or uphold a commitment to constitutional principles and the rule of law. Instead, they abided by the demands of Border Patrol officers in the Southwest who fought to ensure that the practices they had long recognized as illegal became law.

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In the popular and scholarly imagination, the INS in the Southwest functioned as a law enforcement agency, implementing laws drafted by policymakers in Washington, D.C. This essay unsettles this conception, tracing

the ways in which the INS served as a lawmaking body as well as a law enforcement agency. While Congress and the courts provided the outlines of a federal immigration policy, local agency officials articulated that policy in more detail through the regular exercise of their administrative discretion and the preparation of legislative amendments to immigration statutes. Due to these lawmaking endeavors, INS officials in the Southwest generated a distinct and complex immigration policy for the borderlands that simultaneously closed the border to the entry of immigrants, opened it for the benefit of the border economy, and remapped the border as a jurisdiction for the policing of undocumented immigrants. For much of the twentieth century, the INS sustained all three approaches to immigration regulation along the U.S.-Mexico border despite their contradictory purposes. In so doing, agency officials continued to recognize that the economic and social realities of the borderlands rendered impossible the full application of the federal immigration restriction laws and the closing of the U.S.-Mexico border.

The administration of President Donald J. Trump reconstructed the border once again. Even though it recognized the complexities of immigration enforcement along the nation's southern line, particularly its impacts on the region's binational economy and society and U.S. foreign relations with Mexico, the administration chose to pursue a much simpler vision of the border and border enforcement due to its political appeal. Trump understood that the idea of securing the nation's borders in the name of nativism and national security wins votes. In a sharp break with the past, through more than 400 changes to the nation's immigration policies, his administration closed the nation's borders to both undocumented and legal immigrants (Pierce and Bolter, 2020). As a result of this fundamental transformation of the immigration system, the Trump administration dismantled the widespread notion that the United States constituted a nation of immigrants and extinguished the hopes of millions of immigrants, refugees, and asylum seekers that a better life was to be found there.

In response, immigrants, activists, and legal advocacy organizations challenged the administration's stand on U.S. immigration law. Perhaps most prominently, the American Civil Liberties Union (ACLU) filed hundreds of lawsuits, questioning the legality of the administration's policies and raising awareness of their dire humanitarian impacts on immigrants in the United States and abroad (Crary, 2020). In a less publicized but no less important



fashion, residents on both sides of the U.S.-Mexico border, in what has effectively become a local tradition, continued to oppose federal policies such as those issued by the Trump administration and assert their right to have a voice in the development of immigration and border laws (Sanchez, 2019). Their protests serve as powerful reminders that federal immigration laws and policies are neither legal nor just simply because the president says so. Instead, for over a century, the legitimacy and even existence of the nation's immigration laws and agencies have been matters of constant debate. Along the southern line, these debates enabled border residents, both past and present, to maintain the historical status of the U.S.-Mexico border as a borderland.

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