

Aliens and the Immigration Law Mine Field



**Illegal Immigration, Crime,
and Public Policy Symposium
April 5, 2007**

Aliens in a Time of Terror



I.C.E. Initiatives



■ National Security Cases

- Specially trained team of attorneys handle each of these sensitive cases in close coordination with ICE OI JTTF agents

■ Human Rights Abusers

- Only attorneys with specialized training in human rights law assigned to these cases



The War on Terrorism

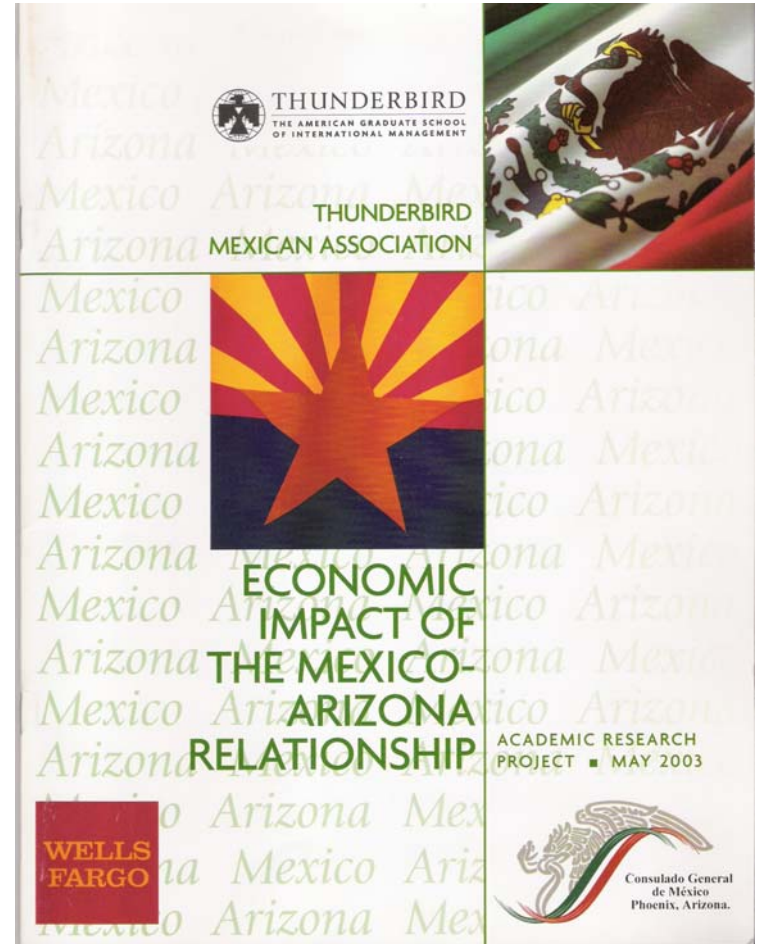
- No Problem Using Immigration Law to Fight Terrorism
- The problem is using the War on Terror to make Immigration Policy

Myth vs. Reality



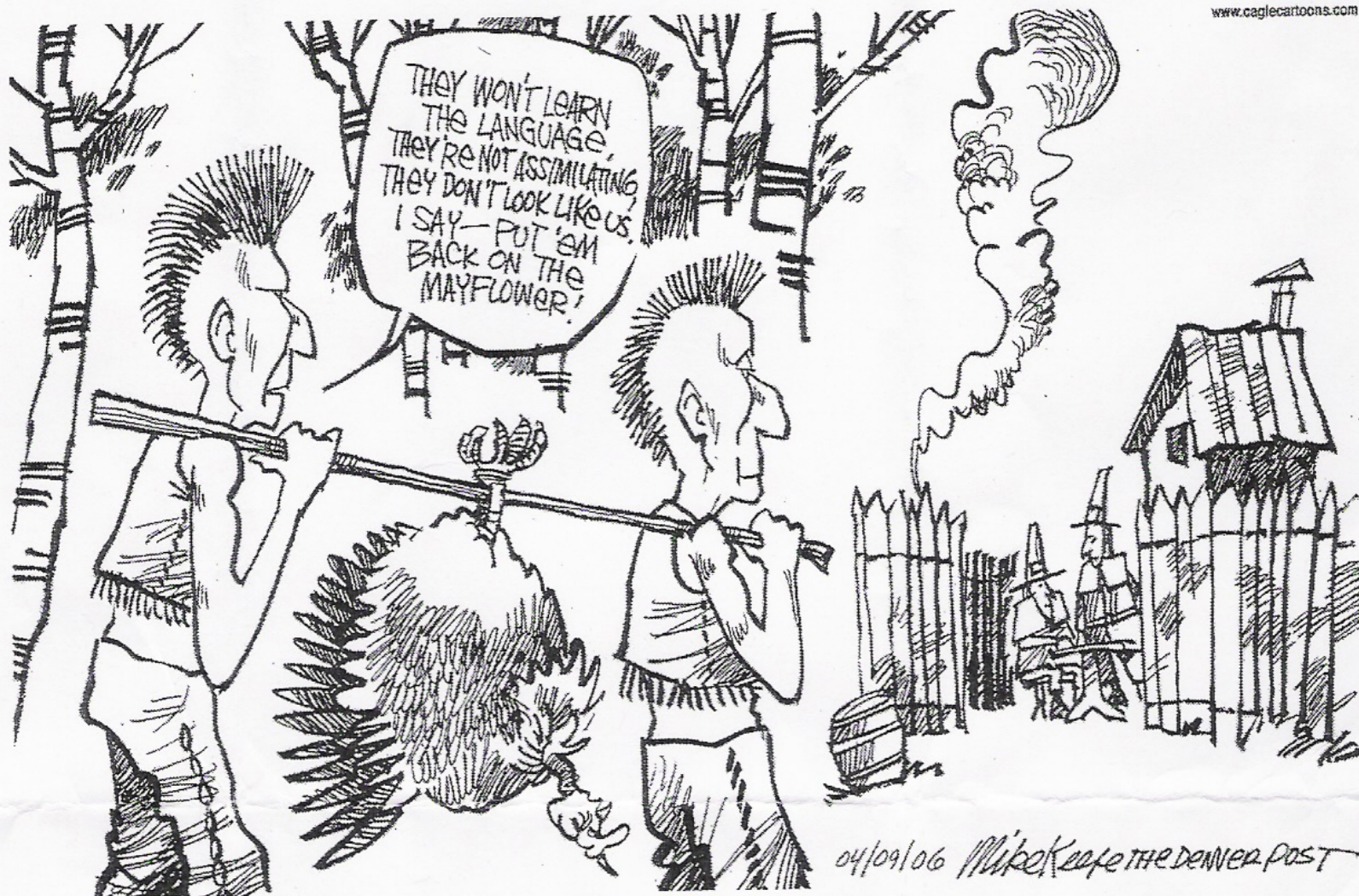
Social Perspectives

- 10.5 mill. Mexican-born people in U.S.
- Just over ½ here legally (5.5 million)
- 150,000 per year enter undocumented
- 22% of Hispanics in U.S. are undocumented Mexicans



PUNCHLINES

www.caglecartoons.com



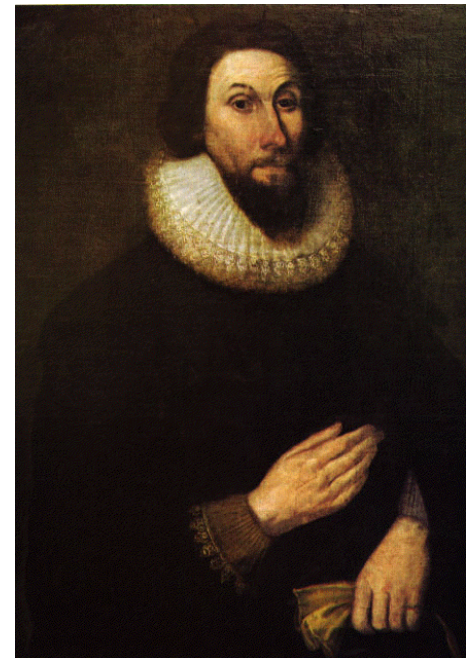
Immigration Law vs. Immigration Aspirations



America: The City on the Hill?



- [Matthew](#) 5:14 ("You are the light of the world. A city set on a hill cannot be hid.").

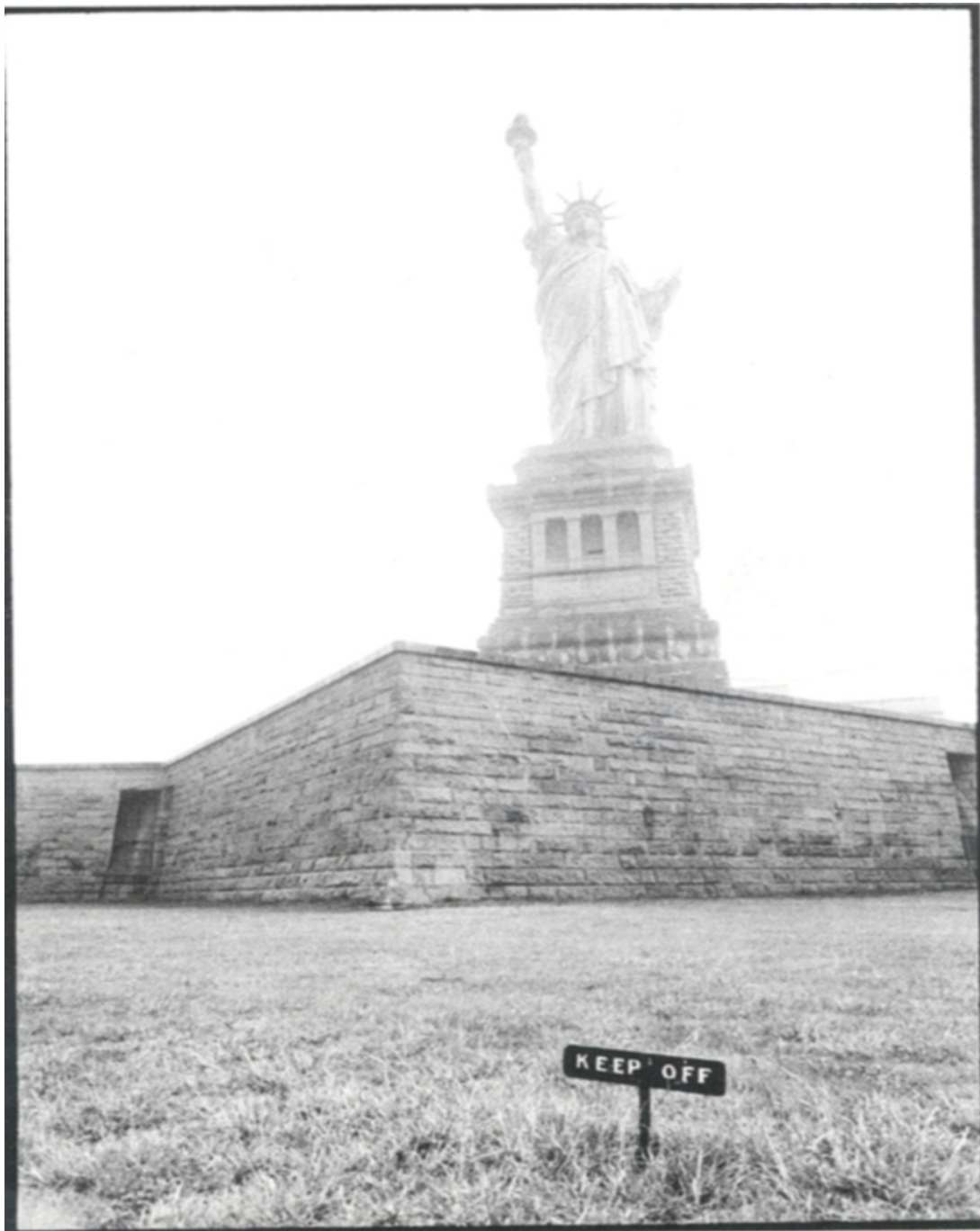




Liberty

*“Give me your tired, your poor,
Your huddled masses yearning to breath free.
The wretched refuse of your teeming shore;
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door.”*

Emma Lazarus



History: Employment & Crime



1920s

- Immigration Act of 1921 – annual limit of 375,000 – the “red scare”
- Immigration Act of 1924 – national quota system to save the “national character.”





1942 – Bracero Treaty

- WWII labor shortages
- Temporary visas for short term workers
- 4.6 million workers to the U.S.
- “leak out” problem with workers working for less than Bracero contract wages and staying illegally

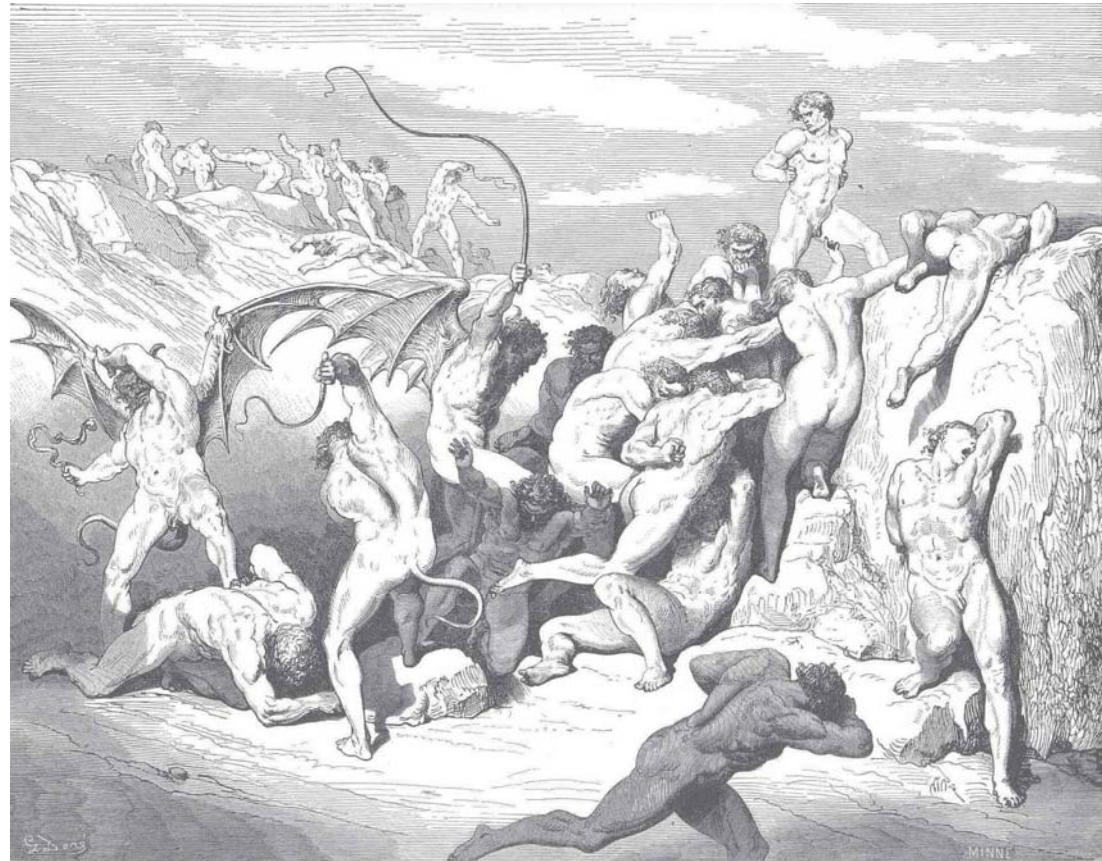


1952

- Mexicans try to negotiate for employer sanctions
- Texas Proviso – harboring becomes a crime but not employing an alien

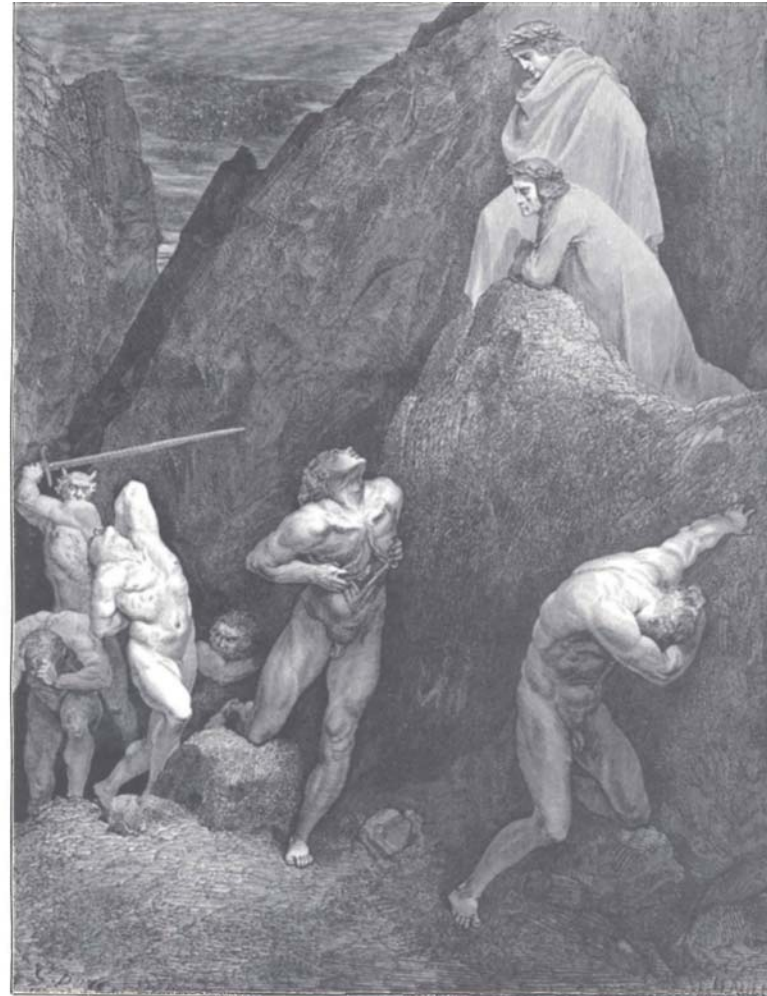
1954

- “Operation Wetback” – INS arrests 1 million workers and deports many with their U.S. born children



1960-1970s

- Mexicans lobby for legal temporary worker programs





1965

- Immigration and Naturalization Act of 1965
 - Limits visas
 - Makes preference for skilled labor
 - Amended in 1976, 1978, and 1980 to restrict Mexican migration

1986

- Illegal immigration declared a “threat to national security” by Ronald Reagan
- Immigration Reform and Control Act of 1986
- Amnesty for 2.3 million Mexicans
- Employer sanctions



1994-94

- NAFTA does not deal with immigration labor issues
- Does provide Visas for small number of high-level intra-country executives





1994

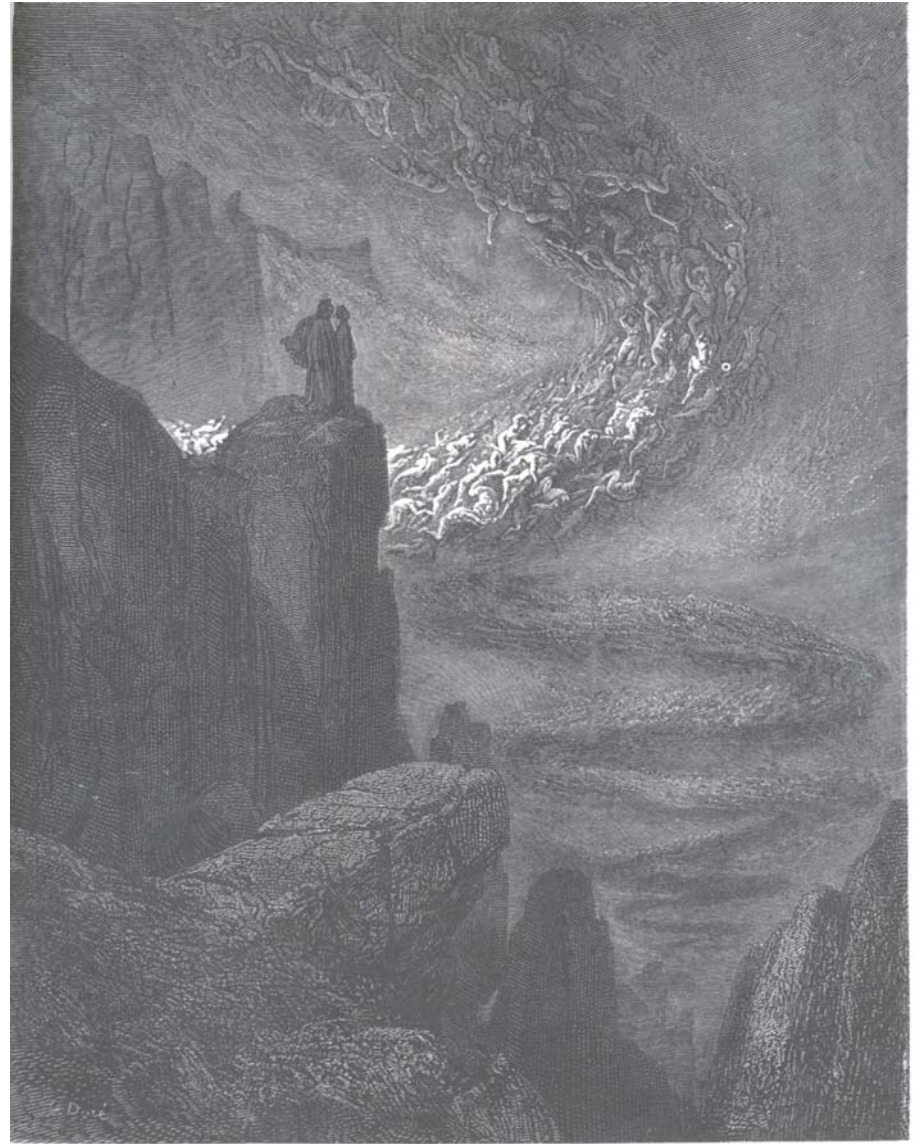
- California Proposition 187 barring illegal immigrants from non-emergency health care and public schools.
- Found unconstitutional



1996

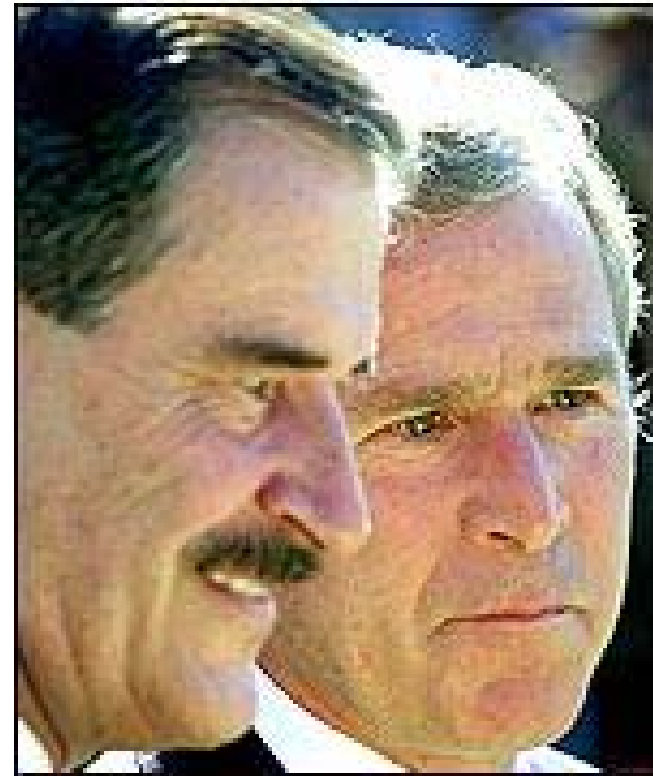
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996
 - Increases penalties on unauthorized migrants
- Protests from Mexicans
- Welfare Act
 - denies even legal immigrants unemployment or health benefits

- INS overwhelmed with citizenship applications



2000-2001

- “NAFTA-Plus” proposed by Pres. Fox suggesting “guest worker” program
- Pres. Bush in agreement with idea



2005



■ Real ID Act

- Makes asylum claims more difficult and allows for the construction of an even larger border fence.
- Prohibits undocumented workers from having drivers license.

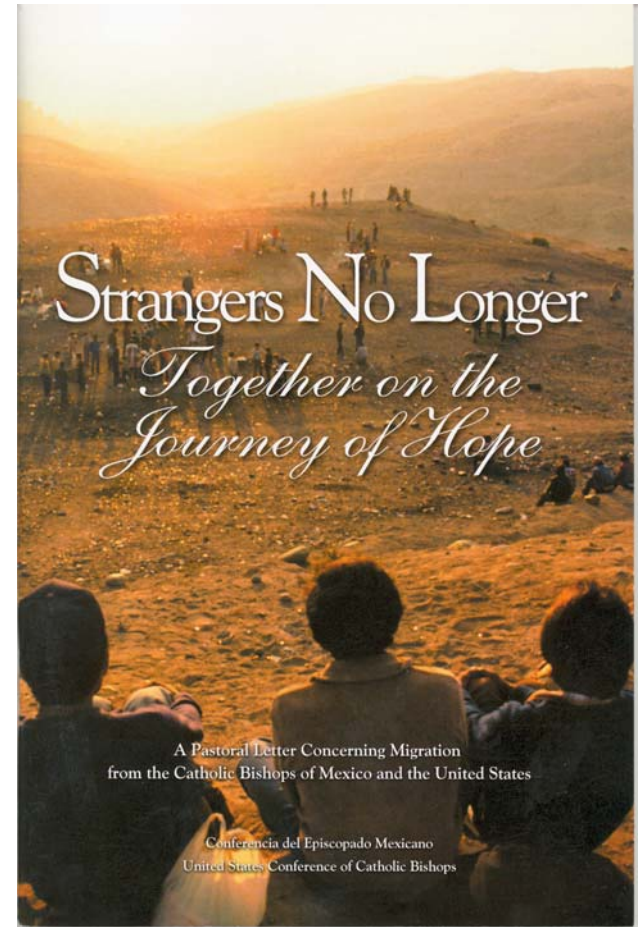
Where undocumented aliens work

- Services – 16%
- Finance – 1%
- Wholesale and Retail – 21%
- Transportation and other – 2%
- Manufacturing – 24%
- Construction – 18%
- Agriculture – 18%



- **“Despite the rhetoric from anti-immigrant groups and some government officials, they labor with the quiet acquiescence of both government and industry.”**

Strangers No More, at
68



Today: Border Life and Slang



-
- ● *Alambrista* – Someone who crawls under the wire, *el alambre*, into the U.S. This is the Spanish for the derogatory “scrapeback,” referring to an alien who crawled under the wire.
- ● *Bajadores* – A group that preys on loads of smuggled aliens, i.e., one smuggling gang stealing the *pollos* of another.
- ● *Bajapollos* – “Border bandits,” those who prey on illegal aliens robbing them and raping women in border towns.

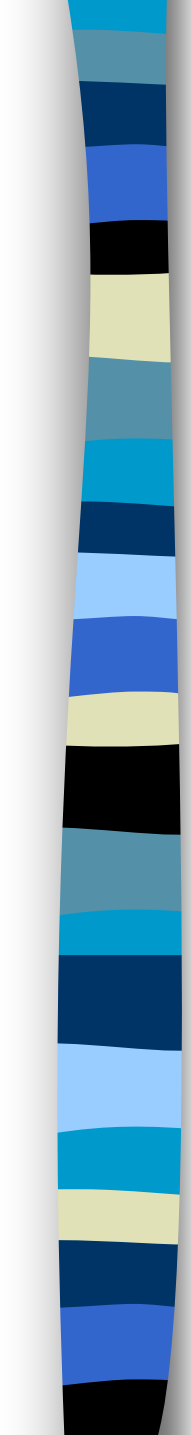


■ • ***Cajuela*** - The Mexican term for car trunk, and a ***cajuelazo*** refers to a trunk load of either illegal aliens or drugs.

■ • ***Clavo*** – Hidden compartments in a car or truck or in the spare tire or a stash house. This has lead to the verb ***Clavar***, “to nail or hammer” being used to say “to stash or to hide.”

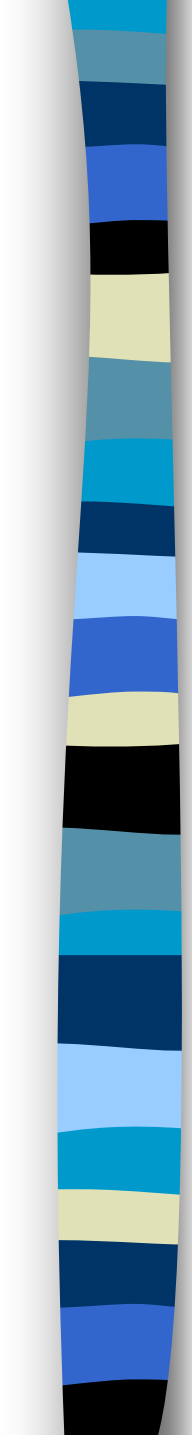
■ • ***Contrabandistas*** – Alien or drug smugglers.



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- • ***Coyote*** - Spanish for coyote and refers to a smuggler. In some areas, smugglers are also known as ***polleros***, or “chicken herders.”
 - • ***Enganchadores*** – “Alien Brokers,” people in border towns that connect those hoping to cross the border with smugglers.
 - • ***Merca*** - Is short for ***mercancia***, “merchandise,” and can refer either to illegal aliens or drugs.
 - • ***Mero, mero*** - The head of the operation of a criminal operation, “the boss” or “big guy.”

- ● ***Mojado/Wetback*** - The derogatory “wetback” has a Spanish equivalent, ***mojado***. This term originally referred to aliens who swam across the Rio Grande or Rio Bravo into the U.S. In a play on words, an illegal alien is often called a ***mojarra*** (a marine bass) in an attempt to cover up illegal activity. (The words ***mojado*** and ***mojarra*** sound similar in Spanish).



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- • *Pateros* - On the Texas/Mexico border at the Rio Grande and Rio Bravo, smugglers are known as *pateros* because the raft used to transport the aliens across the rivers is a *pato* (duck).
 - • *Pollo* - Spanish for chicken and is a slang term on the Mexican border for people being smuggled into the U.S.
 - • *Quemar* – Literally to “burn” a car or driver, i.e., driving a car across the border checkpoint before crossing the load of drugs or *pollos*. It also can mean to send a decoy person to swim across the river to see if the Border Patrol will respond.

- • *Snakehead* - The head of a Chinese smuggling operation. The *snakehead* is far away in China, with the smuggling operation, i.e. the length of the snake, far from him extending all the way into the United States.
- • *Yola* - Slang related to alien smuggling in Puerto Rico district cases describes a smuggling boat from the Dominican Republic as a *yola*, the English translation of Yawl. This would make a yawl passenger a *yolero*

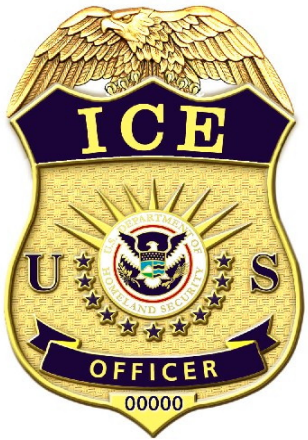


Federal Enforcement

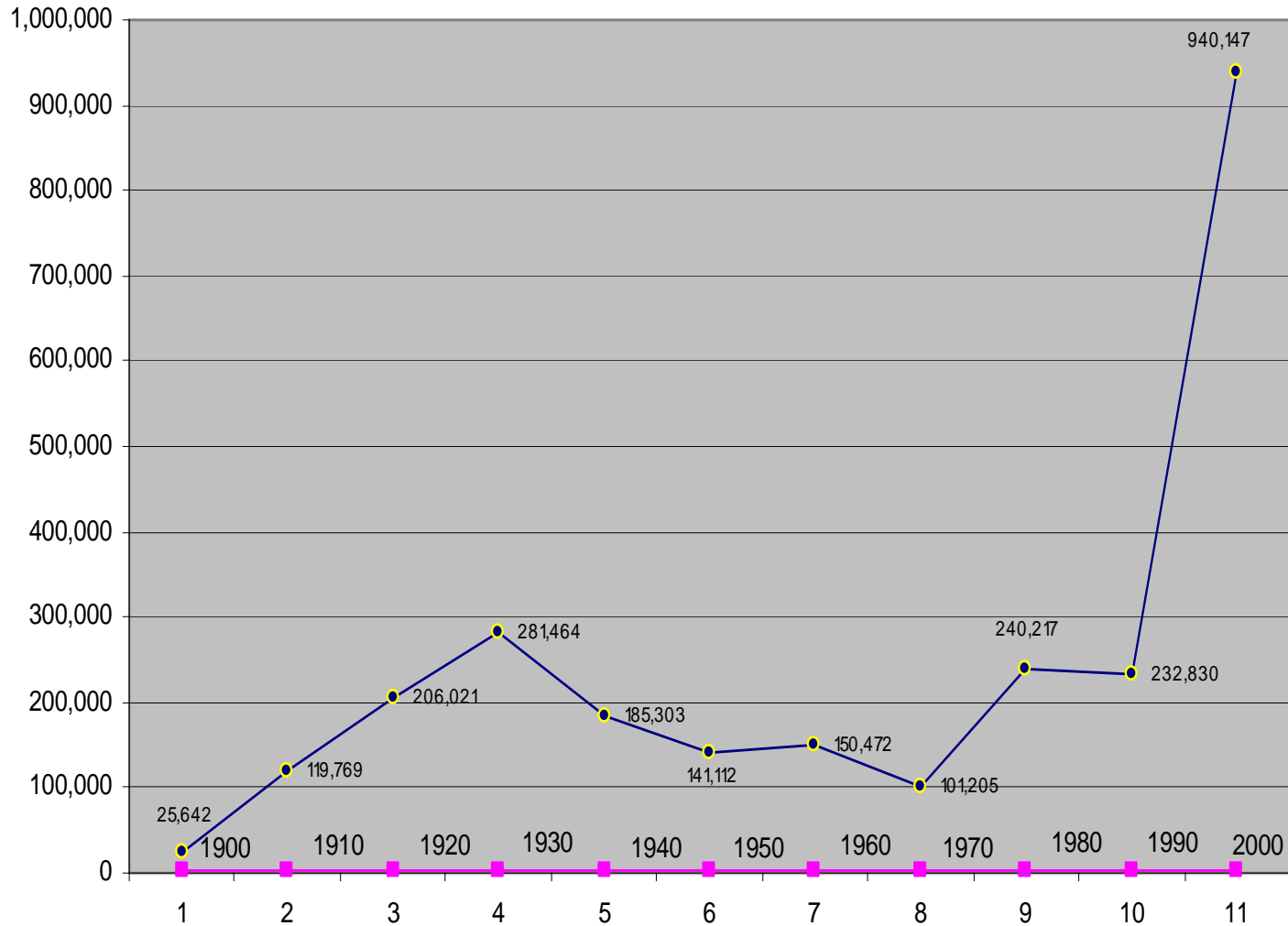


U.S. Immigration
and Customs
Enforcement

Arizona F



Formal Removals from the United States



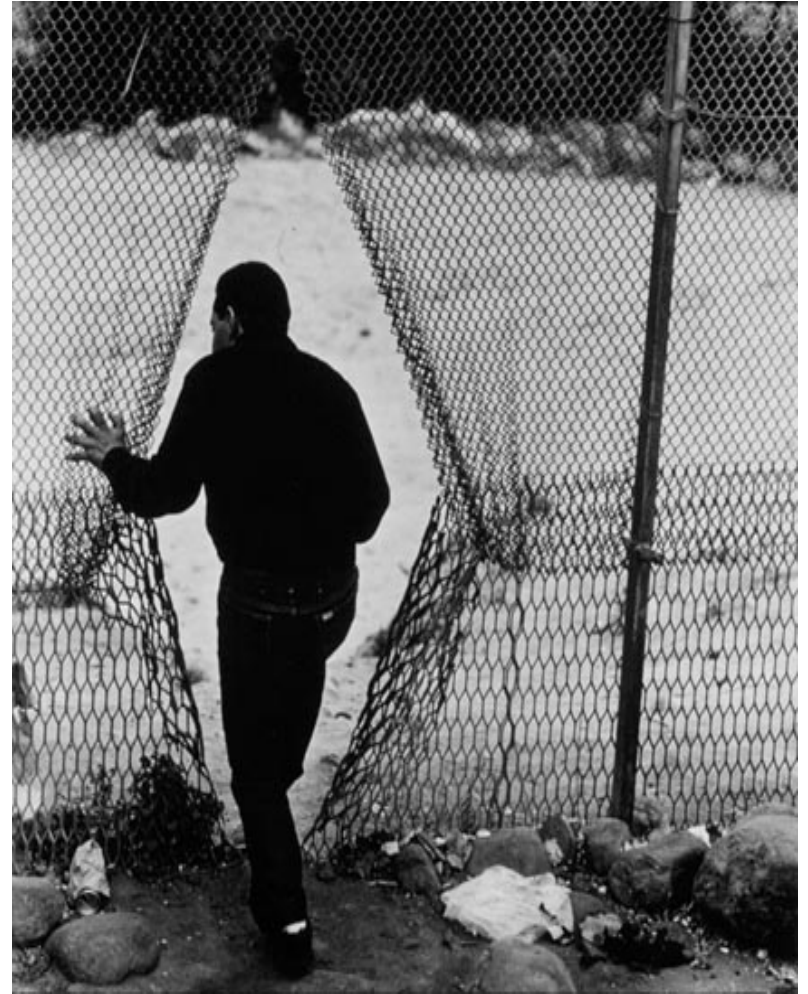
Criminal Basis of Deportation

- Moral Turpitude Acts
- Moral Turpitude Misdemeanors
- Moral Turpitude Felonies
- Weapons Offenses
- Domestic Violence Crimes
- Alien Smugglers, Imm. Fraud, Voters
- Drug Offenses
- Aggravated Felons



Why they come back?

- A deportation may result in “loss of both property and life; or all that makes life worth living.”
 - *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).



8 U.S.C. § 1326

- 2 year max for reentry
- 10 year max for reentry after a felony
- 20 year max for reentry after an aggravated felony

§2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense committed for profit, increase by 16 levels;

(B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels;

(C) a conviction for an aggravated felony, increase by 8 levels;

(D) a conviction for any other felony, increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. § 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the

Federal Sentencing Guidelines

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9

Need for study on deterrence

Severity of Punishment

VS.

Surety of Punishment

40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

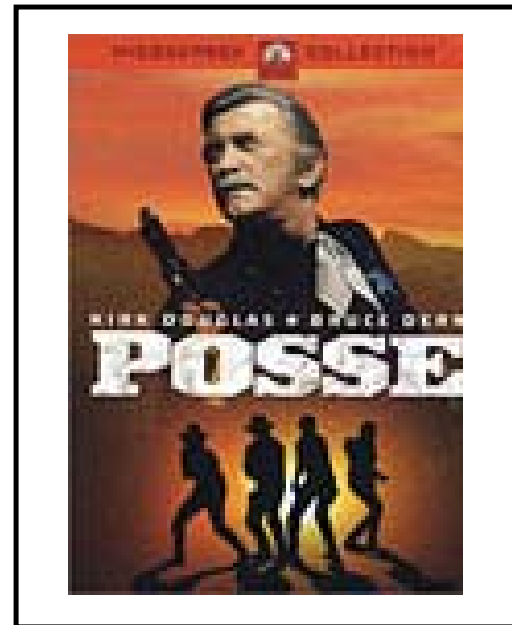
Arizona Legal Issues



- **State Alien Smuggling Statutes –
– Criminalizing *Pollos***
- **Proposition 100 – Bondless Aliens**
- **State Officers Enforcing Federal Immigration Law**



**“We need a posse
to head ‘em off at
the pass!”**





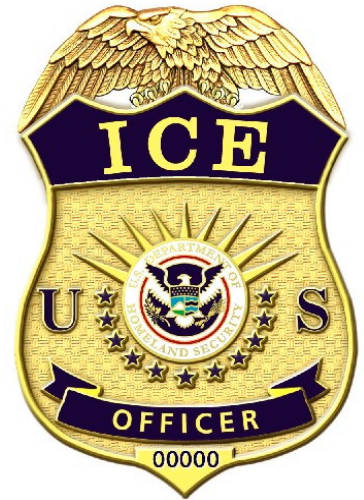
We love
prosecuting
Pollos!



- State smuggling statute
- Reasoning: If a *pollo* pays someone to bring himself across, he has “conspired” to break the law.



**“Give that guy
another Star!”**



- Over 30+ deputies to enforce immigration law



Law Enforcement Problems

- Responsibility of enforcing new law
 - E.g, Taking Statements
- Siphoning off of Spanish speaking officers
- Source of Information lost – Community policing
 - See Chief Corwin
- Cuts against Human Trafficking Prevention
 - See Paul Pinon

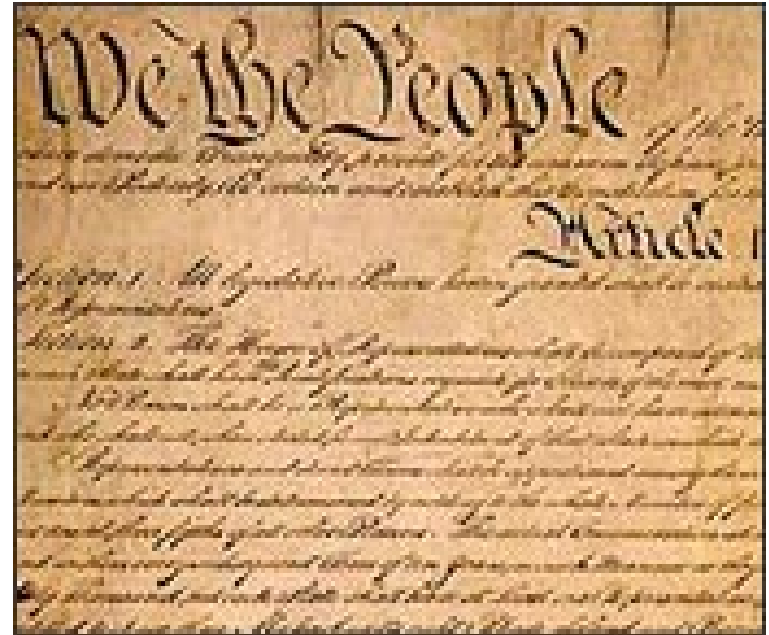
Bondage



- Any alien charge with a serious crime is not bondable – Prop. 100
- Problems:
 - Arizona Supreme Court order – Full hearing in 24 hours on “alienage”
 - Burden of proof on alienage
 - Using the alien’s statements

Local Enforcement: Constitutional Concerns

- Civil Rights
- Equal Protection – 14th Amend
- Article I, § 8, cl. 11
Uniformity Clause
“Congress shall ...
establish a uniform rule of
nationalization”





Local Enforcement: The Costs of Success

- Economic Relationship between Arizona and Mexico
- Worth \$13.6 billion
- \$8 billion for Arizona; \$5.5 billion for Mexico

Favors Arizona by \$2.5 billion

The Economic Relationship

■ Costs of Mexican Immigrants

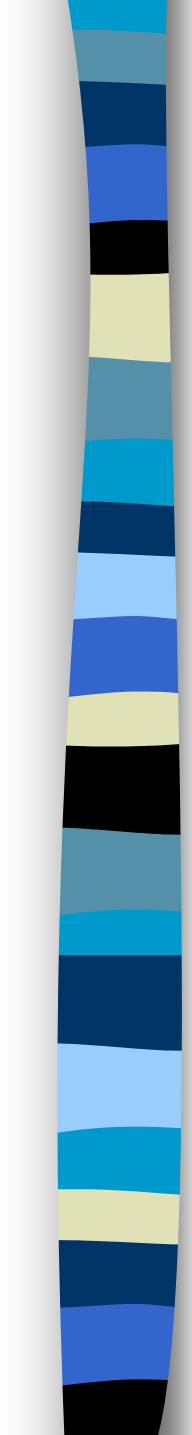
vs.

■ \$539 million in taxes

Fiscal surplus = \$318 million

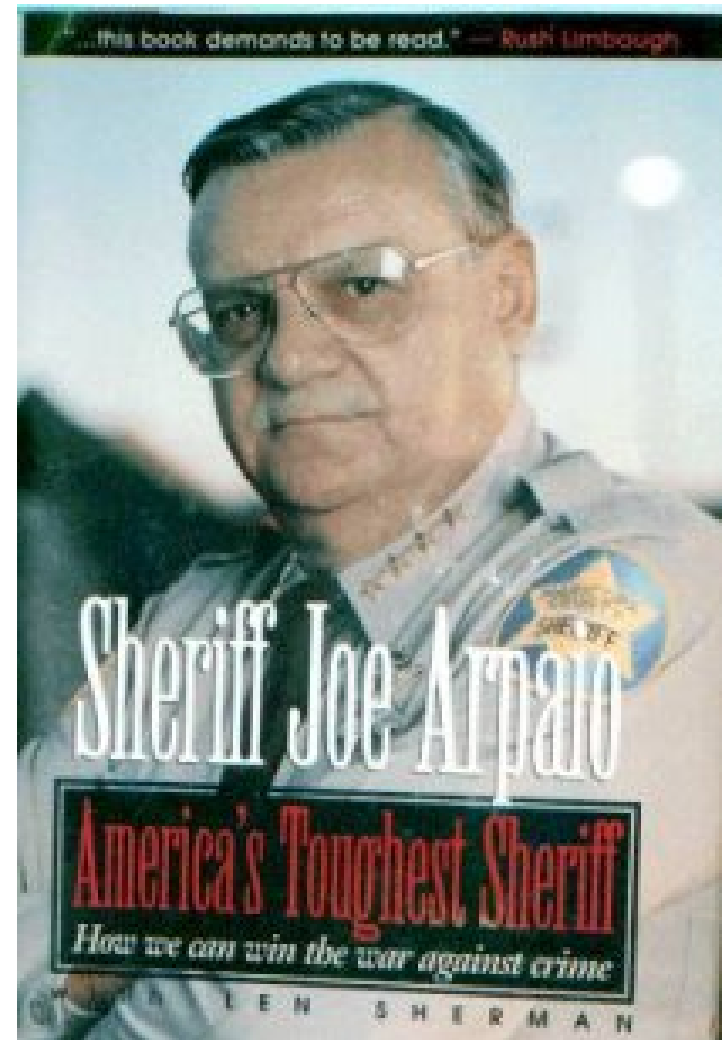
■ Uncompensated Health Care Costs
= \$31 million

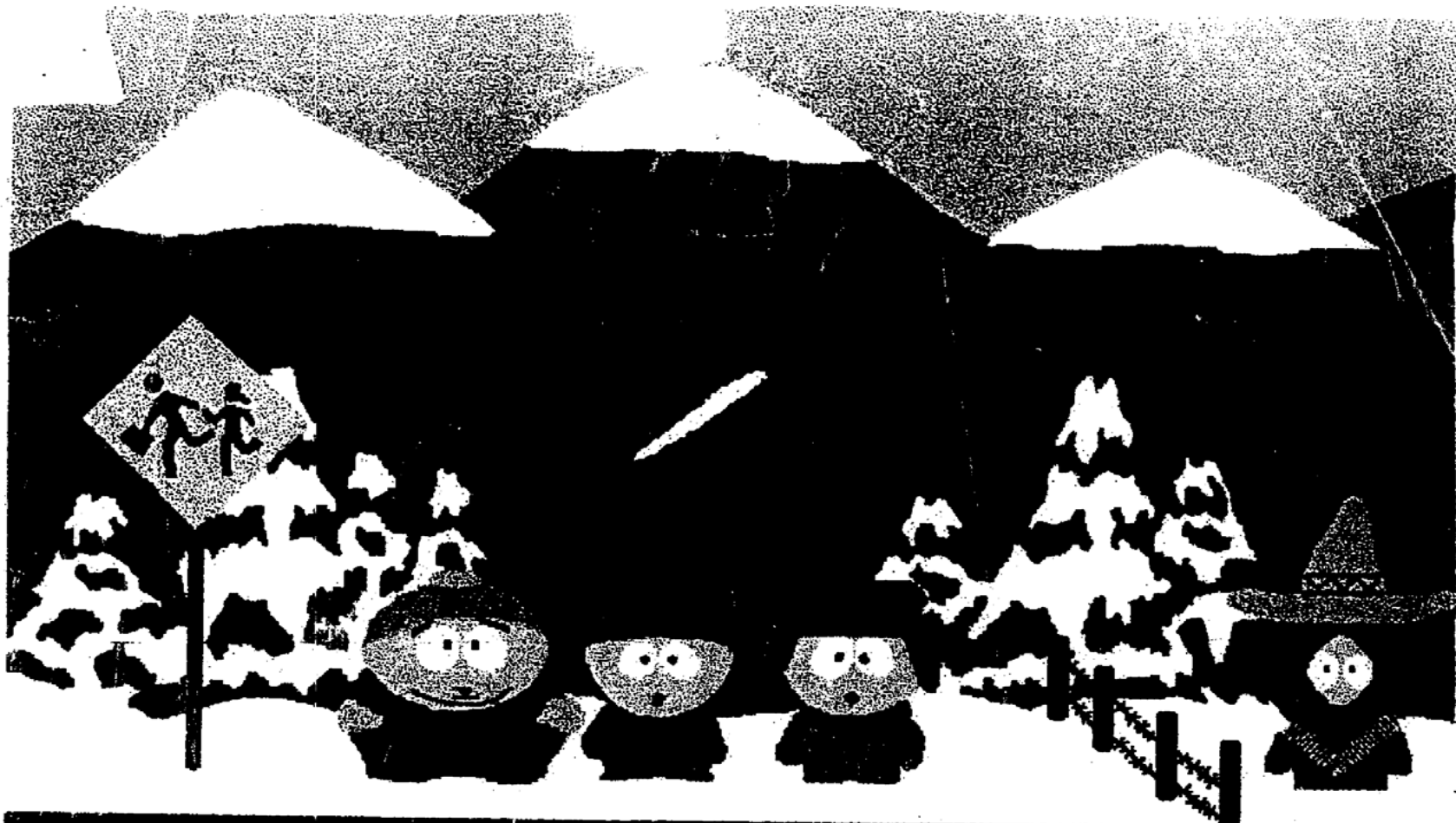
**Example 2: Social Security –
Unclaimed Remittances**



■ Dealing with the Problem

vs





"Oh my god! They've deported Kenny!"

"You bastards!"