



The

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Borders, Trucks, Citizenship, Sanctuary

Unsafe Life on the Border

The television news media bring us daily, graphic reports from Iraq, where valiant Americans are battling danger, death and destruction of property. So why don't we get coverage about similar dramatic and scary confrontations taking place on the U.S. border?

The compelling truth about the danger and devastation on America's southern border is crying out to be told. Americans need to hear from the likes of Erin Anderson, whose family homesteaded in Cochise County on the Arizona-Mexico border in the late 1880s.

Ms. Anderson says these American pioneers can't live on their own property any more because it's too dangerous. They can't ranch it. They can't sell it. It isn't safe to go on their own property without a gun, a cell phone, and a two-way radio. Their land has been stolen from them by illegal aliens while public officials turn a deaf ear.

Cochise County in the Tucson sector is the major smuggling route for illegal aliens and drugs, and literally thousands cross every night. The Border Patrol admits to apprehending one out of five illegals, but many think it's only one out of ten.

The number of illegal aliens apprehended on the southern border jumped 25% in the first three months of 2004 compared with last year. In Tucson the increase was 51%, in Yuma, it was 60%. The news of President Bush's amnesty proposal spread like wildfire as far south as Brazil. After Border Patrol agents reported that the illegals said the amnesty proposal had prompted them to come, U.S. agents were told not to ask the question any more.

Ms. Anderson says that American landowners watch in horror as their lands, water troughs and tanks, and animals are destroyed. The daily trampling of thousands of feet has beaten the ground into a hard pavement on which no grass will grow for the cattle.

Places that the illegals use as layover sites, where they rest or wait for the next ride, are littered with mountains of trash, garbage, open latrines, and plastic bags, diapers and wrappers of all kinds. When indigenous wildlife and cattle

eat the plastic and refuse, they die, so the residents try to clean up the sites as often as they can.

The large number of discarded medicine wrappers indicates the prevalence of disease among the illegals. It is estimated that 10% of all illegals are carriers of Chagas, a potentially fatal disease that is widespread in Central America.

Sometimes the Americans who clean up the sites pick up pocket trash: scraps of paper with the name and phone number of the illegal alien's destination in the United States. This indicates that these border crossings are a very well organized migration.

Other suspicious items picked up by local residents include Muslim prayer rugs and notebooks written in both Arabic and Spanish. These items came from OTMs (Other Than Mexicans) and a subcategory called Special Interest Aliens, who are illegals coming from terrorist sponsoring countries.

The increased crime rate is frightening. Arizona has the highest rate of car theft in the nation, and residents risk home invasion and personal attacks. The increase in violence is very intimidating to American residents. They are afraid to speak out because someone takes note of who they are and where they live, and gives that information to smuggler cartels in Mexico.

People-smuggling by men known as coyotes has piggybacked on the already well established drug smuggling networks and infrastructure, and has become the third largest source of income for organized crime. Drug smuggling and human smuggling are now interchangeable.

Smuggling has become a recognized industry in Mexico. The smuggling route is very mechanized, and some northern Mexican villages have become known as smuggling industry towns. Illegals fly or take a bus from anywhere in Mexico or Central America to an industry town like Altar in the northern region. They are driven to the Arizona border, walk a few miles across the border, and then are picked up by shuttle buses which take them north to Tucson or Phoenix.

Shuttle buses are common carriers, so they are not required to ask for citizenship ID as the airlines do. Often the coyotes take their passengers to stash houses in Phoenix and then hold them for ransom even though they have already paid their smuggling fee.

People smuggling is so lucrative and pervasive that it is corrupting some local American high school kids. Youngsters can make thousands of dollars a week by picking up illegal aliens on the road and driving them to the Phoenix airport.

When is the Bush Administration going to put troops on our southern border to stop these crimes, and when are the media going to interview Erin Anderson and other Arizonans so the American people can know what is really going on?

NAFTA Override U.S. Constitution?

The constitutional issues involved in NAFTA (the North American Free Trade Agreement), passed a decade ago, have just ascended the ladder to the U.S. Supreme Court. Arguments were heard April 21 on whether the non-U.S. tribunals created by NAFTA can require our government to violate federal law in order to comply with foreign rulings.

The issue is whether Mexican trucks can have open access to U.S. highways even though they don't comply with U.S. regulations. For several years, this has been a controversy in Congress, where the decision ought to be made since the U.S. Constitution gives Congress exclusive power "to regulate commerce with foreign nations."

On February 6, 2001, a five-member international tribunal established by NAFTA declared the United States to be in breach of its obligations to Mexico because of restrictions on the entry of foreign trucks. The U.S. Department of Transportation (DOT) ignored U.S. domestic statutes (including the National Environmental Protection Act and the Clean Air Act) and ordered implementation of the decision.

Mexican trucks have so far been permitted to enter only a 20-mile zone on our southern border. Their contents are then transferred to U.S. trucks for delivery in the United States.

The NAFTA tribunal ordered the United States to lift its restrictions on foreign trucks, mandating full access by Mexican trucks across the entire United States. This ruling repeatedly referred to NAFTA as a "treaty" and relied on interpretations of past treaties as justification for the decision.

But NAFTA is not a treaty. It was never submitted to the Senate as a treaty and did not receive the two-thirds majority vote that treaty ratification requires, but instead was enacted in 1993 by a congressional law passed by a simple majority.

Implicitly at stake in this case is whether congressional bypass of the Treaty Clause (Article II, Section 2) can bind the United States as fully as a treaty does. Our system of federalism is also vulnerable, due to the deference historically given to treaties over the rights of the states.

The Ninth Circuit decision (from which the government is appealing) correctly required DOT to comply with domestic laws by preparing an environmental impact statement prior to allowing Mexican trucks to traverse U.S. roads. Any impact statement should evaluate the Mexican trucks' adverse effect not only on nature but also on human safety.

We need an analysis not only of pollution caused by truck emissions and the wear and tear on our highways, but also of the loss of life from trucks and drivers that do not meet U.S. standards. Mexican trucks are older, heavier, and more dangerous than U.S. trucks.

Mexican drivers are less familiar with our roads and language and drive longer hours than U.S. drivers for much lower wages. The loss of life from a predictable increase in accidents should be included in the environmental impact statement.

Deaths caused by language incompatibility, such as misunderstanding road signs or directions, are an essential element of an impact analysis. The most tragic and costly truck accident in midwest history, resulting in the incineration of Rev. Scott Willis's six children in 1994, was caused by the Mexican truck driver's inability to comprehend warnings in the English language.

Fatal accidents involving foreigners unfamiliar with our roads, our rules of the road, and the English language are tragically frequent in states far from our southern border such as Colorado and Iowa. Often vans crammed with illegal aliens are driven by "coyotes" who are paid thousands of dollars per person to transport them hundreds of miles north of the border.

The impact statement should also include the increased quantity of illicit drugs coming into the United States in Mexican trucks, much of it headed for "transshipment" sites in North or South Carolina or Georgia. U.S. Attorney Frank Whitney said that, even at the present time, "It's virtually impossible for the border patrol or customs to truly check every one of these vehicles."

In its Petition, the government argued that it would be more efficient to open our borders to trucks from Mexico and that the Ninth Circuit decision should be reversed because it protects "inefficient procedures." We are not impressed with the government's effort to rank efficiency higher than the U.S. Constitution, sovereignty, and laws.

In this Supreme Court case, the government is maintaining that its decision to open up our highways to Mexican trucks is an act of executive discretion, but in fact it is simply complying with an international tribunal never au-

thorized by any treaty. To allow the executive branch to enforce this decision would set a very dangerous precedent for permitting the rulings of other foreign courts in Geneva, the Hague, or Brussels to bypass both the U.S. Constitution and the U.S. judiciary.

Who Is an American Citizen?

In a world of inhumanity, war and terrorism, American citizenship is a very precious possession. It affords rights that residents of other countries can only dream of.

So who is eligible to claim American citizenship? The U.S. Supreme Court may soon consider that question.

Yasser Esam Hamdi was captured as an enemy combatant during the American military operation in Afghanistan. When interviewed by a U.S. interrogation team, Hamdi identified himself as a Saudi citizen who had been born in the United States.

Now that he has been detained, he contradicts that by claiming to be a citizen of the United States based on his birth in Baton Rouge, Louisiana to Saudi Arabian parents. There is no evidence that his parents intended to settle in the United States, or even that they had a right to do so.

Hamdi was residing in Afghanistan when he was captured. His father, Esam Fouad Hamdi, joined the lawsuit from his country of Saudi Arabia.

Section 1401(a) of Title 8 of the United States Code defines a U.S. citizen as "a person born in the United States, and subject to the jurisdiction thereof." This law uses the same language as the Citizenship Clause of the Fourteenth Amendment.

There is no evidence that Hamdi or his parents ever consented to be subject to the sovereignty of the United States, or sought to settle in the United States or to renounce their Saudi Arabian citizenship. All evidence is that they retained allegiance to Saudi Arabia.

Birth on U.S. territory has never been an absolute claim to citizenship. The Fourteenth Amendment does not automatically extend to children born to alien parents at war with the United States, or to the children of diplomatic agents, or to American Indians, or to illegal aliens. If it did, American Indians would automatically have been American citizens since they were born on what is U.S. territory. But Indians who belong to tribes were not citizens until given that status by Congress.

The Supreme Court held in 1884 in *Elk v. Wilkins* that "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first sec-

tion of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations."

The logic of this decision applies with equal force to visitors or aliens who remain loyal to foreign powers. The Fourteenth Amendment did not change this.

In the 1942 case called *In re: Thenault*, a federal court ruled: "Of course, the mere physical fact of birth in the country does not make these children citizens of the United States, inasmuch as they were at that time children of a duly accredited diplomatic representative of a foreign state. This is fundamental law and within the recognized exception not only to the Constitutional provision relative to citizenship, Amendment Article 14, Section 1, but to the law of England and France and to our own law, from the very first settlement of the Colonies."

In supporting passage of the Fourteenth Amendment, Senate Judiciary Committee Chairman Lyman Trumbull explained that the jurisdictional language in the Citizenship Clause "means 'subject to the complete jurisdiction thereof.' ... [Are] the Navajo Indians subject to the complete jurisdiction of the United States? By no means. We make treaties with them. ... It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government ... that he is 'subject to the jurisdiction of the United States.' ... It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens."

The extensive litigation concerning American Indians illustrates that consent rather than place of birth is what controls citizenship. Indians did not receive citizenship until conferred by congressional acts in 1887, 1901, and 1924, long after ratification of the Fourteenth Amendment.

The Constitution states that "no person except a natural born citizen" is eligible to be President. Everyone recognizes that this provision disqualifies the Governors of California and Michigan who were born in Austria and Canada, respectively.

On the other hand, then Michigan Governor George Romney, whose birthplace was Mexico, ran for president in 1968, and Senator John McCain, whose birthplace was the Panama Canal Zone, ran for president in 2000. Both were "natural born citizens" because their parents were U.S. citizens and subject to the jurisdiction of American sovereignty.

It's not the physical location of birth that defines citizenship, but whether your parents are citizens, and the express or implied consent to jurisdiction of the sovereign. The facts and the law argue against American citizenship for Hamdi.

Giving Criminals a Sanctuary

A favorite argument of those who support amnesty for illegal aliens is: current laws can't be enforced (like Prohibition and the 55-mile-an-hour speed limit) so we might as well adjust to reality. That's about like telling a woman, you can't fight your rapist, so relax and enjoy it. There must be a better solution.

Any comparison of the invasion of illegal aliens with Prohibition or the 55-mile speed limit is totally false. The American people wanted both those laws repealed, but the American people, by a wide margin, want our immigration laws enforced.

That's why Senators Jeff Sessions (R-AL) and Zell Miller (D-GA) held a hearing last week on their Homeland Security Enhancement Act (S.1906) to promote cooperation between local law enforcement and federal immigration authorities. It's a reflection on the peculiar times we live in that we even need such a law, but the failure of federal and state law-enforcement personnel to cooperate to protect us from crimes committed by illegal aliens is as dangerous as the now-famous failure of the CIA and the FBI to talk to each other about terrorists.

Rep. Charlie Norwood (R-GA) is the sponsor of a similar bill called the CLEAR Act (H.R. 2671) to give state and local authorities the power to routinely enforce federal immigration laws. The bill has 120 co-sponsors and is one border security bill that has a chance to pass this year.

The numbers tell us why this cooperation is essential. Our fewer than 2,000 federal immigration agents cannot possibly cope with the problems caused by 10 million illegal aliens. We don't want to hire a half million new federal agents.

The answer is to use the police officers who walk their beats and drive our highways and who come into contact with illegal aliens every day. The feds desperately need the eyes, ears, and cooperation of our 650,000 state and local police officers.

The open-borders lobby is vehemently opposed to this sensible cooperation. Many cities and other local units of government have adopted so-called "sanctuary" laws or policies to forbid local police to ask anyone whether they are legally in the United States.

Police officers who suspect violations of immigration law are often prohibited from detaining illegal aliens or contacting federal immigration authorities. Sanctuary laws even forbid police to report immigration violations to federal authorities.

We've seen numerous examples of illegal aliens who were stopped by the local police but then set free to commit their crimes instead of being deported, such as the notorious gang rape of a mother of two in Queens, New York by three illegal aliens who had been arrested numerous times but never turned over to the immigration agency. The most famous example is D.C.-area sniper Lee Malvo,

who was caught by local law-enforcement in Seattle, identified as an illegal who should be deported, but then set free by the feds.

Three of the 9/11 hijackers, including the ringleader Mohammed Atta, had been stopped and ticketed for significant traffic violations, such as driving without a license and speeding at 90 m.p.h. Thousands of innocent lives could have been saved through closer cooperation between local police and immigration authorities.

The Los Angeles police department is handcuffed by Special Order 40, which prohibits the police from asking anyone they arrest about his immigration status unless the suspect is already charged with committing a felony. The police may not notify immigration authorities about an illegal alien picked up for minor violations, even though it's well known that enforcing laws against minor crimes often prevents a major crime.

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act makes it unlawful for any municipality to restrict its employees from reporting illegal aliens to federal authorities, and allows the federal government and local police to work together under specific written agreements. A few local agencies have reached such agreements, and Virginia just became the third state to give its state police more authority to detain illegal aliens.

Former New York Mayor Rudolph Giuliani, trying to defend his city's sanctuary policy, fought against that law all the way to the Supreme Court. He lost in court, but Mayor Michael Bloomberg's "don't ask, don't tell" rule continues to skirt around the 1996 law.

There are 400,000 illegal aliens walking our streets who are under standing deportation orders (known as absconders), of whom 80,000 are criminal aliens and nearly 3,800 are from countries with known Al Qaeda presence. The L.A. police department has more than 1,200 outstanding warrants for illegal aliens on homicide charges.

The foreign born are 30% of federal prisoners. The big-city gangs are mostly foreign born, and their viciousness is illustrated by the 16-year-old who lay in wait and killed a California police officer on April 21. The murder was the boy's admission ticket to the 12th Street Pomona gang, which has ties to the Mexican Mafia.

The CLEAR Act and the Homeland Security Enhancement Act will give our beleaguered law enforcement officials more tools to combat terrorists, gangs, and other criminals. Tell your Member of Congress to act now.

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