

ABSTRACT

The Coyote Along the Border

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Throughout the years, the United States' migration policy has changed, and these changes have created ripple effects. The United States has avenues for legal immigration, but there are those who are unable to obtain legal status. In these instances, migrants may find themselves compelled to find alternative means to reach the United States. These alternative means may include finding a *coyote*, or smuggler, who agrees to guide the migrant across the border for a fee. With stricter immigration policy and the increased militarization of the U.S.-Mexico border there is a higher demand for the services coyotes offer. I argue that recent changes in United States migration policy have unintentionally led to a greater use of coyotes to cross the border, and in order to address this issue, the United States' immigration system must undergo substantial changes. This thesis seeks to first provide an overview of U.S. immigration policy. Then it will provide an analysis of migrant accounts of their journey to the United States followed by an outline of the United States and Mexico's response to the issue. Finally, this thesis will conclude with a discussion on human rights violations and a call for immigration reform.

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THE COYOTE ALONG THE BORDER

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CHAPTER 1

The *Coyote* and the *Coyote's* Role in Migration

Migrants who chose to come to the United States face a difficult journey. In an ideal situation, migrants would be able to reach the United States through legal means because it is the safest option and because it provides better opportunities upon arrival. However, there are migrants who do not have the fortune to reach the United States through legal means since the legal process is both complex and requires expensive legal counsel to navigate through it. When this happens, migrants may decide to reach the United States through illegal means such as unauthorized border crossings. Crossing is dangerous and potentially deadly, and yet migrants continue to risk crossing the border. As a result of new U.S. policy, it has become more difficult for migrants to successfully cross into the United States in recent decades. In order to increase the chances of successfully crossing the border, migrants have increasingly sought out the help of *coyotes*, or smugglers, to reach their destination.

I argue that recent changes in United States migration policy have unintentionally resulted in an increase in the use of coyotes to cross the border, and in order to address this issue, the United States' immigration system must undergo substantial changes. Chapter 2 addresses the experiences of migrants and the effects the journey has on migrants. Chapter 3 represents a shift in the argument, focusing on the differences between human smuggling, human trafficking, and how the Mexican and American governments have responded to undocumented migration. Chapter 4 concludes with an

overview of the treatment of migrants at the hand of American and Mexican government officials as well as a call for immigration reform. This chapter begins with an overview of the United States' immigration policy.

The United States has sought to increase its control over its side of the border. As a result, the United States focused on increasing control by enacting a series of laws and regulations that led to an increase in border patrol agents, surveillance, enforcement operations, as well as increasing the punishment for crossing without documentation and assisting undocumented migration. While these attempts have made it more difficult for migrants to cross the border, one unintended consequence is the increasing need for *coyotes*.

Until the late 1970's, it was relatively easy to cross into the United States without the assistance of a *coyote*. Furthermore, penalties for assisting people on the journey into the United States were relatively low. At this point, the United States' policy regarding undocumented migrants consisted of apprehension followed by quick repatriation. Under this policy, migrants apprehended by government officials were processed quickly, enabling migrants to quickly return to their country of origin. This quick repatriation meant that there was smaller gap time between crosses into the United States. Since it was relatively easy to cross into the United States, there was little need to hire a coyote, and in the event that people did hire a coyote, the coyote's fees were cheap. Apart from charging people a fee, a coyote's services may range from picking people up from their homes in Mexico to taking people to the doorstep of their destination.

The Bracero Program (1942-1964) provided migrants with work visas in the United States. This program was established following World War II to meet the labor

demand, and it also contributed to increased migration from Mexico. Public ¹attitudes regarding undocumented workers could be summed up as tolerant during the sixties and early seventies. However, as more and more undocumented migrants came, they increasingly began to work outside the agricultural sector and in more “public” and urban service industries to meet the labor demand.² This meant that undocumented workers were more visible to the public. With that visibility, the public tolerated undocumented workers less and less.³ With worsening attitudes towards undocumented workers came shifts in American immigration policy in the 1980s.⁴

As a result of these changes in public opinion, Congress passed the Immigration Reform and Control Act of 1986 (IRCA). The IRCA “introduced sanctions on employers, it broadened border patrol, and offered a general legalization program, including a special legalization program for agricultural workers.”⁵ More specifically, IRCA included three key provisions: first, it provided a path towards legalization. This path enabled undocumented migrants to “legalize their status and eventually become U.S. citizens.”⁶

¹ O’Leary, Anna Ochoa, ed. *Undocumented Immigrants in the United States: An Encyclopedia of Their Experience*. Westport: ABC-CLIO, LLC, 2014. Accessed November 28, 2017. ProQuest Ebook Central.

² O’Leary, Anna Ochoa, ed. *Undocumented Immigrants in the United States: An Encyclopedia of Their Experience*. Westport: ABC-CLIO, LLC, 2014. Accessed November 28, 2017. ProQuest Ebook Central.

³ “Response to: In your view, should immigration be kept at its present level, increased or decreased?” *Gallup Poll*, <http://news.gallup.com/poll/1660/immigration.aspx>.

⁴ O’Leary, Anna Ochoa, ed. *Undocumented Immigrants in the United States: An Encyclopedia of Their Experience*. Westport: ABC-CLIO, LLC, 2014. Accessed November 28, 2017. ProQuest Ebook Central, 102.

⁵ Andreas, Peter. *Smuggler Nation : How Illicit Trade Made America*. Oxford: Oxford University Press, 2014. Accessed October 1, 2017. ProQuest Ebook Central.

⁶ Andreas, Peter. *Smuggler Nation : How Illicit Trade Made America*. Oxford: Oxford University Press, 2014. Accessed October 1, 2017. ProQuest Ebook Central.

Second, IRCA repealed the 1952 Texas provision that enabled employers to hire undocumented workers without punishment. Third, IRCA allocated funds for the INS to strengthen border security.⁷ Those in favor of these programs argued that the combination of documented workers and sanctions against employers would curb the demand for undocumented migrants.

However, one of the unintended consequences resulting from IRCA was document forgeries. Forging documents was relatively easy. With these forgeries, migrants were able to find work since employers were not required to verify the authenticity of these documents and so they had no reservations about hiring people with forged documents. Since these documents were relatively cheap and since employers were not required to verify an individual's work status, the demand for forged documents increased creating an underground/black market for document dispatch. In turn, some of those who had obtained documents, helped those who were undocumented obtain false documents.

The purpose of IRCA was to resolve immigration issues, but as it became evident that IRCA was not fixing the issue, anti-migrant attitudes increased. For example, a study of polls indicate that anti-immigrant sentiments increased after the 1994 elections.⁸ In response, the Clinton Administration increased funding for INS. With more funds, INS were able to acquire new technology and increase the number of border patrol agents. There were more border patrol agents present in the nineties than in the seventies. In

⁷ Andreas, Peter. *Smuggler Nation : How Illicit Trade Made America*. Oxford: Oxford University Press, 2014. Accessed October 1, 2017. ProQuest Ebook Central, 299.

⁸ Muste, Christopher P. "The Dynamics of Immigration Opinion in the United States, 1992–2012." *Public Opinion Quarterly* 77, no. 1 (January 2, 2013): 398-416. *Political Science Complete*, EBSCOhost.

addition to the Clinton Administration, the military also assisted INS by providing new types of technology. More funds coupled with personnel increases made it more difficult for migrants to cross the border unassisted.⁹

Congress also assisted by passing IIRIRA in 1996. The IIRIRA authorized more border patrol agents and imposed harsher penalties against smugglers. Additionally, the IIRIRA “placed restrictions on benefits for aliens.¹⁰” This included limits on driver’s licenses, ineligibility for social security. More relevant, IIRIRA severely penalized “forging or counterfeiting the seal id a federal or a department agency to benefit fraud by an unlawful alien.¹¹” In other words, these harsher punishments also applied to document dispatch coyotaje. Document dispatch coyotaje is a type of coyotaje where *coyotes* provide undocumented migrants with false documents. IIRIRA also revised the process for “consular processing provisions and the visa waiver program,¹²” In regards to smugglers, the IIRIRA provided for more personnel to conduct investigations on smuggling and those who stayed past their visa expiration. This also applied to *coyotes*.

The IIRIRA was a continuation of IRCA and was much harsher. These acts were a response to the growing anti-immigrant attitudes within the nation. According to Christopher Muste, the mid-1990s represent the height of anti-immigrant sentiments in

⁹ See above.

¹⁰ Moloney, Deirdre M. *National Insecurities: Immigrants and U.S. Deportation Policy since 1882*. 1st ed. Chapel Hill, N.C: University of North Carolina Press, 2012, 262.

¹¹ Moloney, Deirdre M. *National Insecurities: Immigrants and U.S. Deportation Policy since 1882*. 1st ed. Chapel Hill, N.C: University of North Carolina Press, 2012, 262.

¹² Moloney, Deirdre M. *National Insecurities: Immigrants and U.S. Deportation Policy since 1882*. 1st ed. Chapel Hill, N.C: University of North Carolina Press, 2012, 262.

the United States.¹³ There are some mentions of migrant smugglers, but neither of these acts focus entirely on smugglers or *coyotes*. The concern these acts sought to address was the fear Americans felt from the migrants themselves. These acts may have imposed harsher penalties but seeing as neither of these acts really resolved the issue, it can be said that they failed and resulted in a more complicated and difficult to navigate migration system. In addition to trying to deter migration, these acts attempted to make it less and less attractive to migrate by reducing the benefits and imposing harsher punishment for migrating without documentation. For example, the three strikes rule coupled with the sentencing guidelines made it increasingly risky to come to the United States. For each strike, the penalty increases in severity and could potentially result in imprisonment. In a sense, this act tried to address the weak spots of the deterrence strategy.¹⁴

In addition to IRCA and IIRIRA, there were a series of operations throughout the nineties that were implemented in order to deter undocumented migration. This includes Operation Blockade, later known as Operation Hold-the-Line.¹⁵ Hold-the-Line placed a handful of agents along the border in El Paso Texas, covering twenty-five miles of the border. This resulted in a decrease in entries through this area. Operation Gatekeeper was implemented in California in 1994. Operation Gatekeeper covered a fourteen mile stretch

¹³ Muste, Christopher P. "The Dynamics of Immigration Opinion in the United States, 1992–2012." *Public Opinion Quarterly* 77, no. 1 (January 2, 2013): 398-416. *Political Science Complete*, EBSCOhost.

¹⁴ Moloney, Deirdre M. *National Insecurities: Immigrants and U.S. Deportation Policy since 1882*. 1st ed. Chapel Hill, N.C: University of North Carolina Press, 2012, 218-219.

¹⁵ Brownell, P. B. (2001). Border militarization and the reproduction of mexican migrant labor. *Social Justice*, 28(2), 69-92. Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/231922489?accountid=7014>.

of territory. After these strategies took effect, migration through these points decreased. Both of these operations serve as the foundation of the Border Patrol's current strategy to counter the flow of undocumented migration.¹⁶ In response to the decrease in migration through these areas, the INS then attempted to fill the gaps by focusing on regions in Arizona and south Texas. Immigration officials expected these areas to become the new main entry areas after the Sand Diego and El Paso regions were secured. This strategy is best known as prevention through deterrence.¹⁷ The point is to fill the border with enough border patrol agents to make it more difficult and therefore less desirable for migrants to attempt crossing. INS sought to apply this strategy along the entire border. Operation Hold-the-Line and Operation Gatekeeper were followed by Operation Safeguard in Nogales Arizona and Operation Rio Grande in 1997 along the border in south-east Texas.

Migration enforcement changed again in response to the 9/11 attacks. In response to 9/11, "Congress passed the Homeland Security Act of 2002" along with the USA PATRIOT Act, the Enhanced Border Security and Visa Entry Reform Act (EBSVERA), the Intelligence Reform and Terrorism Prevention Act (IRTPA), and the REAL ID Act.¹⁸ These policies sought to address the failings that enabled the terrorists to bypass border controls and led to tighter border security in addition to increased government oversight over nonimmigrants. Then the Obama administration's strategy included a shift away

¹⁶ Hendricks, Tyche. *The Wind Doesn't Need a Passport: Stories from the U.S.-Mexico Borderlands*. Berkeley, California: University of California Press, 2010, 73.

¹⁷ Ewing, W. A. (2014). "Enemy territory": Immigration enforcement in the US-mexico borderlands. *Journal on Migration and Human Security*, 2(3), 198-222. Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/1685004690?accountid=7014>, 198.

¹⁸ Rosenblum, Marc R. *US Immigration Policy since 9/11: Understanding the Stalemate over Comprehensive Immigration Reform*. Washington, DC: Migration Policy Institute, 2011, 4-6.

from fence building and instead sought to put resources into border enforcement. This shift also sought to address drug trafficking and the demand for undocumented workers. Furthermore, the Obama administration sought to cooperate with members of the Mexican government in order to produce a more comprehensive approach to the border, immigration, and related issues. Mexico sought to better enforce its border in addition to preventing undocumented migration.

Tighter security made it difficult to travel across the border alone, increasing the need for a smuggler. *Coyotes* became a necessity for people looking to come to the United States. Although there was tighter security along the border, migrants were able to successfully enter the United States with the help of a smuggler. As the demand for the services of a smuggler rose, so too did the price of hiring a smuggler and the risks of crossing. For some migrants, paying nearly a thousand dollars is worth the economic opportunity to be found working. In addition to highlighting the difficulties associated with passage across the border, multiple strategies also indicate that deterrence as a method to prevent migrants from crossing the border is not very efficient. Even as crossing into the United States has become increasingly difficult, migrants and *coyotes* have found ways to adapt to the situation. In the eighties and nineties, migrants adapted by hiring *coyotes* who were more familiar with the routes and better at avoiding detection. More security led to a higher demand for *coyotes*, and although agents were able to apprehend some *coyotes*, they were not able to reach the root of the smuggling organization, which meant that smuggling would be able to persist. Additionally, by apprehending some smugglers, law enforcement inadvertently created a demand for the smugglers who were left. According to Anna O'Leary, *coyotes* used to charge between

fifty and two hundred dollars per person in the seventies.¹⁹ O’Leary also notes that the price increased to between five hundred dollars to a thousand dollars in the nineties. The price increased once more in the 2000s to about three thousand dollars per person. This shows that smuggling is profitable. Presently, it is much more expensive to cross into the United States. In addition to these costs, factors like country of origin make crossing more expensive. Furthermore, drug cartels along the border charge fees in order to allow migrants to cross.²⁰ The estimate for this is between one hundred and two hundred dollars. In some cases, it is as much as five hundred dollars. Recent estimates place the price of an assisted cross between \$2000 and \$10,000.²¹

Although Congress sought to decrease undocumented migration, its policies seem to have had the opposite effect where *coyotes* are concerned. Strict policies coupled with tight border security have created a demand for “professionals” to assist migrants on their journey to the United States. Undocumented migration is an issue for both the government and the migrants themselves. Migrants are exposed to tough conditions in crossing and potentially face harsh treatment once in the United States. For example, an employer might refuse to pay the migrant worker his wages and threaten to report them to immigration services. Undocumented migration presents a humane issue. Migrants are exposed to the elements along their journey and yet, arriving in the United States does not automatically guarantee success.

¹⁹ O’Leary, A.O. (2009). *The ABCs of Migration Costs: Assembling bajadores, and coyotes*. Migration Letters, 6 (1), 27-36. Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/1268155823?accountid=7014>

²⁰ Eichstaedt, Peter. *Dangerous Divide: Peril and Promise on the US-Mexico Border*. Chicago: Chicago Review Press, 2014. Accessed November 30, 2017. ProQuest Ebook Central, 28.

²¹ Dudley, Steven. *Transnational Crime in Mexico and Central America: Its Evolution and Role in International Migration*. Washington D.C.: Migration Policy Institute, 2012, 15.

Generally speaking, *coyote* is a term that describes someone who helps migrants cross the U.S.-Mexico border. Typically, a *coyote* charges a fee for the services he or she provides. Although *coyotes* have knowledge about the unmarked paths, the lay of the land, and how to avoid detection, their assistance does not guarantee a successful cross. But if the migrant successfully crosses the border, then once they are in the United States, they have the opportunity to find a job and send some of their earnings to their relatives back home.

Apart from having knowledge about the terrain, *coyotes* have various methods of guiding migrants across the border, for different fees of course, to circumvent detection. Spener categorizes these approaches as follows: short distance, professional migration, document dispatch, migra-coyotaje, gate-crashing, for-profit charity, friendship-not coyotaje, and commercial transport.²² Each of these methods has its advantages and its disadvantages. For instance, one method might result in quicker passage, but the dangers of being caught or dying might be higher. Short distance methods require

“access to the riverfront between Texas and Mexico as well as a vessel on which to cross deep water. Short distance services are relatively inexpensive, and they also avoid inspection at ports-of-entry. The disadvantages of this type of service lies in the fact that there is a higher chance of robbery and/or assault as well as more checkpoints to go past as the individual journeys deeper in the United States. Once the migrant and coyote are past the border, the coyote’s services end. For this reason, short distance guidance is called “el brinco nomas,” which literally translates to “the jump only.”²³

²² David Spener, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009, 123-124.

²³ David Spener, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009, 123.

Coyotes who employ “professional migration” strategies typically have “knowledge about river crossing checkpoints, Texas roads, how and where to jump on freight trains or they might know someone else who is willing to pick the migrants up.”²⁴ Compared to the other strategies, this strategy is cheaper than other methods. Migrants are also more likely to know and trust the coyote. Like in short distance methods, this method also carries the risk of robbery and/or assault in addition to the dangers associated with riding railroad cars and walking across the land. There is also a higher risk of being detected by border patrol agents.

Interestingly enough, *migra-coyotaje*²⁵ is a method that requires assistance from Immigration and Naturalization Service (INS) officials themselves to help migrants cross the border. However, because it is so difficult to find an INS official who is willing to assist, this method is rarely employed. Apart from being highly successful, *migra-coyotaje* is also a safer option than other options especially for women or for people who have poor health. This type of migration avoids crossing across the river and the land. It also has a lower risk of robbery and/or assault than short distance and professional migration on account of the fact that most people who employ this method travel by car and drive through the ports-of-entry and checkpoints. Once the vehicle in which the migrant is traveling reaches the checkpoint, the INS officials do their part by allowing the vehicle to cross without inspection. This strategy can also be employed at entry points or checkpoints further into the border.

²⁴ David Spener, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009, 123-124.

²⁵ “migra” is slang for immigration agent.

Spener describes “Friendship, not coyotaje”²⁶ as a hybrid method. It is a hybrid method in the sense that it consists of a two-part approach to crossing the border. The migrant typically has enough information about their destination and how to get across the border. Once the migrant makes the decision to cross, they do so without the assistance of a coyote. Before undertaking the journey, the migrant will typically call ahead to a contact or a friend in the United States and arrange for their contact to pick the migrant up from a designated area once the migrant has crossed the border. This type of passage requires knowing someone who lives in the destination as well as an established relationship with the person who will be picking the migrant up. Although the person who picks up the migrant may not have directly assisted the migrant in crossing the border, contact is still complicit. Both parties also risk “arrest, imprisonment, vehicle confiscation, income loss, and deportation along with a prohibition from re-entering the United States.”²⁷ This type of passage is attractive because it is cheaper and since the migrant knows their contact, there is a certain level of trust between them.

These different methods demonstrate that there are different ways to get across the border and there is more than guiding someone across the border. Sometimes, other parties are complicit even though they did not personally take the migrant from point A to point B. In the case of migra-coyotaje, INS officials make it easier to cross by removing barriers that would otherwise prevent migrants from reaching their destination. Each strategy carries with it a set of risks and advantages. Depending on the situation,

²⁶ Spener, David, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009.

²⁷ Spener, David, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009, 139.

migrants and *coyotes* might need to employ different methods in order to succeed. The existence of multiple strategies also showcases how complex the act of crossing can be. The methods *coyotes* employ to assist migrants in crossing do not answer why it is so difficult to cross.

Anti-immigrant sentiments continue to persist even today. These attitudes stem from people who are frustrated by the lack of security along the border. Their accounts also demonstrate what a *coyote* appears to be in their “mind’s eye.” For example, Tyche Hendricks²⁸ describes the Hurt family as ranchers along the New-Mexico-Chihuahua border. The family notes that *coyotes* cut through their fences to get across the border, leaving trash and broken fences as they pass by. Apart from groups of migrants, drug smugglers also cut across through the family’s land. The Hurt family is also more willing to confront groups of migrants than they are willing to confront groups of drug smugglers. The family also indicates that it is increasingly frustrating to not be able to do anything about the trespassing. It is important to note that the Hurt family also has strong ties to Mexico by virtue of being well acquainted with the ranchers across the border.²⁹

Hector Morales has a ranch across the border from the Hurt Family Ranch, and while migrants also cross through their ranch, they seem to be more sympathetic than their American counterparts. Morales said that “the majority are going out there to make a living. They don’t need to be hassled by any more.”³⁰ The similarities in opinions on

²⁸ Hendricks, Tyche. *The Wind Doesn't Need a Passport: Stories from the U.S.-Mexico Borderlands*. Berkeley, Calif: University of California Press, 2010.

²⁹ Hendricks, Tyche. *The Wind Doesn't Need a Passport: Stories from the U.S.-Mexico Borderlands*. Berkeley, Calif: University of California Press, 2010.

³⁰ Hendricks, Tyche. *The Wind Doesn't Need a Passport: Stories from the U.S.-Mexico Borderlands*. Berkeley, Calif: University of California Press, 2010.

both sides of the border is worth mentioning because it demonstrates that there is some degree of sympathy between both groups of individuals. In this instance migrants and *coyotes* are not seen as villains or intruders necessarily. Rather the issue seems to be on the fact that the act of trespassing on the rancher's property and as well as causing damages. This seems to present a tension because both ranchers indicate that they understand why migrants are making the cross through the region. Additionally, the Hurt's apparent willingness to confront groups of documented migrants seems to suggest that the Hurt family is unafraid of migrants.

Words like "illegals" and terms like "wetbacks" demonstrate deeper anti-migrant sentiments. For example, in some regions, people are much more likely to call Border Patrol to report undocumented migrants. Coupled with some cases of migrants stealing from people who live on the border, have caused the fear (and disdain) felt towards these groups to increase. There is an issue of resentment and one negative experience has informed the reaction towards all undocumented migrants. For example, on the O'odham³¹ tribe reservation, there have been reports of migrants breaking into homes. One member of the reservation, tells a story about migrants who broke into her home; this experience made her afraid.

These experiences have shaped their attitudes towards migrants and *coyotes*. It paints a different picture. It showcases migrants as bad people. There is a disconnect between the perceptions of people concerning *coyotes* and migrants and who these groups of people actually are. It seems like this disconnect is tied to a handful of experiences.

³¹ Hendricks, Tyche. *The Wind Doesn't Need a Passport: Stories from the U.S.-Mexico Borderlands*. Berkeley, Calif: University of California Press, 2010.

This is not to say that no migrants ever commit crime. Rather this is meant to note that although there are cases like these, it is only one case, and it should not color the perceptions about an entire group of people.

Some accounts indicate that the guides were “callous” when faced with the decision of whether to leave someone who was either injured or too slow behind. Other accounts indicate that *coyotes* try to put someone on the shortest path if the individual was a woman with a child. Others, still, tried to dissuade women from taking the journey. O’Leary indicates that when it comes to women, *coyotes* have a tendency to dissuade them from crossing because they represent a liability.³² As mentioned above, there are mixed opinions about *coyotes* from the people who employ their services and from the people who are indirectly impacted by *coyotes*.

While perceptions about *coyotes* vary, *coyotes* receive attention in the aftermath of tragedy. For example, *coyotes* abandoned groups of people, leaving them to die in a closed container this past year. These incidents are usually followed by calls for stricter immigration laws and even building a wall that spans the entirety of the United States-Mexico border. However, with stricter immigration laws and heavier surveillance comes more redirection towards the more desolate and hostile regions along the border. As security tightens along the border, people become more desperate to cross, meaning that they are much more willing to risk coming through more dangerous pathways. They are called *coyotes* because like the animal, they disappear into the desert. The message is clear – they are not to be trusted. Doing so, can be dangerous. For some, *coyotes*

³² O’Leary, A.O. (2009). The ABCs of Migration Costs: Assembling bajadores, and coyotes. *Migration Letters*, 6 (1), 27-36. Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/1268155823?accountid=7014>.

represent an opportunity, and trusting a *coyote* seems like a small price to pay for greater economic opportunity.

Coyotes contribute to undocumented migration; although they are part of the problem, they are not necessarily the cause of the problem. The cause of the problem is inadequate migration policy and the solutions the U.S. government attempted to implement. These solutions backfired resulting in a higher demand for *coyotes*. They smuggle people across the border, exposing them to dangerous conditions for a price. In response to these situations, the government and state governments, such as Arizona, have sought to implement or create policy that will deter *coyotes*. However, as previously noted, it is difficult to do so because sometimes *coyotes* blend in with the group they are guiding, making it difficult for border patrol agents to identify the smugglers. And yet, this shows that there are deeper problems within the immigration system and that finding a solution is not easy.

Coyotes are pervasive in the people's imagination. They are the villains who bring the innocent over and contribute to a large undocumented migration problem. Again, as mentioned before, *coyotes* are not the source of the issues concerning immigration. The United States government's efforts to curb undocumented migration has undoubtedly contributed to the situation. Coupled with the demand for cheap labor, the inability of the United States government to meet the demand for work visas exacerbates the issue. With stricter border security enforcement, migrants are forced to go through the more desolate and hostile parts of the border, ones that without the help of a coyote would be impossible to cross. Although there may be estimates as to the number of migrants that cross the border, it is difficult to determine the number with certainty.

Undocumented migrants are only one part of the issue concerning border security. Drug traffickers and potential terrorists are also part of the fears about having an unsecure border. In the aftermath of 9/11, there was an increased urgency to secure the border, but the expansiveness and topography of the land makes it difficult to “secure.” In addition to these large stretches of land, one must also consider the people who own land all along the border. There is a wide array of factors to consider when deciding how to best approach the issue and coming up with solutions. It’s true that this is a problem, and there is a clear and evident need to develop new ideas. Increasing the number of personnel at the border backfired and while it may be a temporary fix, there needs to be a reevaluation of policies regarding border security. Migrants chose to risk the trek out of necessity and *coyotes* present a solution to the problem of how to get across the border safely and to the destination. But using a coyote guarantees neither safe passage nor reaching the destination. *Coyotes* have various depictions in the imagination of the people. For some they are villainous characters that take advantage of migrants and for migrants themselves, they are a way to achieve one’s goal.

Chapter 2 will provide a series of migrant stories and their journey across the border. These stories include the migrants’ interactions with the *coyotes* as well as provide an analysis of the type of coyotaje migrants used. Chapter 3 will address the responses of the American and Mexican governments to the immigration crisis and the connection between human smuggling and human trafficking. Finally, Chapter 4 will conclude the thesis and issue a call to improve the United States’ immigration system.

CHAPTER 2

Crossing with the *Coyote*

One of the questions considered in Chapter 1 was why migrants would seek out *coyotes* to begin with. The story of the *coyote* is multifaceted, and another way to understand the *coyote* is by addressing the *coyote* from the migrant's perspective. For the purposes of this chapter, it is best to include stories or narratives from different people because it offered the best opportunity to obtain a different sample of experiences. More importantly, these stories demonstrate that although there may be similarities between stories, each story offers a unique perspective—the details matter. This chapter begins with recollections about their experience crossing the border. In addition, this chapter seeks to address: 1) What was the experience like? 2) Did the individual encounter violence or abuse? 3) How did the *coyote* treat the migrant? 4) What were the migrants' overall impressions of the *coyote*? 5) If the migrant did not have thoughts on the *coyote* themselves, what were their opinions of the journey in general?

Each story demonstrates what it is like to cross the border. Sal, José Angel, Isabel, María, and Enrique³³ are all people who have crossed the border with the help of a *coyote*. They describe their journey to the United States, referencing specific events that were particularly rough as well as their perception of the *coyote*, their fellow travelers, and in some cases bandits, smugglers, and government officials.

³³ Names changed to protect identities.

Sal

Sal was forty-four at the time he crossed the border.³⁴ His narrative is significant because it is the story of a man migrating to the United States, and because it provides insight on the journey itself. Sal's journey was supposed to take two days and one night. Sal's group consisted twenty men and four women in addition to the four *coyotes* guiding Sal's group. His group was assaulted by bandits who robbed the migrants, taking shoes, money, and what little jewelry the migrants had. The little group was then assaulted a second time. The second time Sal's group was assaulted, the bandits targeted the women, threatening to abuse them. When this happened, one of the *coyotes* told the bandit: "If you hurt her, we will kill you...Maybe you will shoot a couple of us, but there are twenty-eight of us and only three of you; so we'll kill you."³⁵ This prompted the bandits to leave Sal's group alone, allowing them to continue their journey. Sal noted that the *coyotes* helped his group ration their water. Additionally, when climbing through a steep area, one of Sal's groupmates fell, one of the *coyotes* helped the man walk. Furthermore, Sal explained that for two of the young men, the entire village had pooled together to fund their journey to the United States. Sal also explained he was motivated to leave Acapulco to earn more than a dollar an hour for his family. He came to the United States to find better economic opportunities than were available to him in Mexico.

³⁴ Ferguson, Kathryn, Norma A. Price, Ted Parks, Claudia Aburto Guzmán, and John M. Fife. "Story Eighteen." In *Crossing with the Virgin: Stories from the Migrant Trail*, 99-110. University of Arizona Press, 2010. <http://www.jstor.org/stable/j.ctt1814hcf.28>.

³⁵ Ferguson, Kathryn, Norma A. Price, Ted Parks, Claudia Aburto Guzmán, and John M. Fife. "Story Eighteen." In *Crossing with the Virgin: Stories from the Migrant Trail*, 99-110. University of Arizona Press, 2010. <http://www.jstor.org/stable/j.ctt1814hcf.28>.

The four *coyotes* in Sal's group were relatively better than the *coyotes* guiding José Angel, Isabel, and María. These three had worse experiences with their *coyotes*.

José Angel

The second is an account from José Angel³⁶. José Angel's journey began when his relatives arranged for a *coyote* to take José Angel across the border. José Angel offers two direct descriptions of the *coyotes*. The first is: "The treatment we receive at the detention center is better than that offered by the ring of smugglers, one of whose operators now sits right next to me."³⁷ The second description is: "I was spared the vicious yearly cycle of crossing the border...getting smuggled back into the States, and depositing the fruit of my labor in the greedy claws of the *coyote*."³⁸

José Angel made the border cross near San Diego with a relatively large group of people. This group crossed through what Jose Angel describes as the "bowels of San Diego," meaning they walked through a sewer system. This is relevant because José Angel describes the walk through the sewers as disgusting and points out that no American would subject himself to that experience. This demonstrates that one this specific experience was humiliating, and it also shows the lengths José Angel and his groupmates were willing to go in order to reach the United States. This means that the migrants were determined to reach their destination even if it meant paying a large sum of money or being apprehended by U.S. Border Patrol.

³⁶ N., José Ángel. "AMID THE SHADOWS." In *Illegal: Reflections of an Undocumented Immigrant*, 1-26. University of Illinois Press, 2014. <http://www.jstor.org/stable/10.5406/j.ctt5hjjkb.4>.

³⁷ See above. p. 7.

³⁸ See above. p. 10.

While these are the only explicit descriptions José Angel offers about the *coyotes*, his narrative does provide indirect descriptions. For example, at the beginning of his journey, José Angel thinks about the worst-case scenarios that could result from using a *coyote*. José Angel imagines being stuffed into the back of a semi-trailer with several other people and being abandoned to their fate and struggling to breathe. Although this may be an explicit image, it provides insight on how José Angel perceives *coyotes*, even before he began his journey. It is worth noting that what José Angel imagines has happened to others.³⁹ Interestingly enough, José Angel’s relatives made an effort to find a *coyote* with a good reputation. However, it is not clear what this means. José Angel indicates that the U.S. government agents who detained his group treated them better than the *coyotes*.

Isabel

Isabel was eighteen-years-old at the time she crossed the border. According to Isabel, the “pollero⁴⁰ and the rest of his group had deserted Isabel in the desert in an isolated area.”⁴¹ Isabel describes that when a group of bandits attacked Isabel’s group, the *coyotes* did nothing to help them. Isabel was also traveling with a group of twenty people. According to Isabel:

³⁹Montgomery, David, Manny Fernandez, and Yonette Joseph, “Journey Fatal for 9 Migrants Found in Truck in a San Antonio Parking Lot,” New York Times, 23 July 2017, <https://www.nytimes.com/2017/07/23/us/san-antonio-truck-walmart-trafficking.html>.

⁴⁰ Isabel uses the term “pollero” when referring to the coyote while Enrique uses the term “patero.” These terms refer to someone who smuggles people across the border.

⁴¹ Ferguson, Kathryn, Norma A. Price, Ted Parks, Claudia Aburto Guzmán, and John M. Fife. “Story Twelve.” In *Crossing with the Virgin: Stories from the Migrant Trail*, 67-68. University of Arizona Press, 2010. <http://www.jstor.org/stable/j.ctt1814hcf.22>.

“Just before they crossed the border the *coyote* made a call on his cell phone. He then told them to cross and continue without him, he would meet up with them later at an appointed location. He pointed out the trail, well-worn and easy to follow...After the group reached the American side, it came to an open area like a gravel pit. The group was to sleep there and meet up with the *coyote* the following day. The crossers had not been at that location long when a group of banditos arrived. At gunpoint the thieves took everyone’s money and forced the women to line up and strip off all clothing. The women dropped their heads. They stared at the ground, refusing to look at the thieves. Some of them began to sob. The aura of shame and degradation crowded out their fear. But not Isabel. When the other women started to disrobe, the intruders said to her, “Never mind.” She must have wondered if she had been spared the terrible humiliation because of her obesity. The next morning their pollero rejoined the group to guide them north to meet their pickup vehicle. Isabel stumbled and fell more than the previous days. When the pollero realized she couldn’t keep up, he pointed toward a road, He told her to wait there, and probably someone would come by and help. The rest of the group continued its journey. She had not known any of her fellow travelers, but they were sympathetic, and one woman offered to contact her family in Mexico.”⁴²

María

A Guatemalan woman, María,⁴³ recounted her story of crossing the border into the United States. María describes how difficult the journey was for her. The journey was painful and caused María much suffering. The suffering consisted of the difficulty of the journey but also the pain of leaving her family behind and venturing alone. She left her family in order to better provide for her family. The journey cost María about \$9,000. Some of which she had to use to bribe the Mexican officials into letting her pass.

However, it was not enough. The Mexican authorities forced her to return to the southern

⁴² Ferguson, Kathryn, Norma A. Price, Ted Parks, Claudia Aburto Guzmán, and John M. Fife. "Story Twelve." In *Crossing with the Virgin: Stories from the Migrant Trail*, 67-68. University of Arizona Press, 2010. <http://www.jstor.org/stable/j.ctt1814hcf.22>.

⁴³ Sittig, Ann L., and Martha Florinda González. "The Journey to El Norte." In *The Mayans Among Us: Migrant Women and Meatpacking on the Great Plains*, 53-80. Lincoln; London: University of Nebraska Press, 2016. <http://www.jstor.org/stable/j.ctt1d41ctn.10>.

Mexican state of Chiapas. When this occurred, María decided to enlist a *coyote* to help her cross. When describing the *coyotes*, María said the following:

“a *coyote*, a border smuggler, brought me from Guatemala, he told us which way to go and another *coyote* guided us to the U.S. The *coyote* from Guatemala left us at the Mexico border, and the *coyote* from California took us from the Mexican border into the U.S., and that *coyote* made us walk in the desert because we couldn’t go by car anymore.”

In addition to the long journey and suffering, María explains that the *coyotes* charged her \$3,000. Unfortunately, these people charged María \$3,000, but they called María’s relative to say they had delivered María to Phoenix when María was still in Mexico. The *coyotes* ended up stealing those \$3000 from María’s relative and María had to pay back her relative.⁴⁴

If it is difficult for Mexican migrants to cross the border, it is much more difficult for Central American migrants to do so. Ann Sittig and Martha Florinda González note that Guatemalan migrants pay between \$2,000 to \$12,000 to cross the border.⁴⁵ In addition to the high monetary value, the risk increases on account of the fact that migrants are particularly vulnerable to theft and abuses.

Sometimes parents bring their children along for the journey. In one situation, a woman and her child were unable to keep up with their group. As a result, the *coyote* guiding the group left the woman behind but took her child after the woman begged him to. However, the *coyote* abandoned the child under a tree because the child was too much trouble. The woman reached a road where she “flagged down Border Patrol and begged

⁴⁴ See above.

⁴⁵ Sittig, Ann L., and Martha Florinda González. "The Journey to El Norte." In *The Mayans Among Us: Migrant Women and Meatpacking on the Great Plains*, 53-80. Lincoln; London: University of Nebraska Press, 2016. <http://www.jstor.org/stable/j.ctt1d41ctn.10>.

them to find the *coyote* with her son.”⁴⁶ The Border Patrol agents found the *coyote* who then told them where to find the child.

Enrique

In another narrative, a seventeen-year-old migrant from Honduras, Enrique, describes his journey to the United States. His journey began when he crossed the border into Mexico, then he hitched a ride on the Train of Death before arriving at a camp in a Mexican border town on the opposite side of Texas. While in this town, Enrique met a smuggler, El Tirindaro, who agreed to smuggle him into the United States and take him to Florida in order to find Enrique’s mother. Enrique attempted to cross the border eight times before succeeding on his ninth try. In a sense, Enrique was fortunate. On his journey, Enrique encountered bandits and the Mexican migration authorities. Along the route, bandits would rob migrants and in some instances demand payment before passing through a check point. He was young enough to warrant protection from the other camp members. Enrique began the final leg of his journey on an inner tube the smuggler paddled across the river. After that, the smuggler and the group met up with another smuggler who was part of the same network of smugglers⁴⁷ who then took Enrique to Dallas, Texas before finally arriving in Florida.

Crossing the border for women is especially dangerous. Women can potentially encounter violence and sexual assault. These aggressions come from the *coyotes*, bandits,

⁴⁶ Ferguson, Kathryn, Norma A. Price, Ted Parks, Claudia Aburto Guzmán, and John M. Fife. "Story Twenty-eight." In *Crossing with the Virgin: Stories from the Migrant Trail*, 149-50. University of Arizona Press, 2010. <http://www.jstor.org/stable/j.ctt1814hcf.38>.

⁴⁷ Nazario, Sonia, "Enrique’s Journey: The Story of a Boy’s Dangerous Odyssey to Reunite with His Mother," New York: Random House Trade Paperbacks, 2007.

and even the other migrants travelling with them. The “Death of Josseline”⁴⁸ describes various immigration stories. As Reagan argues, hiring a *coyote* is a risk, especially for women. For example, many religious women note that they would much rather “take contraceptives when they know they’re going to cross, because they know they will be raped.” These women are “determined not to get pregnant by a *coyote* or bandit or fellow traveler.”⁴⁹ These are anecdotes from a priest along a border town in Mexico. In regards to the safety of the journey, these anecdotes demonstrate that even prior to undertaking the journey, women have some conception about what lies ahead. These women are under no delusion that the journey will be both difficult and dangerous.

More often than not, *coyotes* lie and cheat people. *Coyotes* charge migrants from central America higher prices than they do migrants from Mexico. The difference ranges from thousands of dollars as seen in Maria’s case. It matters because relying on a *coyote* during a border cross leaves the migrant at the *coyote*’s mercy.

Coyotaje Types within the Narratives

At the beginning of this chapter, I posed five questions about the narratives. These accounts offer descriptions of the experience in addition to information about whether these migrants experienced violence, their impressions of the *coyote* and of the journey itself. But, these narratives also shed light on the types of coyotaje outlined in Chapter 1. To recap, Spener notes that there are various types of coyotaje. These types include professional migration coyotaje, *el brinco nomas* coyotaje, short distance coyotaje, gate-

⁴⁸ Regan, Margaret. “Death of Josseline: Immigration Stories from the Arizona-Mexico Borderlands.” Boston: Beacon Press, 2010.

⁴⁹ Regan, Margaret. “Death of Josseline: Immigration Stories from the Arizona-Mexico Borderlands.” Boston: Beacon Press, 2010.

crashing coyotaje, for-profit charity coyotaje, friendship-not-coyotaje, and commercial transport.⁵⁰ Each of these migrants utilized some version of professional migration coyotaje, while Enrique's was a hybrid that included professional migration. They also experienced the difficulties of the journey, and they also endured the risks associated with this type of coyotaje. These migrants encountered robberies and assaults at the hands of both *coyotes* and bandits along the journey.

Throughout his journey, Enrique used a combination of short distance coyotaje and professional migration coyotaje. When Enrique first befriended El Tirindaro, Enrique did not anticipate that El Tirindaro would help him cross into the United States. El Tirindaro helped Enrique cross into the United States by engaging in short distance coyotaje. El Tirindaro put Enrique in a rubber tube and paddled Enrique across the river. Once they were on the other side, El Tirindaro left Enrique with another pair of smugglers who then took Enrique to Florida.

Enrique's narrative shows a couple of things. First, Enrique's migration narrative shows that there is a possibility for different types of coyotaje to create a hybrid as Spener notes.⁵¹ El Tirindaro is a short distance *coyote* while the other smugglers are professional migration smugglers who are knowledgeable about guiding and/or taking migrants to their destination. In order to successfully cross into the United States, Enrique had to engage in two types of coyotaje. However, overall, the type of coyotaje Enrique

⁵⁰ Spener, David, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009.

⁵¹ Spener, David, 1961 and JSTOR (Organization). *Clandestine Crossings: Migrants and Coyotes on the Texas-Mexico Border*. Ithaca: Cornell University Press, 2009.

used could be construed as purely professional migration since El Tirindaro and the other smugglers were part of the same group of smugglers.

Regarding the remaining narratives, they consisted of professional migration coyotaje. The narratives indicate that the *coyotes* were sufficiently knowledgeable about the terrain to guide large groups of people. These *coyotes* were able to guide groups of people past immigration checkpoints as well and having someone, possibly another *coyote* pick up the migrants and drive them to their final destination. One feature of professional migration coyotaje is the greater likelihood that migrants may know the *coyote*. However, this was not the case within any of these narratives, with the possible exception of Enrique. There is no indication that these migrants knew the *coyote* before beginning the journey. Additionally, it is difficult to say that the migrants trusted the *coyotes*. For example, after being abandoned by the *coyote*, Isabel clearly could not trust the *coyotes*. Maybe the *coyote* would not have abandoned Isabel if they had known each other before the journey. On the other hand, Sal had much more reason to trust the *coyotes* who guided his group especially after the *coyotes* demonstrated some degree of concern when the group was ambushed by bandits. The point is that for the most part, there really is no way of determining whether a migrant can trust the *coyote*.

The final pages of this chapter aim to describe human and drug trafficking and their relationship to the *coyote*. In order to elaborate on the human trafficking aspect, consider the distinction drawn between human trafficking and human smuggling.

According to the United Nations, human trafficking is defined as the:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud,

deception, abuse of power or vulnerability, or benefits to a person in control of the victim for the purpose of exploitation.”⁵²

The key difference between smuggling and trafficking lies in the fact that smuggling is done with consent.⁵³ In other words, the migrant consents to pay the *coyote* or smuggler to smuggle the migrant into another country or place. However, it is easy to see how smuggling and trafficking can intersect. For example, migrants may be forced to carry illicit drugs in addition to paying the *coyote* to smuggle them across the border, or migrants may be forced into sex trafficking to pay their fees. When this occurs, migrants, at least according to the last part of the definition, have become victims of exploitation because they are forced to do something against their will.

According to Murphey-Aguilar, *coyotes* are

“the weakest and least organized and protected links in a series of highly entrepreneurial, and often competitive, criminal smuggling chains, now have to exact a large enough toll from migrants and their families to pay off gangs, corrupt border officials and TCO’s who protect and enable the smuggling and who have no qualms about killing to control what has become a multi-billion dollar a year criminal enterprise”⁵⁴

Again, this highlights the dangers migrants must encounter when crossing the border.

Enrique’s narrative falls in line with Murphey-Aguilar’s description of the need for money and the need to pay off bandits for safe passage. Maria’s narrative also supports this. Sal’s narrative speaks to the fact that the *coyote* cannot offer migrants strong

⁵² “Trafficking in Persons and Migrant Smuggling,” United Nations Office on Drugs and Crime, <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>.

⁵³ See above.

⁵⁴ Murphy-Aguilar, Moira. *Borderline Slavery : Mexico, United States, and the Human Trade*. Abingdon: Taylor and Francis, 2012.

protections. As smugglers and traffickers, *coyotes* can also “abuse, deceive, or even coerce”⁵⁵ migrants on their journey.

Finally, these narratives show-case the multi-faceted lives of the migrants who migrate to the United States with the assistance of a *coyote*. Although these narratives differ, they highlight key similarities such as danger and violence migrants encounter at the hands of *coyotes*. There is a deep connection between the work of a *coyote* and human trafficking. *Coyotes* are both smugglers and traffickers. It matters because the *coyote* is a threat. There is no security, and there is no safe passage for the migrants involved. Hiring a *coyote* does not guarantee that the migrant will be free from harm.

Conclusion

Going back to the questions from the beginning of the chapter, each of the migrants experienced some type of violence or abuse. It may not have happened to the individual, but they were at least witnesses. In some of these cases, the *coyote* perpetrated the abuse. Overall, their experiences were negative. María, for example, noted that there were many times during her journey where she wished she were back in Guatemala with her family. With the exception of Sal and maybe Enrique, the *coyotes* did not treat the groups well. Isabel was abandoned, María was cheated out of money, and Jose Angel indicated Border Patrol treated him better than the *coyotes*. Overall, their impressions of the *coyote* ranged from negative to terrible. Each migrant noted that the journey was difficult and challenging.

⁵⁵ Murphy-Aguilar, Moira. *Borderline Slavery : Mexico, United States, and the Human Trade*. Abingdon: Taylor and Francis, 2012.

From the stories recounted above, there are groups of people who are much more vulnerable than other migrants- women and children. Women often encounter higher levels of danger than men when crossing. In addition to men and women and children, there is a third category: the sick and the elderly. If there is a sick or elderly person- their chances of making a successful cross are low. For example, Isabel's story demonstrates the decisions *coyotes* are willing to make in order to continue the journey. In the desert, there is no room for mercy. Again, payment does not mean safety. In Isabel's case, she was left behind because she both injured and could no longer keep up with the rest of the group. The *coyote* left Isabel's life to chance. This shows, at least in this particular case, that there is neither a sense of duty nor a sense of obligation to protect migrants. Money is the only thing that matters.

When deciding which narratives to include in this chapter, I knew I wanted to demonstrate the ways *coyotes* harm the migrants who hire them. The five stories in this chapter show the challenges and dangers migrants face by hiring *coyotes*. Each narrative is from a migrant who hired a *coyote* and subsequently made the journey across the border. Two of these migrants had to journey across two borders: the border between the United States and Mexico and Mexico's southern border. In both of these narratives, the individual encountered gross human rights violations that included the violence and the abuse migrants experience as a result of smuggling. And although there may be narratives that cast the *coyote* as a perpetrator of human rights violations, there are also narratives that do not portray the *coyote* in a terrible light.

However, the role of the smuggler as a perpetrator of violence is complicated. In "Human Smuggling and Border Crossings," Gabriella Sanchez notes that:

“Since most illicit activities take place out of the protections of court systems or regulations, their rules are socially enforced, leaving the use of violence or coercion for very unique or extreme circumstances”⁵⁶

Sanchez suggests that although migrants do experience violence, the nature of smuggling as a “community-based activity” means that *coyotes* employ violence as a last resort. In a way this is in line with Sal’s narrative. Sal experienced violence, but it was not the *coyotes* he employed who perpetrated the act. It was a group of bandits who, as far as the narrative indicates, were unaffiliated with the *coyotes* Sal employed.

Additionally, Sanchez indicates that as a “community-based activity,” successful *coyotes* rely on their reputation to maintain their business. Sanchez notes that *coyotes* “who harm their customers are likely to be reported to the community as unreliable.”⁵⁷ Consequently, it is in the *coyote*’s interest to take care of their client as much as they can. Furthermore, successful coyotaje depends on social connections and networks. As a result, smuggling is an exclusive activity; this “exclusiveness” keeps the group safe from actors who may harm the group through violence or some other means.

In addition to Sal’s narrative, Conchetta’s narrative demonstrates an instance where the act of smuggling was not inherently violent. Conchetta, a thirty-five-year-old Honduran woman, recounted her journey to the United States. Conchetta’s journey began in Honduras. Then she crossed into Guatemala where she met a *coyote* who smuggled her into Mexico “hidden in trucks and in a car.”⁵⁸ From Mexico, the *coyote* took Conchetta’s group to a safe house before crossing the border on foot to Nuevo Laredo. Once in Nuevo

⁵⁶ Sanchez, Gabriella. *Human Smuggling and Border Crossings*. London: Taylor and Francis, 2014. ProQuest Ebook Central.

⁵⁷ See above.

⁵⁸ Sladkova, Jana. *Journeys of Undocumented Honduran Migrants to the United States*. El Paso: LFB Scholarly Publishing LLC, 2010. ProQuest Ebook Central.

Laredo, the group continued in a car. When the group arrived at their destination, the *coyote* called Conchetta's friends to pick her up from the safe house.

In her interview, Conchetta notes she had a relatively positive experience. Conchetta did not mention encounters with violence or bandits. However, when talking about the other people in her group, Conchetta was more detailed in her account of the suffering her groupmates experienced. In her description of the car rides, Conchetta explained that her groupmates had difficulties breathing. Conchetta stressed that she did not encounter the same difficulties as her groupmates.

Conchetta's narrative is an example of a what could be construed as a best-case scenario. Conchetta reached her destination, and as far as she reports, she experienced neither violence nor was she trafficked. Additionally, Conchetta's references to her groupmates' suffering demonstrates that although the group may not have experienced violence, undertaking the journey is both dangerous and risky. Meaning that the journey is inherently dangerous. As mentioned before, the journey can be more dangerous for women than men. As a woman, the journey was much more dangerous since by virtue of her sex, the odds of experiencing some type of violence whether it be from the *coyotes*, law enforcement, bandits, or even the other members of the group are higher.

While it may be the case that coyotaje and smuggling of this type is "community-based," the violence that does occur should not be disregarded. While the *coyote*'s reputation may be on the line and consequently his business, that is not enough to remedy the human rights violations migrants experience at the hands of *coyotes*.

This chapter fits into my thesis because in Chapter 1, I argued that United States migration policy led to the rise of the *coyote*. By extension, these narratives demonstrate

the ripple effect United States migration policy created. This chapter intends to demonstrate the human impact and the humans policy-making affects. These narratives are meant to highlight the difficulties and human rights violations many migrants experience along the journey. That *coyotes* violate human rights. Abuse, violence, human trafficking, sex trafficking and forced labor are human rights violations migrants can experience. This is the worst possible outcome of the journey itself.

According to the United Nations, human rights are “inherent to all human beings and consist of right to life, liberty, freedom from slavery and forced labor.”⁵⁹

Alternatively, a human rights violation is a state’s failure to respect or uphold a person’s legal rights that are based on international standard or norms.⁶⁰ However, this definition does not include action by non-state actors, which is what *coyotes* would be considered. Using this as a sole definition of human rights violations would imply that since smuggling is an activity committed by a non-state actor, then there are no legal protections within that framework. Instead, governments address this issue by criminalizing the act of smuggling and the act of soliciting the services of *coyotes*. By its very nature coyotaje does not offer the legal protections available through the American and Mexican governments. Chapter 2 has made references to human smuggling and human trafficking. Chapter 3 will provide an overview on the differences between human smuggling and human trafficking as well as the responses from both the United States and Mexico to this issue.

⁵⁹ “Human Rights.” *United Nations*. <http://www.un.org/en/sections/issues-depth/human-rights/>.

⁶⁰ “Human Rights Violation.” In *Encyclopedia of Human Rights in the United States*, by H. Victor Conde. 2nd ed. Grey House Publishing, 2011. http://ezproxy.baylor.edu/login?url=https://search.credoreference.com/content/entry/greyhuman/human_rights_violation/0?institutionId=720

CHAPTER 3

Catching the *Coyote*

Introduction

Both Mexico and the United States must address the issue of undocumented migration, smuggling, and human trafficking. For example, the United States has addressed the issue regarding undocumented migration, human smuggling, and human trafficking through the militarization of its borders and investing in personnel increases. The line between human smuggling and human trafficking is thin since the legal distinction is based on whether a migrant was coerced. Human trafficking is a danger undocumented migrants risk when crossing the border, and this danger is exacerbated by the fact that undocumented migrants lack legal protections when journeying with a coyote and the legal protections that do exist are lacking.

When human trafficking does occur, what should the government do? Chapter Two demonstrated that one of the reasons smuggling is so risky is because there are no legal protections for the migrants who seek out a coyote's services. Migrants are at the mercy of the coyote. So what does that mean for the governments who have to confront smuggling and human trafficking? Both Mexico and the United States have policies to address the issue presented by human smuggling, human trafficking, and subsequent human rights violations. In some cases, the Mexican and American governments have worked together to address this issue. Yet despite all of this, it is important to show what each government is doing to address human trafficking and human smuggling. It is also important to address the shortcomings of each government's response to the issue. This

chapter begins by explaining the distinctions between human trafficking and human smuggling before shifting into a discussion on American and Mexican migration policy and each governments' response to the migration crisis.

Legal Distinctions between Human Trafficking and Human Smuggling

According to the American Immigration Council, the United States immigration law is civil⁶¹ law rather than criminal law. As a result, those finding themselves within the immigration system's removal proceedings lack the same standard of rights and procedures afforded to those within the criminal justice system. Additionally, the AIC notes that with the criminalization of more acts, there are more acts that can result in removal proceedings. Criminal convictions and charges can negatively impact a migrant's immigration case. Criminal charges and/or convictions could potentially be crimes of moral turpitude. If they are crimes of moral turpitude, they heighten the risk of deportation.

In February 2017, John Kelly issued a memorandum to the Department of Homeland Security, which effectively criminalized parents for paying smugglers to bring their children to the United States. Under this memorandum, DHS is instructed to:

Enforce "immigration laws against those who – directly or indirectly – facilitate the smuggling or trafficking of alien children into the United States. Proper enforcement includes, but is not limited to, placing individuals who are removable aliens into removal proceedings, or referring such individuals for criminal prosecution, as appropriate"⁶²

⁶¹ "Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice." *American Immigration Council*, last modified. March 19, 2013. <https://www.americanimmigrationcouncil.org/research/two-systems-justice-how-immigration-system-falls-short-american-ideals-justice>.

⁶² Kelly, John. "Implementing the President's Border Security and Immigration Enforcement Improvements Policies." Secretary U.S. Department of Homeland Security, last modified February 17, 2017. https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf

This directive does a couple things. First, it expands the “priority” category of individuals who are subject to removal proceedings. Second, it establishes a practice within the immigration system to charge parents of undocumented children with human trafficking. In an ideal situation, there would human smuggling and human trafficking would be kept separate. The government sought to differentiate these aspects. Now, however, this new practice sets a precedent that gives the government grounds for removing parents under the pretense of human traffickers, even though the parents may not necessarily engage in activities that result in the exploitation of children. Arguably, human trafficking is a much more serious offense than human smuggling because human trafficking results in the exploitation of a person. This directive seems to apply the same punishment, enforcement of immigration laws, to two separate crimes. However, because human trafficking is a much more serious offense, it is more likely that it could result in deportation/removal proceedings.

Human trafficking and human smuggling are two distinct terms. The difference, for the most part is predicated on coercion. Chapter 22 § 7102 of the U.S. Code provides definitions for coercion, victim of trafficking, victim of a severe form of trafficking, severe forms of trafficking in persons, and victim of trafficking. Under this definition, human trafficking includes both forced labor and sex trafficking. These definitions are a result of the United States’ Trafficking Victims Protection Act of 2000, which sought to protect trafficking victims, combat trafficking, and punish traffickers.⁶³ Although human trafficking and human smuggling are different terms, they are often used interchangeably.

⁶³ “Victims of Trafficking and Violence Protection Act of 2000.” *U.S. Department of State*, last modified October 28, 2000. <https://www.state.gov/j/tip/laws/61124.htm>.

The United States government emphasizes the distinction between human smuggling and human trafficking. Under the United States Code, human trafficking or “trafficking in persons” consists of the following:

- (A) “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁶⁴

Under the United States Code, human smuggling, alien smuggling, is defined as:

“an offense...for any person who—knowing that a person is an alien, to bring to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry...regardless of whether such alien has received prior official authorization to come...”⁶⁵

Human smuggling is part of a series of offenses under U.S. Code 1324(a). The other offenses under this code include “domestic transportation, harboring, encouraging or inducing aliens to enter the United States, and engaging in a conspiracy to bring unauthorized aliens to the United States.”⁶⁶ Additionally, this code applies to “any person” who commits the offense. This could potentially apply to the parents who pay coyotes to smuggle their children to the United States.

As mentioned above, the Trump Administration has issued a memo instructing Immigration Services to charge the parents of undocumented migrant children with either trafficking or smuggling. In the past, the government stressed the distinction between

⁶⁴ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S. Code § 7109 (a). <https://www.law.cornell.edu/uscode/text/22/7109>.

⁶⁵ Title 8 Aliens and Nationality Chapter 12 Immigration and Nationality, 8 U.S. Code § 1324 (a)(1)(A)(i) <https://www.justice.gov/usam/criminal-resource-manual-1907-title-8-usc-1324a-offenses>.

⁶⁶ Title 8 Aliens and Nationality Chapter 12 Immigration and Nationality, 8 U.S. Code § 1324(a). <https://www.justice.gov/usam/criminal-resource-manual-1907-title-8-usc-1324a-offenses>.

human trafficking and human smuggling. In addition to the legal definitions above, Immigration and Customs Enforcement notes that smuggling includes the “importation” or “transportation” whereas trafficking includes “exploitation.” That being said, attempting to charge parents with human trafficking is to conflate two distinct terms as defined by the government.

With this in mind, it is very difficult to accept that the parents of undocumented children are human traffickers under United States law. It is easier to accept that they may be responsible for aiding the smuggling of their children. Arguing that that the parents of these children are human traffickers for having paid smugglers conflates the idea of smuggling with trafficking. Additionally, ICE has implemented this new directive through its Human Smuggling Disruption Initiative.⁶⁷ In August 2017, ICE conducted an operation that resulted in the arrest of over 400 people. The main goal of this operation was to detain the parents of migrant children who paid smugglers to bring their children to the United States. This is an example of how the directive is implemented in practice; this is problematic, and it is exacerbated by the fact that immigration courts do not offer the same legal protections criminal courts would.

The law establishes distinctions between human trafficking and smuggling. These distinctions are an important part to the United States’ approach in their handling of these types of cases. In addition to legal statutes, the United States has also created the Human Smuggling and Trafficking Center under ICE. This task force has five main objectives, one of which include providing information, assessments, interagency issue

⁶⁷ Burnett, John, “ICE Has Arrested More Than 400 In Operation Targeting Parents Who Pay Smugglers,” *NPR*, last modified 18 August 2017, <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>

identification, support, and working with foreign governments and organizations.⁶⁸ The United States also issues an annual Trafficking in Persons Report which assesses a foreign country's compliance with the United States' definitions of human trafficking and smuggling.

It may seem strange for the United States to create these assessments and for it to base compliance on domestic law. However, the United States is a leader when it comes to addressing the issue of human trafficking. The United States has authority on the subject. As a result, the international community pays attention. This began with the Clinton Administration, when the United States adopted the Trafficking Victims Protection Act of 2000. Under the Bush Administration and under the Obama Administration, the Trafficking Victims Protection Reauthorization Act of 2003 and subsequent reauthorizations of the act represent the continuation of the government's policy to protect victims, prosecute human traffickers, and punish human traffickers. It is equally important to note that these acts focus on human trafficking- they make no mention of human smuggling.

Under U.S. law, coyotes can potentially be both human traffickers and human smugglers. Whether they are human traffickers depends on coercion and exploitation of migrants. On the other side of the border, the Mexican government has created definitions of human trafficking that differ from the American government's definitions. Under Mexican law, human trafficking "the use of force, fraud, or coercion as an

⁶⁸ "Human Smuggling and Trafficking Center." *U.S. Immigration and Customs Enforcement*, last modified March 29, 2017. <https://www.ice.gov/human-smuggling-trafficking-center>

aggravating factor rather than an essential aspect.”⁶⁹ In 2014, the Mexican government adopted a law that “provided for more severe penalties, incorporates new types of criminal behavior associated with human trafficking and extends the of aggravating circumstances of the crime, and increases penalties...”⁷⁰ Mexico is making efforts to address human trafficking, however, part of the problem lies in the fact that some government officials are complicit in worsening the issue.

What is the United States doing to address the issue of smuggling and trafficking along the southern border?

The United States identifies human trafficking as “involving the use of force, coercion, or fraud to induce an individual into performing a commercial sex act (sex trafficking), or to subject them to involuntary servitude, debt bondage, or slavery (labor trafficking).”⁷¹ According to data from the United States, “more than 90% of sex trafficking cases and 57% of labor trafficking cases involved women, and in 63% of labor trafficking cases, the victim was identified as a foreign national.”⁷² The United States offers human trafficking victims relief. Human trafficking victims, in certain cases, have access to government benefits and services. However, those who receive benefits must be

⁶⁹ “Trafficking in Persons Report Country Narrative: Mexico.” *U.S. Department of State*, last modified 2017.

⁷⁰ Gutiérrez, Norma. “Mexico: Federal Senate Approves of Law Against Human Trafficking,” *Library of Congress*, last modified 24 February 2014. <http://www.loc.gov/law/foreign-news/article/mexico-federal-senate-approves-of-law-against-human-trafficking/>

⁷¹ “Human Trafficking.” https://permanent.access.gpo.gov/gpo82717/2017NCVWRW_HumanTrafficking_508.pdf

⁷² See above.

willing to assist in a government investigation. If the trafficking victim is undocumented, they have the option of applying for a T visa.⁷³

In addition, under the Department of Homeland Security, Immigration and Customs Enforcement (ICE) is a government agency that serves as an instrument to address human trafficking and smuggling. ICE offers human trafficking and human smuggling definitions. ICE notes that human trafficking has a focus on “exploitation” whereas human smuggling has a focus on the “transportation” of people.⁷⁴

The Trump Administration’s immigration policy has three key goals: “ensure safe and lawful admissions; defend the safety and security of our country; and protect American workers and taxpayers.”⁷⁵ With these goals in mind the Trump Administration has ended the Deferred Action for Childhood Arrivals (DACA) Program initiated under the Obama Administration to provide undocumented migrants who came to the United States as children with deferred deportation as well as a means to work and study. Additionally, the Trump Administration has also moved to cancel the Central American Minors (CAM) Refugee/Parole Program. This program enabled children from Honduras, El Salvador, and Guatemala to reunite with a parent living in the United States⁷⁶ by applying for screening in their home country and keeping the child from making the

⁷³ See above.

⁷⁴“Human Trafficking and Smuggling.” *U.S. Immigration and Customs Enforcement*, last modified January 16, 2013. <https://www.ice.gov/factsheets/human-trafficking>

⁷⁵ “Trump Administration Immigration Policy Priorities.” *The White House*, last modified October 8, 2017. <https://www.whitehouse.gov/briefings-statements/trump-administration-immigration-policy-priorities/>.

⁷⁶ “DHS Announces End to a Program Which Gave Central American Children a Safe and Legal Way to Enter the US.” *The Washington Office on Latin America*, last modified August 16, 2017. <https://www.wola.org/2017/08/dhs-announces-end-program-gave-central-american-children-safe-legal-way-enter-u-s/>.

dangerous journey north. As noted in Chapter One, ending these types of programs contributes to the demand for coyotes. Without a legal means to reach the United States (or Mexico for that matter), Central American children may be more likely to turn to smugglers. As a result, this will contribute to the criminal organizations the Trump Administration is adamant to counteract.

Criminalization of Smuggling, Trafficking, and Migration

Both Mexico and the United States have made efforts to address human trafficking. Human smuggling and human trafficking are illegal in both countries. The criminalization of these illicit activities is meant to discourage the practice of both. However, both continue to struggle with the addressing the issue. The United States has taken a hard approach regarding immigration in general and has also worked to address undocumented migration. In an effort to do so, the United States expanded the priority of individuals to parents of undocumented children who paid a smuggler to bring their child to the United States. The parents of these undocumented children do so for many reasons. Some chose to escape the violence within their home country. For example, Human Rights Watch notes that central American countries like Guatemala are currently experiencing problems with public security, corruption, and criminal justice.⁷⁷ Insight Crime also reports that Guatemala faces challenges with criminal groups that consist of police, smugglers, human traffickers, and drug cartels.⁷⁸

⁷⁷ Human Rights Watch. www.humanrightswatch.org.

⁷⁸ “Guatemala Profile,” *InSight Crime*, last modified November 29, 2017. <https://www.insightcrime.org/guatemala-organized-crime-news/guatemala/>.

Chapter Two mentioned the intersection between human trafficking and smuggling and other types of illicit activities such as the drug trade. In some cases, migrants are forced to become drug mules while attempting to cross into the United States. While there are many connections between human trafficking and drug trafficking, one of these connections lies with Mexican drug cartels who also participate in human trafficking.⁷⁹ However, as the Mexico and the United States move to address drug trafficking, criminal organizations move to human trafficking in order to earn profit. As a result, smuggling has become a profitable business.

The main argument in Chapter One indicated that the United States' immigration policy resulted in an increased demand for coyotes. The same can be said for the United States' policy on drug trafficking. As the United States attempts to address the issues surrounding human smuggling, human trafficking, and drug trafficking, the worse the problem becomes. This also indicates that there is something wrong with the approach to resolving the issue.

Rather than reduce the desirability of hiring smugglers or coyotes, U.S. policy has had the opposite effect. The effects of U.S. policy have contributed to maintaining the coyote business. The harder it is to cross into the United States, the more need there is for people to hire coyotes to smuggle them into the United States. "Tougher" immigration policies and increased border security exacerbate the issue of undocumented migration. Similar policies, like strict border security and "tougher" laws, have the capacity to do more harm than good. The parents of migrant children, who pay smugglers or coyotes to

⁷⁹ McAdams, M. (2010). *Human trafficking in Mexico*. Washington: The Council on Hemispheric Affairs. Retrieved from Social Science Premium Collection. Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/196340975?accountid=7014>

bring their children to the United States will be charged with “human trafficking.” As mentioned before, doing so conflates human smuggling and human trafficking. It blurs the distinction between the two acts. This is a potential issue because blurring the distinctions between smugglers and traffickers makes it much more difficult to address the problem. Labeling the parents of migrant children as traffickers does more harm than good because it creates the possibility of leaving the child without a parent, and it also creates the possibility of using the human trafficking charge to deport the parent if the parent is undocumented. The definition of human trafficking differs from the definition of human smuggling on account of the “exploitation.” It makes little sense to claim that a parent will “exploit” their child (unless there is proof a parent has in fact exploited their child).

Chapter Two mentioned the intersection between human trafficking and smuggling and other types of illicit activities such as the drug trade. In some cases, migrants are forced to become drug mules while attempting to cross into the United States. While there are many connections between human trafficking and drug trafficking, one of these connections lies with Mexican drug cartels who also participate in human trafficking.⁸⁰ However, as the Mexico and the United States move to address drug trafficking, criminal organizations move to human trafficking in order to earn profit. As a result, smuggling has become a profitable business.

⁸⁰ McAdams, M. (2010). *Human trafficking in Mexico*. Washington: The Council on Hemispheric Affairs. Retrieved from Social Science Premium Collection Retrieved from <http://ezproxy.baylor.edu/login?url=https://search.proquest.com/docview/196340975?accountid=7014>

What is Mexico doing to address the issue of smuggling and trafficking along its borders?

According to the “Access to Justice for Migrants in Mexico: A Right that Exists Only on the Books,”⁸¹ Mexico has policies in place meant to address the issues undocumented migrants confront in the region. However, the summary also notes that there are areas the government could improve. This article outlines a few programs the Mexican government has implemented in order to address smuggling and human trafficking. Mexico has implemented the mechanism for foreign support. This mechanism allows people to report crimes against migrants from abroad. In addition to this mechanism, Mexico has also tasked its National Human Rights Commission with performing visits to detention centers to assess how migrants are treated.⁸² This same report notes that migrants are subject to kidnappings, forced disappearances, and false imprisonments. More concerning however, is the fact that little has been done to address the issue. Mexican officials have not given the same attention to addressing crimes against migrants as they have to their “capacity to detain and deport”⁸³ them. Additionally, government officials appear to show an unwillingness to address the issues migrants encounter.

In 2011 Mexico implemented the Migratory Act⁸⁴ (Ley de Migración), which outlined Mexico’s policy regarding migrants and migrant rights. This Act is significant

⁸¹ Suárez, Ximena, Andrés Díaz, José Knippen, and Maureen Meyer. “Access to Justice for Migrants in Mexico: A Right that Exists Only on the Books.” *The Washington Office on Latin America* (2017): https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf.

⁸² See above.

⁸³ See above.

⁸⁴ “Migratory Act 2011.” *Senado de la Republica LXI Legislatura*, last modified May 25, 2011. https://www.albany.edu/~rk289758/documents/Ley_de_Migracion_en_Ingles.pdf.

because it provides foreigners, including migrants, with legal protections they otherwise would not have. In addition to legal protections, this law also grants migrants due process within the law. Article 11 of the Act specifies that “migrants have the right to the administration of justice, at all times respecting the right to due process, as well as to lodge complaints of human rights.”⁸⁵ The right to due process is a significant aspect of law and is especially significant to migrants because of the legal protections due process provides creates. In other words, due process provides migrants the means to protect themselves against harm and it provides them a means for “remedy.” This is a contrast to the American government, where migrants have some rights, they do not have full due process rights on account of the fact that the American Immigration Courts are not criminal courts; they function like civil courts.

Although Mexico has these legal provisions in place, they stand at odds with how migration policy is conducted. Mexico has these legal provisions, but they have not been effectively implemented. What does this mean for migrants and the due process they are supposed to be afforded? Well, migrants have these rights in theory, but not in effect. These rights are there; they just are not enforced as well as they could be. This is a problem because it violates human rights.

Furthermore, Mexico and the United States have a joint program to address human smuggling along the U.S.-Mexico border. “Operation Against Smugglers Initiative on Safety and Security” (OASISS) is a program in which Mexican smugglers

⁸⁵ See above.

are tried in Mexican courts.⁸⁶ More specifically, this program seeks to target both smugglers and human traffickers, highlighting each respective government's role in providing safety and security for people. In addition to this program, the United States also implemented Operation Firewall. The purpose of this program is to address bulk cash smuggling.

Conclusion

To conclude, there is a lot more each government can do in relation to smuggling and human trafficking. Each government is confronted with difficulties in addressing this issue. However, each government must make an effort to address the issue in a manner that does not negatively affect the migrant and or person seeking help. Although undocumented migrants may be breaking a law by using smugglers to enter the United States or Mexico, the governments of each country should make sure to treat the migrants they detain with dignity. This means letting them know what their rights are and treating them humanely. Regarding human trafficking and human smuggling, both governments have made efforts to address the issue. There is a presumption that at the hands of the government, migrants will not be subject to mistreatment. However, that is not always the case.

Chapter 3 has sought to provide an overview of human smuggling and human trafficking as well as the role of the United States and Mexico in addressing the issue. Chapter 4 concludes the thesis by discussing human rights violations perpetrated by the

⁸⁶ CPB Media Relations. "Border Patrol, Mexican Government Partner to Combat Human Smuggling." *U.S. Customs and Border Protection*, last modified June 26, 2017. <https://www.cbp.gov/newsroom/local-media-release/border-patrol-mexican-government-partner-combat-human-smuggling>.

American and Mexican governments. Most importantly, Chapter 4 provides an outline of the immigration system in the United States and ends with a call for immigration reform in order to better address human smuggling and human trafficking.

CHAPTER 4

Conclusions on the Coyote and the United States

When I first began writing this thesis, I knew I wanted to talk about coyotes and their relationship to migrants. For the most part, I wanted to talk about the human impact of migration policy from both perspectives. The overarching thesis is this: U.S. Migration policy led to the increased need for the coyote. As the United States continues to work to address the migration crisis, it is important to note that the immigration system is in dire need of reformation. This chapter will provide an overview of human rights violations undocumented migrants face at the hands of both the American and Mexican governments as well as a discussion advocating for a better immigration system within the United States.

Human Rights Violations: It is not just the coyote who violates human rights, Mexico and the United States do it too.

Chapter Two provided a series of narratives from migrants who crossed the border with the assistance of a coyote. Some narratives demonstrated the fact that the governments themselves also perpetrated human rights violations. Both the American and Mexican governments have been criticized for how they treat undocumented migrants. According to the Human Rights Watch, migrants held in detention centers along the US-Mexico border are subject to “deplorable” conditions.⁸⁷ For example, migrants are placed

⁸⁷ Bochenek, Michael Garcia. “In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells.” *Human Rights Watch*, 2018. <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

in holding cells without mattresses for days, prevented from showering sometimes for days, and had limited access to feminine hygiene products.⁸⁸ This is a case where migrants are subject to poor detention conditions.

Abuses at the hands of American law enforcement is not unprecedented. The American Immigration Council has released a series of special reports detailing abuses, misconduct, violations, and so on committed by American immigration authorities.⁸⁹ The most recent report notes the five problem areas: “failure to inform migrants of their rights; intentional interference of migrants exercising rights; coercive tactics to obtain signed documents; intimidation obstructs access to legal remedies; and failure to provide removal documents.”⁹⁰ These areas demonstrate mis-steps on behalf of American immigration officials. This report also notes that Trump Administration’s new immigration directives have negative impacts on migrants’ rights. The report states that the Trump administration’s “tacit approval of harsh treatment toward migrants also risks emboldening immigration agents to act improperly,”⁹¹ indicating that harsh treatment is not conducive to resolving the issue at hand. In another report, the AIC notes that immigration officials “are known for regularly overstepping the boundaries of their authority by using excessive force, detaining people under inhumane conditions, and

⁸⁸ See above.

⁸⁹ “Abuses,” *American Immigration Council*, <https://www.americanimmigrationcouncil.org/topics/abuses>. These reports include “Deportations in the Dark,” “Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered,” and “Detained Beyond the Limit

⁹⁰ Campos, Sara, and Guillermo Canto. “Deportations in the Dark: Lack of Process and Information in the Removal of Mexican Migrants,” *American Immigration Council*. https://www.americanimmigrationcouncil.org/sites/default/files/research/deportations_in_the_dark.pdf.

⁹¹ See above.

using coercion and misinformation to remove people.”⁹² Detainees have also reported cases of physical abuse.⁹³ This same report indicates that immigration agencies have done little, if anything, to address these problems.

The narratives in Chapter Two shed light on the experiences of migrants with Mexican government officials. More specifically, throughout these narratives, migrants mentioned that there is mistreatment from the smugglers and the government officials who detain them. Enrique’s narrative provides insight, however brief, about the treatment migrants receive from Mexican officials. As mentioned above, the Mexican government also has made efforts to address human rights violations committed by government officials. Migrants in Mexico experience violence and coercion at the hands of criminal organizations and in some cases, government officials as well.

A Better Migration System

We need a better Migration System because the current one is broken. The present migration system is a civil system, not a criminal system. As a result, migrants do not receive the same due process they would in a criminal court. This is problematic because no due process is a violation. Constitutional protections apply to American citizens, but they should also apply to non-citizens as well. Some might argue that since undocumented migrants violate federal law because they do not have the government’s

⁹² Cantor, Guillermo, and Walter Ewing. “Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered.” *American Immigration Council*, last modified August 2, 2017. <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

⁹³ Campos, Sara, and Guillermo Canto. “Deportations in the Dark: Lack of Process and Information in the Removal of Mexican Migrants,” *American Immigration Council*. https://www.americanimmigrationcouncil.org/sites/default/files/research/deportations_in_the_dark.pdf.

permission to be lawfully present, undocumented migrants should be punished for violating U.S. immigration law. However, American citizens are afforded due process within the criminal procedure when accused of a crime. People subject to criminal proceedings have the right to counsel, the right to a jury trial, and so on. There are legal protections in place to make sure that people accused of violating a law do not lose their freedoms unless there is proof that they committed the crime. Why should undocumented migrants not receive due process to determine whether they should be subject to removal?

When an undocumented migrant faces criminal charges and subsequently goes through the justice system, the migrant's counsel must inform the migrant of the potential immigration consequences the criminal matter could have on the migrant's immigration case. In *Padilla v. Kentucky*,⁹⁴ the Supreme Court stated "that counsel must inform a client of whether his plea carries a risk of deportation."⁹⁵ This becomes a matter of justice and fairness. Denying migrants their due process is a disservice to justice.

Migrants should be given due process in immigration court. Another issue pertaining to immigration courts is the fact that since it is a civil procedure and not a criminal procedure, the government does not have to provide migrants with an attorney if the migrant cannot afford one. This is one of the more pronounced differences between immigration courts and criminal courts. The right to an attorney is a constitutional right,

⁹⁴ "Padilla v. Kentucky 559 US 356 (2010)." *Supreme Court of the United States*, last modified March 31, 2010. <https://www.oyez.org/cases/2009/08-651>.

⁹⁵ See above.

and in the criminal justice system, defendants are informed of this right. That is not always the case within immigration courts.

In *Jennings v. Rodriguez*⁹⁶, the Supreme Court dealt with an issue pertaining to bond hearings. More specifically, the court dealt with three questions regarding the rights of migrants under immigration proceedings. One of questions was whether “noncitizens subject to mandatory detention under the relevant text of the INA entitled to bond hearings, with the possibility of release, if their detentions last six months?”⁹⁷ In this case, the Court determined that noncitizens are not entitled to bond hearings if they are detained for more than six months. Again, this example demonstrates the complexity of the issue regarding rights and it also demonstrates a difference between criminal and immigration courts. The point of talking about these cases and due process is to highlight the complexity of the immigration system and the questions that arise from this complexity. At this point it is worth mentioning that in the interest of justice, migrants should receive similar rights regarding bond hearings at least in this particular case. In his opinion, Justice Breyer makes a comment questioning why migrants do not have the right to bond hearings when “triple ax murderers” do have the right to a bond hearing.

Stricter immigration policy and the effective militarization of the border contributes to the problem. Although the Trump Administration may believe that conflating human smuggling and human trafficking will alleviate the issue of undocumented migration, it is not necessarily the case. By expanding the applicability of

⁹⁶ “*Jennings v. Rodriguez* 583 US_(2018).” *Supreme Court of the United States*, last modified February 27, 2018. <https://www.oyez.org/cases/2017/15-1204>.

⁹⁷ See above.

the law, the Administration is including more people and in doing so, it creates possibility of worsening the immigration court backlog.⁹⁸ The backlog of immigration courts is so severe that the New York Times reports cases where people wait years to stand in front of a judge.⁹⁹ The backlog is a result of various factors including a lack of judges and legal professionals to handle the case load and work.¹⁰⁰ The New York Times also reports that immigration judges also spend very little time addressing or handling cases. In some instances, judges take as little as seven minutes to make a decision about a case. This is not enough time to make a sound judgement about a case. It is also a case of two extremes. On one end, the system takes too little time to handle a case. On the other end, the system takes too long. Resolving this issue requires finding a solution that provides the right amount of time needed to handle the matter because time is sensitive for migrants especially when being in legal limbo keeps them from their loved ones and making a living.

There is an indication that targeting the parents of migrant children for having paid coyotes to bring their children to the United States is not a feasible solution. Why? Because it means grouping parents who want to care for their children with people who are responsible for human trafficking and exploiting migrants by forcing them into labor,

⁹⁸ “Empty Benches: Underfunding of Immigration Courts Undermines Justice.” *American Immigration Council*, last modified June 17, 2016. <https://www.americanimmigrationcouncil.org/research/empty-benches-underfunding-immigration-courts-undermines-justice>.

⁹⁹ Preston, Julia, “Deluged Immigration Courts, Where Cases Stall for Years, Begin to Buckle,” *The New York Times*, Dec. 1, 2016, <https://www.nytimes.com/2016/12/01/us/deluged-immigration-courts-where-cases-stall-for-years-begin-to-, buckle.html>.

¹⁰⁰ “Empty Benches: Underfunding of Immigration Courts Undermines Justice.” *American Immigration Council*, last modified June 17, 2016. <https://www.americanimmigrationcouncil.org/research/empty-benches-underfunding-immigration-courts-undermines-justice>.

by forcing them into the sex trade, or by forcing them to become drug mules. Rather than expend resources to target the parents of migrant children, the government would be better off focusing its resources on those who do exploit migrants. By widening the scope of the laws so it applies to these parents, the government is also potentially making it easier for those who engage in human trafficking to slip through the cracks; it becomes harder to apprehend those individuals, making the issue that much worse. As a result, the parents of these migrant children should not be targeted.

Solution to the migration system?

The question remains: How do we resolve the issue? One way to solve the issue is as follows: Scholars have suggested penalizing employers who contract undocumented migrants. It seems like a simple solution. By making it difficult and unappealing for employers to hire undocumented migrants, it will reduce the number of jobs available. If there are no jobs available to undocumented migrants, then they will not want to travel to the United States in search of economic opportunity.

Another way forward is to address the backlog itself. One way to address the backlog would be by providing enough resources, judges, and legal personnel to be able to handle the case load. Rather than prioritizing certain cases, and consequently moving them “up the line” which contributes to the backlog, it could be possible to establish certain divisions within the Department of Justice that would be responsible for handling certain types of immigration cases. For example, one division could be responsible for handling cases pertaining to child migrants from the northern triangle in central America while another could be responsible for handling petitions for asylum or refuge. Alternatively, the labor division could be divided up based on region since some cases

may overlap. Illicit drug trade, human smuggling, and human trafficking overlap, for example, would make it difficult to designate the case to a division.

The AIC notes that in addition to supplying the immigration system with enough personnel to handle the case load, it is also important that migrants receive due process.¹⁰¹ Immigration reform should include provisions requiring law enforcement to inform migrants that that the migrant has a right to counsel as well as applying the legal protections within the criminal justice system to the immigration system.

Apart from allocating resources and personnel to handle the workload, it is also important to address the labor aspects by providing for enough visas to meet the labor demand. For one, it is clear that migrants are finding jobs in the United States. With this in mind it is important to provide a means for migrants to obtain legal status or permission to work in the United States. Presently, the United States' H-2A visas are available for temporary or seasonal agricultural workers, and H-2B visas are available for temporary non-agricultural workers.¹⁰² However, there are limits as to the number of migrant workers who can apply to for these visas. This is an issue because by setting a cap, the government is making it much more difficult to meet the labor demand within these types of business sectors.

The militarization along the border combined with strict policies has made it much more difficult to cross over into the United States. When it was easier for migrants

¹⁰¹ "Empty Benches: Underfunding of Immigration Courts Undermines Justice." *American Immigration Council*, last modified June 17, 2016. <https://www.americanimmigrationcouncil.org/research/empty-benches-underfunding-immigration-courts-undermines-justice>.

¹⁰² "Temporary (Nonimmigrant) Workers." *U.S. Citizenship and Immigration Services*. <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.

to migrate between countries, there was less incentive to permanently settle in the United States.¹⁰³ This is not the case anymore. Stricter policies have made it difficult move between the United States and Mexico and have contributed to a higher presence of undocumented migrants within the United States. One way to address the problem would be by increasing the visa cap to meet the labor demand. By increasing the visa gap, the government would be creating more legal access to the United States.

All of this to say that increasing legal avenues for migration would reduce the back log within the immigration courts as well as reduce the need for coyotes. As mentioned before at the beginning of Chapter 1, migrants come to the United States for many reasons, including for work. Since there are people who are willing to meet the labor demand within the agriculture and service industries, it would be sensible to provide those individuals with legal means to come to the United States. Doing so will reduce the incentive to cross the border without documentation, and it will also reduce the need for hiring a *coyote*. These legal means are much safer than hiring a *coyote* and risking the journey across a dangerous landscape.

So, to conclude the conclusion and to reiterate something that has been said countless times before, we need immigration reform. In the interest of justice, we need immigration reform that provides undocumented migrants with a pathway towards citizenship- we need immigration reform that takes the Dreamers into account. We need immigration reform that takes into account the lives of the people it affects. We need immigration reform that recognizes the contributions migrants make to our country. Most

¹⁰³ Hamilton, Nora. *Mexico: Political, Social and Economic Evolution*. New York: Oxford University Press, 2011.

importantly, we need to understand that many of those who journey across the border do so out of necessity, in pursuit of opportunity.

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