

No. 15-16410

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARACELI RODRIGUEZ, INDIVIDUALLY AND AS THE SURVIVING MOTHER AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF J.A., DECEASED,

Plaintiff-Appellee,

v.

LONNIE SWARTZ, AGENT OF U.S. BORDER PATROL,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Arizona, Tucson
Case No. 4:14-cv-00251-RCC

The Honorable Raner C. Collins, Chief United States District Judge

**BRIEF FOR SCHOLARS OF U.S.-MEXICO BORDER ISSUES AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE ARACELI
RODRIGUEZ AND AFFIRMANCE**

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INTEREST OF THE *AMICI CURIAE*

Amici curiae are some of the country's foremost scholars on issues touching the United States-Mexico border, including transborder populations, immigration and migration, asylum and detention, human rights, drug-related violence, political and cultural geography, environment and sustainability, border economies, and more. *Amici* are interested in providing the Court an accurate portrayal of the United States-Mexico border as it exists in Nogales, Arizona and Nogales, Sonora. Identities of *amici* are described in Appendix A.

**STATEMENT OF COMPLIANCE WITH RULE 29(A) OF THE FEDERAL
RULES OF APPELLATE PROCEDURE**

This brief is submitted pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. All parties have consented to its filing. No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no other person except *amici curiae* or their counsel contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The shooting at the center of this case occurred on the border between two countries, but in the middle of a single community. For many decades, there was no meaningful barrier between Nogales, Arizona and Nogales, Sonora, and today, the cities remain essentially identical in demographics, bound together by cross-border families, economic interdependence, and a binational cultural unity. U.S. and Mexican citizens travel across the border at Nogales by the thousands each day, millions of them on foot each year. The fence that now marks the border is a mundane fixture in city life, and it runs through the middle—not along the edge—of the community where J.A. lived and died.

ARGUMENT

Araceli Rodriguez's son was shot and killed on the U.S.-Mexico border where it runs between the twin cities of Ambos Nogales. This single cross-border community—officially comprising Nogales, Arizona and Nogales, Sonora—ties the two countries together. The name Ambos Nogales—which means “both Nogales”—itself is emblematic both of the community's shared history, and of the cross-border lives of the people who live there. The two cities are bound together by family ties, economic interdependence, and mutual support in times of trouble. In considering this case, *amici* urge the Court to recognize that a person who walks along the border in Ambos Nogales walks in the middle of a single, bustling

community of families, workers, and businesses in which the fence marking the border is absorbed as just another fixture in city life.

This brief describes how the border exists in Nogales, not as an abstract political division on a map, but as a fact of life for border residents who live and interact with it day to day, and year to year. They walk across the border by the thousands each day—2.9 million crossed on foot in 2014.¹ They sit through the checkpoint traffic jams of spring break and *semana santa*, the Holy Week before Easter, and they clothe their children with goods from across the border. From the Nogales families living between two countries but in one community, to people drawn to these cities by economic opportunities, to tourists enthralled by the area's binational culture, everyone in Nogales touches the border.² Understanding how the border affects people who live in Nogales, and people who grow up there, is essential to understanding the facts of this case.

¹ U.S. DEP'T. OF TRANSP., BORDER CROSSING/ENTRY DATA: QUERY DETAILED STATISTICS, http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html (last visited Apr. 1, 2016).

² See LAURA VELASCO ORTIZ & OSCAR F. CONTRERAS, MEXICAN VOICES OF THE BORDER REGION ix (2011) (“The internationality and intense cross-border interaction of the border region have, more than any other factors, given it a unique personality and flavor. As a consequence, some argue the borderlands in their entirety constitute a single transnational system in which human experiences become defined by ties to the other side.”) (quotation marks and citation omitted).

I. Family and the Border Lifestyle

Many families in Ambos Nogales live on both sides of the border.³ Parents, children, and all types of relatives cross frequently to gather for a meal in Mexico, watch a baseball game in Arizona, or attend mass on either side.⁴ Family names span both sides of the border, and first-time meetings in the region inevitably involve the last-name-game of determining who is related to whom and how else their social networks are connected.⁵

³ See ALBERTA H. CHARNEY & VERA K. PAVLAKOVICH-KOCHI, *THE ECONOMIC IMPACTS OF MEXICAN VISITORS TO ARIZONA: 2001-2002* 13 (2002) (According to a University of Arizona survey, approximately 8% of Mexican aliens passing through the Nogales border port were visiting family.).

⁴ See OSCAR J. MARTINEZ, *BORDER PEOPLE: LIFE AND SOCIETY IN THE US-MEXICO BORDERLANDS* 129 (1994) (“Many Anglos regularly have lunch or dinner in favorite Mexican restaurants. Some enjoy meeting in Mexican bars for ‘happy hour,’ while others spend Friday or Saturday nights in popular nightclubs and discotheques . . .”).

⁵ Cf. JOSIAH MCC. HEYMAN, *LIFE AND LABOR ON THE BORDER: WORKING PEOPLE OF NORTHEASTERN SONORA, MEXICO, 1886-1986*, 128-31, 158-160 (1991) (detailing widespread phenomenon of border balanced families providing material and emotional support across the border in the nearby and closely comparable twin cities of Douglas, Arizona and Agua Prieta, Sonora).

J.A.'s family exemplifies the type of cross-border existence that is so common to Ambos Nogales. J.A. and his mother lived in Nogales, Sonora, four blocks from the U.S. border. But because J.A.'s mother was so often away for work, J.A.'s grandmother played a significant role in raising him. To care for him, she would travel to Sonora frequently from Arizona, where she and J.A.'s grandfather live. They have both since become U.S. citizens.



Figure 1. A woman, who declined to give her name, is hugged by her husband as they chat through the border fence separating Nogales, Arizona, and Nogales, Mexico, on July 28, 2010. Jae C. Hong, *THE ATLANTIC* (May 6, 2013), <http://www.theatlantic.com/photo/2013/05/on-the-border/100510/#img36>.

Yet J.A.'s family was far from unique. The lives of José and Hope Torres, another cross-border family, likewise demonstrate the regular contact that people in Ambos Nogales have with the border. José, a Mexican citizen, now deceased, and Hope, an American citizen, met and married in the Nogales community and lived on both sides of the border at different times.⁶ In Nogales, Sonora, José founded *Casa de la Misericordia*, or House of Mercy, an organization dedicated to caring for the city's at-risk youth. Yet José frequently crossed the border onto the U.S. side to collect donations and purchase supplies.⁷ And Hope commuted across the border daily to jobs in Nogales, Arizona at Valley National Bank and machine manufacturer Walbro.⁸

Even people who may never cross the border are in constant contact with people from the other side. For example, in the Nogales community, shops line both the Arizona and Sonora sides of the border, each catering almost exclusively to clientele from the other side. They include high end shops like Bracker's Department Store alongside kiosks for low-price Chinese merchandise that is often

⁶ See MIRIAM DAVIDSON, *LIVES ON THE LINE: DISPATCHES FROM THE U.S.-MEXICO BORDER* 145-70 (2000).

⁷ See *id.* at 146-47.

⁸ *Id.* at 155-56.

resold in Mexican flea markets.⁹ Successful businesses, like a popular restaurant called Elvira's, often open new locations on the other side of the border.¹⁰ These businesses and the commerce they engage in are part of the perpetual mixing of Mexicans and Americans that has defined the culture here.¹¹ So, to a great degree, border life is not built on the exclusion of people from the other side, but on the opportunities presented by the connections that bind the two sides together.

⁹ See BRACKERS DEPARTMENT STORE, <https://www.facebook.com/Brackers-Department-Store-406377952794006> (last visited Apr. 4, 2016); *Nogales: Attractions*, FROMMERS (Mar. 22, 2016, 5:21 PM), <http://www.frommers.com/destinations/nogales/668483>; Paul Theroux, *The Country Just Over the Fence*, N.Y. TIMES, Feb. 23, 2012, http://www.nytimes.com/2012/02/26/travel/nogales-mexico-a-few-steps-and-a-whole-world-away.html?_r=0 (describing the sights of Nogales, Sonora directly along the border: “small children kicking a ball, men in sombreros conferring under a striped awning, steaming food carts”).

¹⁰ See, e.g., ELVIRA'S, <http://www.elvirasrestaurant.com/aboutelviras.htm> (last visited Apr. 4, 2016) (noting that Elvira's, established in Nogales, Sonora in 1927 has relocated to nearby Tubac, Arizona).

¹¹ MARTINEZ, *supra* note 4 at 53 (“Above all, the distinctiveness of border Mexicans and Anglos is embedded in the long-term incorporation of many traits from each other's culture, including cross-borrowing of such things as language, religion, values, customs, traditions, holidays, foods, clothing, and architecture.”); Reed Karaim, *The Mexican Border: Crossing a Cultural Divide*, THE AMERICAN SCHOLAR, June 3, 2011, <https://theamericanscholar.org/the-mexican-border-crossing-a-cultural-divide/#.VwKaq5j2bGg> (“The cultural fusion is woven into life in the city and all of southern Arizona. There are the Sonoran hot dog stands and the mariachi bands. On the weekends before school starts and during the pre-Christmas season, the Sonoran middle class floods Tucson to shop; the parking lots are filled with cars bearing Mexican plates, and English becomes the second language in my local Target store.”).



Figure 2. Life and activity in Nogales progress adjacent to the border fence on the Arizona and Sonora sides. Sgt. 1st Class Gordon Hyde, THE AMERICAN SCHOLAR (June 3, 2011), <https://theamericanscholar.org/the-mexican-border-crossing-a-cultural-divide/#.VwKaq5j2bGg>.

II. Two Cities in One Community

Reflecting the connections among its people, Ambos Nogales exists as an interdependent community that in many ways functions as one, rather than as separate cities. In fact, as their shared name suggests, the cities of Ambos Nogales were originally just Nogales. This undivided community was founded in 1882 as a trading post to connect Mexico with the new U.S. territories in the American Southwest. Even after a barrier was established in 1918, it functioned for decades more like a picket fence with easy movement from one side to the other.¹² Only in the 1990s did the United States build a sturdier wall through Ambos Nogales.¹³ Still, the people here remember that, as recently as 2007, no passport was necessary to cross the border, and even today, the lack of a passport usually results

¹² See CASEY & MARY WATKINS, UP AGAINST THE WALL: RE-IMAGINING THE U.S.-MEXICO BORDER 28-29 (2014); Randall H. McGuire, *Steel Walls and Picket Fences: Rematerializing the U.S.-Mexican Border in Ambos Nogales*, 115 AMERICAN ANTHROPOLOGIST 466, 466 (2013); ORTIZ & CONTRERAS, *supra* note 2 at xiii; Daniel D. Arreola, *La Cerca y Las Garitas de Ambos Nogales: A Postcard Landscape Exploration*, 43 J. SW. 505, 516 (2001).

¹³ See McGuire, *supra* note 12 at 466.

in only a few words of admonition before crossing is allowed.¹⁴ The current fence was erected in 2011, and though it has slatted bars that let passers-by see through to the other side, locals lamented that “it separates us from *nuestros queridos* [our beloved].”¹⁵

But these stronger barriers have not fundamentally changed the Ambos Nogales community or severed it into two. They have simply increased the time that people here must spend to cross the border, and residents are endlessly sharing strategies for time-efficient crossing. While recent expansion of the Mariposa crossing—the U.S. entry point to the west of Nogales—has helped somewhat to reduce wait times, a television station and website are permanently devoted to documenting the length of the line, and the U.S. Customs and Border Patrol (CBP) has released a smartphone application, “Border Wait Times.” Meanwhile, frequent crossers or commuters (if they undergo an FBI background check and prove their employment) may sign up for CBP’s SENTRI program for expedited entry to the

¹⁴ Wren Abbot, *Unspoken Rule Allows Passport-Free Border Crossings*, NOGALES INTERNATIONAL (Nov. 1, 2010), http://www.nogalesinternational.com/news/unspoken-rule-allows-passport-free-border-crossings/article_c24349d7-6d03-57d1-a140-084ab521c7f7.html.

¹⁵ McGuire, *supra* note 12 at 467 (quoting from a conversation between the author and “Carlos,” a Nogales resident); *see also* HEYMAN, *supra* note 5 at 198.

U.S.¹⁶ The U.S. also issues repeat-visit B-1/B-2 visas for Mexican border residents who pass background checks. Commonly referred to as crossing cards or “*lazervisas*,” these allow travel into the United States up to 75 miles from the border for shopping, family visits, and tourism.¹⁷

Accordingly, cross-border travel is somewhat more complex and less convenient than it once was, but traversing the U.S.-Mexico boundary remains a part of everyday life in Nogales. The streets that lie to either side of the borderline remain bustling places within the community, and the fence itself is absorbed as just another fixture in city life. Artists have painted murals over sections of the fence; pictured is one artist’s effort to add a shade of blue “to resemble the sky being brought down, ‘erasing’ the border fence.”¹⁸

¹⁶ U.S. CUSTOMS AND BORDER PROTECTION, SECURE ELECTRONIC NETWORK FOR TRAVELERS RAPID INSPECTION, <http://www.cbp.gov/travel/trusted-traveler-programs/sentri> (last visited Mar. 21, 2016); U.S. CUSTOMS AND BORDER PROTECTION, CBP BORDER WAIT TIMES, <https://apps.cbp.gov/bwt/mobile.asp> (last visited Mar. 21, 2016).

¹⁷ *See Border Crossing Card*, U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/visas/en/visit/border-crossing-card.html> (last visited Apr. 4, 2016).

¹⁸ Paulina Pineda, *Artist uses paint to ‘erase’ border fence*, NOGALES INTERNATIONAL (Oct. 14, 2015), http://www.nogalesinternational.com/news/artist-uses-paint-to-erase-border-fence/article_9c6d89b8-72a0-11e5-87f9-57978b03f324.html?utm_medium=social&utm_source=email&utm_campaign=user-share; Keaton Thomas, *Artist plans to render border fence “invisible,”* (Cont'd on next page)



Figure 3. Locals help artist Ana Teresa Fernández paint a section of the border fence sky blue. Bob Phillips, EL DAILY POST (Oct. 15, 2015, 4:31 PM), <http://www.eldailypost.com/culture/2015/10/artist-plans-to-render-border-fence-invisible/>.

And despite the presence of the border fence, Ambos Nogales continues to act as a single community, jointly celebrating cultural events and sharing common governmental approaches to issues affecting both cities. This February, on *Día de la Bandera*, or Flag Day, crowds of both Mexicans and Americans gathered outside the Mexican Consulate in Nogales, Arizona while elementary students

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THE ASSOCIATED PRESS (Oct. 13, 2015), <http://www.kgun9.com/news/artist-plans-to-render-border-fence-invisible>.

from Nogales, Sonora sang the Mexican national anthem.¹⁹ The celebrations for *el Día de los Muertos*, or Day of the Dead, one of the most important Mexican holidays, span several days as well as both sides of the border. Local groups coordinate numerous events, including a parade, art displays, and a cultural tour, from Nogales, Sonora all the way across the border and into Tubac, Arizona.²⁰ Events like these are reported in the local newspaper, The Nogales International, under its logo that features the U.S. and Mexican flags crossed together.²¹

Emergency services in the two cities of Nogales also have a long history of helping one another. They have passed water from one side to another during a drought,²² and sent fire trucks to safeguard cross-border neighbors during

¹⁹ See *Binational crowd gathers for Dia de la Bandera*, NOGALES INTERNATIONAL (Feb. 26, 2016), http://www.nogalesinternational.com/community/binational-crowd-gathers-for-dia-de-la-bandera/article_1a8275fc-dc0f-11e5-87b6-d72e482047a5.html?utm_medium=social&utm_source=email&utm_campaign=user-share.

²⁰ See *Day of the Dead coming early to Nogales*, NOGALES INTERNATIONAL (Oct. 23, 2015), http://www.nogalesinternational.com/community/day-of-the-dead-coming-early-to-nogales/article_55cd6a5c-7915-11e5-a83b-f3aee5487853.html; *Day of the Dead Celebrations in Nogales*, NOGALES411 (Nov. 1, 2014), <http://nogales411.com/ddm-celebrations-nogales-2014/>.

²¹ See NOGALES INTERNATIONAL, <http://www.nogalesinternational.com/> (last visited Apr. 2, 2016) (“Nogales International is an award winning newspaper, based in Nogales, Arizona, and was founded in 1925.”).

²² See TERRY W. SPROUSE, WATER ISSUES ON THE ARIZONA-MEXICO BORDER: THE SANTA CRUZ, SAN PEDRO, AND COLORADO RIVERS 4, (2005), *available at* (Cont'd on next page)

emergencies. Locals take pride in this practice as symbolic of the solidarity and unity of Ambos Nogales.²³



Figure 4. Firefighters in Nogales, Arizona reach over the border fence to put out a fire in Nogales, Sonora. Fire Department, NOGALES AZ.GOV, <http://www.nogalesaz.gov/Fire-Department/> (last visited Apr. 2, 2016).

The two cities have had to cooperate to confront environmental hazards in the region as well. There is a constant threat of floods from the Nogales Wash, a transborder river that flows through the center of Nogales, Sonora and into Arizona. Indeed, Arizona is downstream, downwind, and downhill from Sonora,

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<https://wrrc.arizona.edu/sites/wrrc.arizona.edu/files/Water%20Issues%20on%20the%20Arizona%20Mexico%20Border.pdf>

²³ See Theroux, *supra* note 9 (“Such was the bond of the two border towns that when the old elegant Hotel Olivia on the Mexican side caught fire in the 1960s, and the situation became desperate, water hoses were tossed over the fence by the fire brigade in Arizona to help the local bomberos put it out, an act of neighborliness that is still fondly remembered by the Nogalans.”); Manuel C. Coppola, *Blaze in Nogales, Sonora battled from both sides of the border*, NOGALES INTERNATIONAL (May 10, 2012), http://www.nogalesinternational.com/news/blaze-in-nogales-sonora-battled-from-both-sides-of-the/article_3267761e-9b0d-11e1-85e7-001a4bcf887a.html (discussing a Sonora fire in 2012 that was fought by firefighters on both sides of the fence).

and thus the two cities often collaborate to stop wildfires, floods, or spills before they move northbound in the United States, or to provide aid in their aftermath.²⁴ During last year's monsoon season, local firefighters, law enforcement, and search and rescue personnel combined forces with U.S. Border Patrol to locate missing persons in the resulting floods.²⁵ Binational plans like Border 2012 and Border 2020, programs building on the La Paz agreement between the United States and Mexico dating back to 1983, provide training and equipment for emergency responders and mutual aid to control events that threaten public health and safety.²⁶

²⁴ See Ieva Jusionyte, *When aid, not crime, crosses the border*, NOGALES INTERNATIONAL (Dec. 11, 2015), http://www.nogalesinternational.com/opinion/guest_opinion/when-aid-not-crime-crosses-the-border/article_12ce8fe0-9f8c-11e5-93ee-97999710ebaf.html.

²⁵ See Murphy Woodhouse, *Authorities temporarily suspend search for flood victim in Nogales Wash*, NOGALES INTERNATIONAL (July 30, 2015), http://www.nogalesinternational.com/news/authorities-temporarily-suspend-search-for-flood-victim-in-nogales-wash/article_0f2b1180-3702-11e5-83b8-17fa6cda8ec2.html.

²⁶ See Jusionyte, *supra* note 24. The La Paz Agreement was signed by the United States and Mexico “for the protection and improvement of the environment in the border area.” La Paz Agreement, Mex.-U.S., Aug. 14, 1983, 80 Stat. 271, 1 U.S.C. 113. This Agreement gave rise to the Border 2012 and Border 2020 Environmental Programs, binational agreements between sister cities along the United States-Mexican border that “emphasiz[e] regional, bottom-up approaches for decision making, priority setting, and project implementation to address the environmental and public health programs in the border region.” *What is Border 2020?*, EPA, <https://www.epa.gov/border2020/what-border-2020> (last visited Apr. 11, 2016).

These shared challenges help to ensure Ambos Nogales's continued existence as one community.

III. One Economy and One Workforce

The two cities of Ambos Nogales are so interrelated that even estimating each city's population is a difficult task. Nogales, Arizona is reportedly home to around 21,000, while roughly 233,000 reside in Nogales, Sonora²⁷—but these numbers include U.S. citizens living on the Mexican side and Mexican citizens living on the U.S. side.²⁸ Further, these figures do not fully include the large floating population that moves back and forth between the cities and is not officially counted in either country.²⁹

²⁷ U. S. CENSUS BUREAU, QUICKFACTS NOGALES CITY, ARIZONA, <http://www.census.gov/quickfacts/table/PST045215/0449640> (last visited Mar. 21, 2016); INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA, PRINCIPALES RESULTADOS DEL CENSO DE POBLACIÓN Y VIVIENDA 2010 SONORA (2010), http://www.inegi.org.mx/prod_serv/contenidos/espanol/bvinegi/productos/censos/poblacion/2010/princi_result/son/26_principales_resultados_cpv2010.pdf.

²⁸ See generally MARTINEZ, *supra* note 4 at 67-138.

²⁹ See Diane Austin, *Confronting Environmental Challenges on the US–Mexico Border: Long-Term Community-Based Research and Community Service Learning in a Binational Partnership*, 18 J. COMMUN. PRAC. 361, 369 (2010). She estimates the population of Nogales Sonora could be as high as 350,000. *Id.* See also KATHLEEN STAUDT & IRASEMA CORONADO, *FRONTERAS NO MÁS: TOWARD SOCIAL JUSTICE AT THE U.S.-MEXICO BORDER* 107 (2002) (describing the “workers and capital” that “cross[] the U.S.-Mexico border using official, formal, and informal channels” in both “north-to-south and south-to-north directions”); KATHLEEN STAUDT, *INFORMAL ECONOMIES AT THE U.S.-MEXICO BORDER* 39-40 (1998) (noting the difficulty of obtaining precise figures)

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Demographically, however, the populations on the two sides are almost identical. Nogales, Arizona is approximately 95% Latino-Hispanic and 39.5% foreign born; a language other than English is spoken at home in 88% of households.³⁰ It is not uncommon for people to live on one side of the border and work on the other, and on the Arizona side, about 15% of the area's workforce is comprised of Mexican immigrants.³¹ It is also difficult to estimate the number of U.S. citizens living in Mexican Nogales, since Mexico does not carefully monitor or require visas for entries to the free tourist zone of Sonora. Many residential moves across the border may be temporary and not officially recorded anywhere.³²

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regarding several variables, such as population movement, in some border cities).

³⁰ U.S. CENSUS BUREAU, QUICKFACTS NOGALES CITY, *supra* note 27.

³¹ See Pedro Paulo Orraca Romano, *Immigrants and Cross-border Workers in the U.S.-Mexico Border Region*, 27 FRONTERA NORTE 5, 11-12 (2015); *see also* CHARNEY & PAVLAKOVICH-KOCHI, *supra* note 3 (Based on a 2001 study by the University of Arizona, 9.5% of aliens passing through the Nogales port are entering the U.S. for work.); DANIEL D. ARREOLA & JAMES R. CURTIS, THE MEXICAN BORDER CITIES: LANDSCAPE ANATOMY AND PLACE PERSONALITY 215 (1993) (noting that some North American executives commute daily to the maquiladora industrial parks in Nogales, Sonora); *see generally* MARTINEZ, *supra* note 4 at 108, 130, 150-52; STAUDT, *supra* note 29 at 65 (describing the “considerable amount of informal work” and numerous “informal workers”).

³² See PETER M. WARD, COLONIAS AND PUBLIC POLICY IN TEXAS AND MEXICO: URBANIZATION BY STEALTH 171 (2010); STAUDT, *supra* note 29 at 39-40.

Moreover, high rates of dual nationality make it convenient for people to identify as Mexican when in Mexico and as American in the United States.

Among these residents of the Ambos Nogales community, countless livelihoods depend on the border because different prices from one side to the other generate significant trade. Moving people and goods between the two countries, though time consuming, is vital to the region's prosperity. Large legal ports of entry between the two cities allow many thousands of people to move back and forth over the border *every day*. Indeed, in 2014 (the most recent year for which reliable data exists), 2.9 million people crossed into Nogales, Arizona *on foot*. These pedestrians are in addition to 6.8 million vehicle passengers and over 300,000 trucks.³³

Many of the visitors in both countries cross over in order to shop.³⁴ In 2001, spending by Mexican visitors in Arizona directly sustained 7,000 jobs in Nogales's

³³ See CITY OF NOGALES, ARIZONA, PORT OF ENTRY & LOGISTICS, <http://www.nogalesaz.gov/Ports/> (last visited Mar. 22, 2016); U.S. DEP'T. OF TRANSP., BORDER CROSSING/ENTRY DATA: QUERY DETAILED STATISTICS, *supra* note 1.

³⁴ See CHARNEY & PAVLAKOVICH-KOCHI, *supra* note 3 at iii (According to a University of Arizona survey, 75% of aliens entering Arizona at Nogales stated that they were coming to shop.); MARTINEZ, *supra* note 4 at 52-53, 77-78 (noting that it is more common to buy sophisticated products such as personal computers and other electronics in the United States, while personal services such as haircuts are cheaper in Mexico); Arreola, *supra* note 12 at 508 (noting Nogales, Sonora's "status as a curio mecca"); see also Irasema Coronado, *Who* (Cont'd on next page)

Santa Cruz County (which had a total reported population of only 38,000).³⁵ And some 60 to 80 percent of sales tax revenue in Nogales, Arizona comes from Mexican shoppers.³⁶ Many also cross the border to seek healthcare. Especially common are U.S. residents crossing for dental services which are frequently less expensive in Mexico.³⁷

U.S. and Mexican manufacturing is also highly interrelated and interdependent in the Nogales area, due in part to Mexico's Border Industrialization Program. Begun in 1965, it spurred the growth of the border region's low-wage assembly plants, or *maquiladoras*, allowing U.S. companies to engage a large and inexpensive workforce.³⁸

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Governs in a Binational Context? The Role of Transnational Political Elites (1998) (Ph.D. dissertation, University of Arizona) ("On a daily basis, over 50,000 people visit the city [of Nogales, Arizona] either from Mexico or from other parts of the United States into Mexico.").

³⁵ CHARNEY & PAVLAKOVICH-KOCHI, *supra* note 3 at 34.

³⁶ See Jonathan Clark, *CBP stats show big drop in local border-crossings*, NOGALES INTERNATIONAL (Dec. 20, 2011), http://www.nogalesinternational.com/news/cbp-stats-show-big-drop-in-local-border-crossings/article_28530fac-2aac-11e1-8f2e-0019bb2963f4.html.

³⁷ See, e.g., BORDER DENTAL, <http://www.borderdentalclinic.com.mx/home.html> (last visited Apr. 4, 2016) (Clinic offers dental services three blocks from the border and advertises, "we work with most American insurance.").

³⁸ See Vera Pavlakovich-Kochi, *The Arizona-Sonora Region: A Decade of Transborder Region Building*, 14 ESTUDIOS SOCIALES 27, 33 (2006); MARTINEZ, *supra* note 4 at 39. By 1992, some 2,000 *maquiladoras* employed

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But for Ambos Nogales, the most important industry, and the one that best demonstrates the interconnected nature of the border economy, is winter produce. Nogales has traditionally been the main point of entry for fresh fruits and vegetables from Mexico into the United States.³⁹ And it is home to over 100 growers and distributors of fresh produce, employing large numbers of the region's seasonal employees and shipping produce all over the United States.⁴⁰ Protests over border wait times have been common during produce seasons when millions of dollars in fruits and vegetables are at risk of spoiling.

Tourism also constitutes an important industry in the Ambos Nogales economy. Nogales, Sonora is a popular destination for U.S. travelers, and most of the restaurants and businesses catering to U.S. customers are within a few blocks

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nearly 500,000 workers. *Id.* at 39-40 (“In less than a generation the maquiladoras had become the principal economic activity along the border, providing striking evidence for the area’s overwhelming ties with the U.S. economy.”). *See generally* LAWRENCE A. HERZOG, CITIES, SPACE, AND POLITICS ON THE U.S.-MEXICO BORDER 33-62 (1990). The *maquiladoras* also spurred huge population growth in the 1980’s. *See* LAWRENCE A. HERZOG, FROM AZTEC TO HIGH TECH: ARCHITECTURE & LANDSCAPE ACROSS THE MEXICO-UNITED STATES BORDER 89 (1999).

³⁹ *See* Pavlakovich-Kochi, *supra* note 38 at 32 (“Largely run by families with ties on both sides of the border, the [produce] business represents an intricate binational system of capital, land-owners, growers, field works, brokers, distributors and shippers.”).

⁴⁰ *See Ambos Nogales Produce*, NOGALES.AZ.GOV, <http://www.nogalesaz.gov/Ambos-Nogales-Produce/> (last visited Apr. 4, 2016).

of the border.⁴¹ Travel guides recommend that American visitors park their cars on the U.S. side and walk into Mexico where they can explore the nearby stores and attractions on foot.⁴² The border streets are busy and crowded with visitors, residents, and locals selling their wares, but the guides note that a trip into downtown Nogales is a relatively easy and safe way for a first time visitor to explore Mexico.⁴³ From the volume of visitors in both of the Nogales cities who shop, eat, work, and vacation, it follows that it would be unwise to assume the nationality of a person seen just beside the border, on either side.

CONCLUSION

In considering this case, *amici* urge the Court to recognize that Ambos Nogales—though it extends into two countries—is a single community of families, workers, and businesses. When a person who lives here walks beside the border, he walks beside a fence that is a mundane and unremarkable fixture in his world.

⁴¹ EDWARD BURIAN, *THE ARCHITECTURE AND CITIES OF NORTHERN MEXICO FROM INDEPENDENCE TO THE PRESENT* 181 (2015) (“The primary commercial strip through town is Avenida Obregón, with many tourist-oriented shops, restaurants, bars, and pharmacies only a few blocks from the border.”). Avenida Obregon intersects with Calle Internacional, the street on which J.A. was fatally shot.

⁴² *See, e.g.*, JOHN NOBLE ET AL., *LONELY PLANET, MEXICO* 745 (14th ed. 2014); DK EYEWITNESS TRAVEL, *ARIZONA & THE GRAND CANYON* 103 (6th ed. 2015); JOHN FISHER ET AL., *ROUGH GUIDES, THE ROUGH GUIDE TO MEXICO* 519 (9th ed. 2013).

⁴³ *See, e.g.*, TIM HULL, *MOON, ARIZONA & THE GRAND CANYON* 182-83 (12th ed. 2014).

He walks past shops that cater to tourists; he walks where his neighbors come to work. He walks through the middle of his community.

Dated: May 6, 2016

Respectfully submitted,

/s/ *Ethan D. Dettmer*

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 14 point Times New Roman typeface. According to the “Word Count” feature in my Microsoft Word for Windows software, this brief contains 6,032 words up to the signature lines that follow the brief’s conclusion, not including the table of contents, and table of authorities.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on the 6th day of May in San Francisco, California.

Date: May 6, 2016

GIBSON, DUNN & CRUTCHER LLP

/s/ *Ethan D. Dettmer*

Ethan D. Dettmer

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on May 6, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: May 6, 2016

GIBSON, DUNN & CRUTCHER LLP

/s/ *Ethan D. Dettmer*

Ethan D. Dettmer

APPENDIX A: IDENTITIES OF THE AMICI CURIAE

Institutional affiliations are provided for identification purposes only.

Daniel D. Arreola is a Professor in the School of Geographical Sciences and Urban Planning and an Affiliate Faculty with the School of Transborder Studies at Arizona State University. He has published extensively in scholarly journals and in book chapters and has authored several books on topics relating to the cultural geography of the Mexican-American borderlands. He received his Ph.D. in Cultural Geography from the University of California at Los Angeles. Born and raised in Los Angeles, California, he has lived and researched in the four American states that line the U.S.-Mexico border.

Jeffrey M. Banister is Research Social Scientist, Editor, and Professor in the Southwest Center and the School of Geography and Development, University of Arizona. Dr. Banister has lived, worked, and researched in Sonora, Mexico, and in the U.S.-Mexico borderlands since the mid-1990s. His work focuses on environmental issues, and he teaches a geography course on the U.S.-Mexico border environment.

Howard Campbell is Professor of Anthropology and Chairman of the Department of Sociology & Anthropology at the University of Texas at El Paso. He is the author or editor of six books concerned with Mexico or the U.S.-Mexico border. Campbell has testified on drug violence in Mexico in front of the Senate

Foreign Relations Committee, and he has written numerous articles and one book concerned with drug trafficking on the U.S.-Mexico border or other issues that affect the lives of border residents.

Dr. Selfa Chew holds a Bachelor's Degree in Communication Science from Universidad Nacional Autónoma de México, a M.F.A. in Creative Writing, and a Ph.D. in Borderlands History from The University of Texas at El Paso. She is currently pursuing her second doctoral degree in the Sociocultural Foundations of Education Program at the University of Texas at El Paso. Her research focuses on racial relations, the Asian and African diasporas, and World War II. Her latest publication is *Uprooting Community: Japanese Mexicans, World War II and the U.S.-Mexico Borderlands*, published by the University of Arizona Press in 2015.

Dr. Mat Coleman (UCLA, Geography, 2005) is Associate Professor in the Department of Geography at The Ohio State University. Dr. Coleman is a political geographer who works in the areas of policing and race, law and geography, migration, and border economies. A major theme in his research concerns the need to ground complex theory in ethnographic research, focused on the "everyday lives" of power and inequality. Dr. Coleman is editor of the Geographies of Justice and Social Transformation series at the University of Georgia Press as well as an editorial board member for the Annals of the Association of American Geographers, Political Geography, and Geography Compass.

Wayne A. Cornelius is an expert on comparative immigration policy and the mass politics of immigration, as well as Mexican politics and development. He is the author, co-author, or editor of nearly 300 publications dealing with these subjects, including 15 books on Mexican migration. He did field research with his students on Mexican migration to the United States nearly every year from 1976 through 2015, from 2004-2015 as founding Director of UCSD's nationally recognized Mexican Migration Field Research and Training Program. He is an emeritus professor in the UCSD School of Medicine's Division of Global Public Health, where he specialized in immigrant health, as well as Distinguished Professor of Political Science, Emeritus, and the Theodore Gildred Professor of U.S.-Mexican Relations, Emeritus, at UCSD. In 2012 President Felipe Calderón awarded him the Order of the Aztec Eagle, Mexico's highest decoration for foreign citizens, in recognition of lifetime contributions to immigration research and improvement of U.S.-Mexican relations.

Jason De León is Assistant Professor of Anthropology at the University of Michigan and the director of the Undocumented Migration Project, a long-term research project that draws on ethnography, archaeology, and forensic science to understand the violent social process of clandestine border crossings. De León carried out long-term ethnographic research on undocumented migration in Ambos Nogales between 2009 and 2014. His recent book *The Land of Open Graves:*

Living and Dying on the Migrant Trail was published by the University of California Press in October 2015 and details the day to day experiences of migrants in Nogales, Sonora.

Jill Guernsey de Zapien is the Associate Dean for Community Programs at the University of Arizona Mel and Enid Zuckerman College of Public Health. Ms. de Zapien has been involved in community based public health interventions, policies, and research in Arizona and throughout the Southwest and Mexico for more than thirty years. She serves as Principal Investigator of the College of Public Health Graduate Service Learning Program, including the Border Health Service Learning Institute. She is a co-author of over 60 publications and reports and has received numerous awards and recognition for her work from universities and organizations in the United States and Mexico.

Michael Dear is Emeritus Professor in the College of Environmental Design at the University of California, Berkeley; and Honorary Professor in the Bartlett School of Planning at University College, London (England). His latest book, *Why Walls Won't Work: Repairing the US-Mexico Divide*, was published by Oxford University Press in 2013, and was awarded the Globe Prize for Geography in the Public Interest from the Association of American Geographers. Professor Dear has been a Guggenheim Fellowship holder, a Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford, a Fulbright Specialist, and Fellow at the

Rockefeller Center in Bellagio, Italy. He has received many awards in recognition of his work, including the highest honors for creativity and excellence in research, as well as numerous undergraduate teaching and graduate student mentoring awards.

Dr. Miguel Diaz-Barriga is a Professor of Anthropology at University of Texas Rio Grande Valley and recently served as the Carol L. Zicklin Endowed Chair for the Honors Academy at Brooklyn College. His research focuses on concepts relating to Mexican-American politics and identity, Latin American social movements, and border studies. He is the recipient of grants and research awards including from the National Science Foundation for the project, “The Border Wall, Immigration, and Citizenship on the United States/Mexico Border.” Professor Diaz-Barriga served as the President of the Association of Latina and Latino Anthropologists of the American Anthropological Association from 2010-2012.

Linda Green is an associate professor of Anthropology and former Director of the Center for Latin American Studies (2011-2015) at the University of Arizona. Her research, though divergent in orientation, converges around a central theoretical problematic, namely how to think dialectically about complex issues of culture, community, violence and suffering. As such her work attempts to trace historical shifts in vulnerability, particularly among peoples across the Americas

whose primary identity is indigenous. Green conducts field research in rural Guatemala, the U.S.-Mexico border, and rural Alaska; current fieldwork focuses on crimes and detentions along the Arizona-Mexico border.

Carina Heckert is Assistant Professor of Anthropology at the University of Texas at El Paso. Her research focuses on how public policies shape people's experiences with illness and experiences seeking healthcare, as well as HIV/AIDS, gender-based violence, and immigrant mental health in both Latin America and the United States. She currently lives, teaches, and conducts research in the border community of El Paso-Juaréz.

Lawrence Herzog, Professor in the School of Public Affairs at San Diego State University, has focused his life's work on the subject of the "transfrontier metropolis" along the U.S.-Mexico border. He has written and edited ten books on the subject, including *Where North Meets South: Cities, Space and Politics on the U.S.-Mexico Border* (University of Texas Press, 1990) and *From Aztec to High Tech: Architecture and Landscape Across the U.S.-Mexico Border* (Johns Hopkins University Press, 1998). His work has focused on the "transfrontier metropolis" thesis which argues that cross-border cities (Tijuana-San Diego, Mexicali-Calexico, Juarez-El Paso, Ambos Nogales, etc.) are, indeed, a single, interconnected socio-cultural and economic space that can be mapped and understood as its own unique ecosystem.

Josiah Heyman (Ph.D., CUNY, 1988) is Professor of Anthropology, Endowed Professor of Border Trade Issues, and Director of the University of Texas at El Paso's Center for Interamerican and Border Studies. He has conducted border research on various topics since 1982, funded by the National Science Foundation, National Institutes of Health, U.S. Department of Agriculture, Harry Frank Guggenheim Foundation, Wenner Gren Foundation, and many others. He is current co-principal investigator of a \$5 million grant from the USDA. He is the editor and author of several titles, including *Life and Labor on the Border: Working People of Northeastern Sonora, Mexico, 1886-1986* (University of Arizona Press, 1991), and author of more than one hundred and twenty scholarly articles, book chapters, and essays.

Anita Huizar-Hernández, Ph.D., is an Assistant Professor of Border Studies whose research and teaching focus on diverse cultural production within the U.S.-Mexico borderlands, with an emphasis on Arizona. She teaches classes that examine the political, economic, and cultural development of the borderlands through literature, visual art, theater, and film. Her recent research exploring citizenship and identity from Arizona's territorial period (1848-1912) to the present is forthcoming in the journals MELUS (Multi-Ethnic Literatures of the United States) and Aztlán: A Journal of Chicano Studies.

Reece Jones is an Associate Professor of Geography at the University of Hawai‘i at Manoa. His research on border security and violence has been featured in dozens of media outlets including the New York Times, Time Magazine, and the Economist. He is the author of two books, *Border Walls: Security and the War on Terror in the United States, India and Israel* (Zed Books, 2012), which won the 2013 Julian Minghi Outstanding Book Award for best book in political geography from the Association of American Geographers, and the forthcoming *Violent Borders: Refugees and the Right to Move* (Verso, 2016).

Daniel E. Martínez received a Ph.D. from the School of Sociology at the University of Arizona in May of 2013, and holds a M.A. in Sociology and M.S. in Mexican American Studies, also from the University of Arizona. Martínez’s research and teaching interests include criminology, juvenile delinquency, race and ethnicity, and unauthorized immigration. He is one of three co-principal investigators of the Migrant Border Crossing Study, a Ford Foundation-funded research project that involves interviewing recently deported unauthorized migrants about their experiences crossing the U.S-Mexico border and residing in the United States. Martínez also does extensive research on undocumented border crosser deaths along the Arizona-Sonora border.

Douglas S. Massey is the Henry G. Bryant Professor of Sociology and Public Affairs at Princeton University and Director of the Office of Population

Research. He is Past-President of the American Sociology Association, the Population Association of America, and the American Academy of Political and Social Science and a member of the National Academy of Sciences and the American Academy of Arts and Sciences.

Molly Molloy is a research librarian and border and Latin American specialist at the New Mexico State University Library in Las Cruces, New Mexico. She is the creator and editor of the Frontera List, a forum for news and discussion of border issues. Molloy has testified as an expert witness in political asylum cases about country conditions and violence in Mexico. She translated and co-edited *El Sicario: The Autobiography of a Mexican Assassin* (Nation Books, 2011) and has been published in The Nation, Phoenix New Times, Narco News Bulletin, and other publications.

Joseph Nevins is an Associate Professor of Geography at Vassar College in Poughkeepsie, New York. He has spent over two decades studying the U.S.-Mexico border region. Among his books is *Operation Gatekeeper and Beyond: The War On "Illegals" and the Remaking of the U.S.-Mexico Boundary* (Routledge, 2010).

Nestor Rodríguez is Professor of Sociology at The University of Texas at Austin, where he received his Ph.D. in 1984. His research and publications span several topics, including international migration, impact of immigration policies on

immigrant populations and sending-communities, U.S.-Mexico border control policy, and migrant deaths at the U.S.-Mexico border. In 2004, he received the Joseph S. Werlin Award in Latin American Studies at the University of Houston, and in 2013 he received the Distinguished Career Award of the Latino Section of the American Sociological Association.

Raquel Rubio-Goldsmith is the Co-Director of the Binational Migration Institute and adjunct faculty member of the Department of Mexican American Studies at the University of Arizona. She has authored several reports on border deaths and scholarly articles on the impact that immigration policy enforcement has on border communities. Dr. Rubio-Goldsmith foments community and academic research on immigration, working closely with several immigrant rights non-governmental organizations.

Dr. Thomas E. Sheridan is a Research Anthropologist and Professor of Anthropology in the Southwest Center and the School of Anthropology at the University of Arizona. He has written or co-edited twelve books and monographs including *Arizona: A History, Revised Edition* (UA Press, 2012) and *Landscapes of Fraud: Mission Tumacácori, the Baca Float, and the Betrayal of the O'odham* (UA Press, 2006), which won the Past Presidents' Gold Award from the Association of Borderlands Studies. He is deeply involved in sustainability and conservation efforts in the Sonora Desert and Pima County. Dr. Sheridan received

an Earl Carroll Fellowship from the School of Social and Behavioral Sciences at the University of Arizona in 2009 and was named a Distinguished Outreach Professor by the University of Arizona in 2016.

Jeremy Slack is an Assistant Professor of Geography at the Department of Sociology and Anthropology at the University of Texas, El Paso. He received his Ph.D. in Geography from the University of Arizona in 2015. His research is focused on deportation and the problems forced removal creates for individuals and their families, the connections to place that are severed, and how it has intersected with drug-related violence on the border. He has published widely in Geography, Anthropology and Sociology in journals such as *Area*, *Antipode*, *Human Organization* and *Social and Legal Studies*, to name a few.

Kathleen Staudt (Ph.D., University of Wisconsin, 1976), is Professor of Political Science and Endowed Professor of Western Hemispheric Trade Policy Studies at the University of Texas at El Paso. Dr. Staudt has published nineteen books and edited volumes, nine of which focus on the U.S.-Mexico border, as well as over 130 academic articles and chapters in books. In 2001, Dr. Staudt co-founded Border Interfaith, a policy-change alliance of 12 member institutions, including a synagogue, teacher association, and other congregations. Besides serving on local nonprofit boards of directors, she recently completed a term on the

Board of Directors of the Association of Borderlands Studies (headquartered in Europe).

Juanita Sundberg is Associate Professor of Geography and Latin American Studies at the University of British Columbia. Current research projects include a collaborative binational project analyzing how militarized approaches to border governance and territorial control (re)configure everyday life for residents of the United States and Mexico borderlands. Dr. Sundberg also is working on a book manuscript tentatively titled *Cat Fights on the Río & Diabolic Caminos in the Desert: the nature of geopolitics in the United States-Mexico borderlands*. The book draws on thirteen years of research focusing on the environmental dimensions of U.S. border security in border protected areas, especially national wildlife refuges.

Char Ullman (Ph.D., University of Arizona, 2004) is Associate Professor of Sociocultural Foundations of Education and Educational Anthropology, as well as the Director of Doctoral Program in Teaching, Learning, and Culture at the University of Texas at El Paso. Her research interests include Mexican migration to the United States and immigration and education, among others. Significant publications include *Methods for the Ethnography of Communication: Language in Use in Classrooms and Communities*, written with Judith Kaplan-Weinger (Routledge, 2015) as well as *Performing the Nation: Undocumented Mexican*

Migration and the Politics of Bodies and Language Use Along the U.S.-Mexico Border, published in *Ethnos: Journal of Anthropology* in 2015.

Carlos G. Vélez-Ibáñez received his Ph.D. in Anthropology from USCD in 1975. Intellectual interests are broadly comparative and publications include eleven books in English and Spanish. After professorships and serving as dean at other universities, presently, he is Regents' Professor and Founding Director Emeritus of the School of Transborder Studies and Motorola Presidential Professor of Neighborhood Revitalization at Arizona State University. His honors are numerous including the Bronislaw Malinowski Medal; elected Fellow of the American Association for the Advancement of Science, 1999; elected Fellow of the American Anthropology Association and the Society of Applied Anthropology; and Corresponding Member of the Mexican Academy of Sciences.

Wendy Vogt is Assistant Professor of Anthropology at Indiana University-Purdue University Indianapolis. She holds a Ph.D. from the University of Arizona and has conducted extensive fieldwork along the U.S.-Mexico border and in Oaxaca, Mexico. Her research focuses on the intersections between migration, violence and human rights in Latin America.

Dr. Margath Walker is an Assistant Professor in the Department of Geography at the University of Louisville. She has worked along the U.S.-Mexico border for over ten years and has recently been working on Mexico's southern

border with Guatemala. Her work bridges political and cultural-economic geography to explore how macro-level policies and processes are interpreted at the local scale. Professor Walker has numerous publications in highly ranked journals, and is currently working on a book about Herbert Marcuse, anticipated in a recent article (Environment and Planning D: Society and Space), one of the first articulations of Marcuse for geographic audiences.

Margaret Wilder is an associate professor of geography and development, and Latin American Studies, at the University of Arizona. She served as associate dean of the College of Social and Behavioral Sciences from 1991-2002, and since 2002 has been a full-time faculty member. Professor Wilder teaches courses, leads field trips, and publishes research on environment, society, and development in the U.S.-Mexico border region, including Ambos Nogales. Her major areas of research focus on water and environmental vulnerability in northwest Mexico and the border region, and her publications have appeared in *World Development*, *Water International*, and the *Annals of the Association of American Geographers*.

Luis H. Zayas, Ph.D., is the Dean of the School of Social Work and the Robert Lee Sutherland Chair in Mental Health and Social Policy at The University of Texas at Austin. He has conducted one of the few major studies on the suicidal behaviors of teenage Latinas, reported in his book, *Latinas Attempting Suicide: When Cultures, Families, and Daughters Collide* (Oxford University Press, 2011),

and his research on the effects of deportation on children of undocumented immigrants has been funded by the National Institute on Child Health and Human Development. His latest book, *Forgotten Citizens: Deportation, Children, and the Making of American Exiles and Orphans* (Oxford, 2015), reports on his research and clinical work with U.S. citizen-children of detained and deported immigrant parents. Dr. Zayas continues evaluating mothers and children from Central America held in detention at the Karnes City and Dilley, Texas, to assist in their asylum cases, and has provided briefing to Congressional groups.

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