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The United States, Mexico, and the War on Drugs in the Trump Administration

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**The United States, Mexico, and the
War on Drugs in the Trump Administration**

JAMES COOPER¹

I. INTRODUCTION.....	235
II. THE UNITED STATES-MEXICO BORDER: A CONTESTED SITE	244
III. THE WAR ON DRUGS.....	252
A. THE DOMESTIC FOCUS.....	252
B. THE GLOBAL BATTLEFRONT	258
IV. THE WAR ON DRUGS IS MAKING THE BORDER REGION EVEN MORE INSECURE	264
A. THE DRUGS WAR AND THE COLLAPSING MEXICAN STATE	265
B. GENERAL PUBLIC INSECURITY IN MEXICO	277
V. PRESIDENT TRUMP’S WAR ON DRUGS	281
VI. CONCLUSION: PRESIDENT TRUMP, THE WAR ON DRUGS, AND THE FUTURE OF UNITED STATES-MEXICO RELATIONS.....	291

¹ Professor of Law, California Western School of Law. The author would like to thank Professors William J. Aceves, Thomas D. Barton, and Dino Kritsiotis for their ideas and support for this project. The author has been a Principal Project Co-director for a national moot court competition for Mexico funded by the Mérida Initiative and consulted for Los Pinos, Mexico’s Executive Branch, on issues of oral trials and judicial reform. He also thanks Linda Weathers of the Library at California Western School of Law for her wonderful support. The author would like to thank Carlos Aguillar, Alberto Aldrete, Cecilia Ambrosio, Carley Doyle, and Luis Gonzalez for their research assistance.

I. INTRODUCTION

In his announcement that he was seeking the Republican Party's nomination for the U.S. Presidency on June 16, 2015, Donald J. Trump stated in part:

[W]hen Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists.²

Indeed, a great deal of Mr. Trump's Presidential campaign was focused around the relationship the United States has with its southern neighbor and on the border that the two countries share. In his initial campaign launch address, Mr. Trump made a major promise to U.S. voters: He would build a wall along the U.S.-Mexico border and he would look to Mexico to cover the construction costs.³ He reiterated his promise several times during the Republican Party primaries and in the general election campaign.⁴ During the transition into his administration, he continued to promise to build a wall;⁵ only five weeks into his Presidency, Mr. Trump claimed that

² Time Staff, *Here's Donald Trump's Presidential Announcement Speech*, TIME (June 16, 2015), <http://time.com/3923128/donald-trump-announcement-speech/>.

³ Donald J. Trump, Announcement to Seek the Republican Party Nomination for President of the United States of America at Trump Tower in New York City (June 16, 2015). ("I would build a great wall, and nobody builds walls better than me, believe me, and I'll build them very inexpensively, I will build a great, great wall on our southern border. And I will have Mexico pay for that wall."). *See Id.* It is important to note that about 700 of the 1969 miles of the U.S.-Mexico border already has a fence or wall. *See* Peter Andreas, *Monkey Cage: Yes, Trump Will Build his Border Wall. Most of It is Already Built.*, WASH. POST (Nov. 21, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/11/21/yes-trump-will-build-his-border-wall-most-of-it-is-already-built/?utm_term=.2f2de3d831c7.

⁴ *See* Andreas, *supra* note 3.

⁵ FOX NEWS, *Trump Repeats Vow to Build Border wall, but Admits 'There Could Be Some Fencing'* (Nov. 14, 2016), <http://www.foxnews.com/politics/2016/11/14/trump-repeats-vow-to-build-border-wall-but-admits-there-could-be-some-fencing.html>; Margaret Hartmann, *GOP Congress Has Plan to Build Trump's Border Wall, Make America Pay for It*, NEW YORK (Jan. 6, 2017, 8:45 AM), <http://nymag.com/daily/intelligencer/2017/01/trump-gop-have-plan-to-build-wall-make-u-s-pay-for-it.html>.

the construction was far ahead of schedule.⁶ When he met with Mexican President Peña Nieto at the G-20 meeting in Hamburg on July 7, 2017, he told reporters that he “absolutely” expected Mexico to pay for the wall’s construction.⁷ By January 2018, however, even President Trump’s Chief of Staff, John Kelly, told Democrat Congress members that, as a candidate, some of the President’s positions on the border wall were “uninformed.”⁸ At the time of the writing of this Article, President Trump has asked Congress to earmark funds for the construction of the wall along the U.S.-Mexico border.⁹

During his campaign, Mr. Trump promised to create a deportation force to remove the estimated eleven million undocumented immigrants,¹⁰ whom Mr. Trump and his supporters prefer to call “illegals”.¹¹ According to the President, many of these undocumented immigrants are rapists and drug dealers, and he often refers to them as “bad hombres.”¹² After candidate Trump won the

⁶ *Trump Promises Border Wall ‘Soon, Way Ahead of Schedule’*, BBC NEWS (Feb. 24, 2017), <http://www.bbc.com/news/world-us-canada-39080356>.

⁷ Abby Phillip & Jenna Johnson, *Post Politics: Ahead Of Meeting With Peña Nieto, Trump ‘Absolutely’ Still Wants Mexico To Pay For Border Wall*, WASH. POST (July 7, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/07/07/after-meeting-with-pena-nieto-trump-absolutely-still-wants-mexico-to-pay-for-border-wall/?utm_term=.7497ccb70529; Tracy Wilkinson & Brian Bennett, *Trump Has First Meeting With Mexico’s Peña Nieto Amid Tense Relations*, L.A. TIMES (July 8, 2017), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-has-1st-meeting-with-mexico-s-1499425322-htmlstory.html>.

⁸ Tal Kopan & Jim Acosta, *John Kelly Told Democrats Some of Trump’s Campaign Stances ‘Uninformed’*, CNN (Jan. 17, 2018), <http://www.cnn.com/2018/01/17/politics/john-kelly-daca-congress/index.html>.

⁹ Tal Kopan, *Trump Asks for \$33B for Border, Including \$18B for Wall*, CNN (Jan. 5, 2018), <http://www.cnn.com/2018/01/05/politics/border-security-billions-trump-wall/index.html>.

¹⁰ Tom LoBianco, *Donald Trump promises ‘deportation force’ to remove 11 million*, CNN (Nov. 12, 2015), <http://www.cnn.com/2015/11/11/politics/donald-trump-deportation-force-debate-immigration/index.html>; Jose A. DelReal, *Donald Trump Calls for ‘Deportation force’ to Remove Undocumented Immigrants*, WASH. POST (Nov. 11, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/11/11/donald-trump-calls-for-deportation-force-to-remove-undocumented-immigrants/?utm_term=.4282c99fc83d.

¹¹ Alex Nowrasteh, *You Say ‘Illegal Alien.’ I Say ‘Undocumented Immigrant.’ Who’s Right?*, NEWSWEEK, (Dec. 18, 2017), <http://www.newsweek.com/you-say-illegal-alien-i-say-undocumented-immigrant-whos-right-750644>.

¹² Aaron Blake, *The Final Trump-Clinton Debate Transcript, Annotated*, WASH. POST (Oct. 19, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/10/19/the-final-trump-clinton-debate-transcript-annotated/?utm_term=.81ed5898d6a1; see also Elizabeth Gurdus, *Trump: ‘We Have Some Bad Hombres and We’re Going to Get Them*

nomination of the Republican Party, his surrogates walked back this proposal.¹³ Speaker of the House of Representatives Paul Ryan maintained that such a force would not be funded by Congress.¹⁴ By Week Five of the Trump administration, a set of memoranda for the Department of Homeland Security circulated, however, advancing more aggressive enforcement of immigration laws.¹⁵

Repeatedly, candidate Trump promised to withdraw from the North American Free Trade Agreement (“NAFTA”).¹⁶ NAFTA¹⁷ is the highly successful, liberalized trade pact between Mexico, the United States, and Canada, which went into force on January 1, 1994 and integrated the U.S. economy with those of its two hemispheric partner countries. Some \$1.4 billion worth of goods cross the U.S.-Mexico border every day.¹⁸ Bilateral trade under NAFTA has

Out, CNBC (Oct. 19, 2016), <http://www.cnbc.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-them-out.html> (discussing Trump’s third and final debate over illegal immigrants who Trump thinks pose a national security issue due to the influx of drugs).

¹³ Trip Gabriel, *Donald Trump’s Surrogates Back Off ‘Deportation Force’ for Illegal Immigrants*, N.Y. TIMES (Aug. 28, 2016),

https://www.nytimes.com/2016/08/29/us/politics/donald-trump-immigration.html?_r=0.

¹⁴ Eric Bradner, *Ryan: ‘We Are Not Planning on Erecting a Deportation Force’*, CNN (Nov. 13, 2016), <http://www.cnn.com/2016/11/13/politics/paul-ryan-donald-trump-obamacare-deportation-force/index.html>; Matt Apuzzo, *Trump Orders a Wall Built, but Congress Holds the Checkbook*, N.Y. TIMES (Jan. 25, 2017),

<https://www.nytimes.com/2017/01/25/us/politics/donald-trump-mexico-border-wall-congress.html>;

Mike DeBonis, *Deportation Force ‘Is Not Happening,’ Ryan Tells Undocumented Family*, WASH. POST (Jan. 12, 2017),

https://www.washingtonpost.com/news/powerpost/wp/2017/01/12/deportation-force-is-not-happening-paul-ryan-tells-undocumented-family/?utm_term=.f093f10f5f46.

¹⁵ Memorandum from Sec’y. John Kelly on Implementation of Border Security and Interior Enforcement Executive Orders to the Dep’t. of Homeland Sec., (Feb. 21, 2017), <https://www.dhs.gov/news/2017/02/21/secretary-kelly-issues-implementation-memoranda-border-security-and-interior>.

¹⁶ Jared Bernstein, *Trump Promises to Tear Up Trade Deals. Here’s What He Should Do*, WASH. POST (Nov. 14, 2016),

https://www.washingtonpost.com/posteverything/wp/2016/11/14/trump-promises-to-tear-up-trade-deals-heres-what-he-should-do/?utm_term=.39161b8f69a5. In fairness, Mr. Trump also promised to withdraw from the Trans-Pacific Partnership, a twelve-country trade agreement that the U.S. had recently signed. *Id.* Trump also said that, “I’ll bring back our jobs from China, from Mexico, from Japan, from so many places. I’ll bring back our jobs, and I’ll bring back our money.”

¹⁷ North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 107 Stat. 2006, 32 I.L.M. 289 & 605 (1993).

¹⁸ Patrick Gillispie, *NAFTA: What Is It, and Why Trump Hates It*, CNN (Nov. 15, 2016), <http://money.cnn.com/2016/11/15/news/economy/trump-what-is-nafta/index.html>.

238 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

expanded by 556 percent.¹⁹ NAFTA is a \$19 trillion a year regional market.²⁰ His campaign stated that as President, Trump will

[t]ell NAFTA partners that we intend to immediately renegotiate the terms of that agreement to get a better deal for our workers. If they don't agree to a renegotiation, we will submit notice that the U.S. intends to withdraw from the deal. Eliminate Mexico's one-side backdoor tariff through the VAT and end sweatshops in Mexico that undercut U.S. workers.²¹

Upon election, President Trump maintained that NAFTA is “a horrible deal” and opted to renegotiate NAFTA only one day after announcing that he was prepared to activate the article in the trade agreement initiating withdrawal from it: “I think we’ll be successful in the renegotiation, which, frankly, would be good because it would be simpler.”²² U.S. Trade Representative Robert Lighthizer notified Congress that the Trump administration aimed to support economic growth and better-paying jobs by improvements to NAFTA. Those improvements were not detailed.²³ Renegotiations began in August 2017.²⁴ They continued at a warp speed, with further sets of negotiations in Ottawa, Mexico City, and Washington D.C. in the

¹⁹ WILSON CENTER, *THE ANATOMY OF A RELATIONSHIP* 25 (Christopher Wilson ed., 2016)

https://www.wilsoncenter.org/sites/default/files/anatomy_border_evolution_us_mexico_cooperation.pdf.

²⁰ Carla A. Hills, *NAFTA's Economic Upsides: The View from the United States*, FOREIGN AFFAIRS (2014), <https://www.foreignaffairs.com/articles/canada/2013-12-06/naftas-economic-upside>.

²¹ Tim Hains, *Donald Trump's Seven-Point Plan to Reform NAFTA and Stop WTO "Cheaters"*, REAL CLEAR POL. (June 28, 2016),

http://www.realclearpolitics.com/video/2016/06/28/donald_trumps_seven-point_plan_to_reform_nafta_and_wto_cheaters.html.

²² Scott Horsely, *With Billions At Stake, Trump Agrees To Mend NAFTA — Not End It*, NPR (Apr. 27, 2017), <http://www.npr.org/2017/04/27/525920241/with-billions-at-stake-trump-agrees-to-mend-nafta-not-end-it>.

²³ Julie Hirschfeld Davis, *Trump Sends Nafta Renegotiation Notice to Congress*, N.Y. TIMES (May 18, 2017), https://www.nytimes.com/2017/05/18/us/politics/nafta-renegotiation-trump.html?_r=0.

²⁴ Jorge Valencia, *NAFTA Talks Could Begin as Early as August; 'We Are Ready,' Mexican Official Says*, FRONTERAS (May 18, 2017),

<http://www.fronterasdesk.org/content/10679/nafta-talks-could-begin-early-august-'we-are-ready'-mexican-official-says>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 239

subsequent months. A sixth set of negotiations ended in late January 2018 with little achieved.²⁵ Both Canada²⁶ and Mexico²⁷ are preparing for a post-NAFTA world.

And despite these Herculean efforts to achieve a new agreement, President Trump continued to hint that he still might withdraw the U.S. from the trade pact. In front of Canadian Prime Minister Justin Trudeau, on a state visit to the White House, the U.S. President stated:

It's possible we won't be able to make a deal, and it's possible that we will. We'll see if we can do the kind of changes that we need. We have to protect our workers. And in all fairness, the prime minister wants to protect Canada and his people also. So we'll see what happens with Nafta, but I've been opposed to Nafta for a long time, in terms of the fairness of Nafta.²⁸

Mr. Trump repeatedly pointed to the U.S. trade deficit with Mexico

²⁵ Ana Swanson, *Signs of Progress in Nafta Talks but Countries Remain Deeply Divided*, N.Y. TIMES, (Jan. 29, 2018), https://www.nytimes.com/2018/01/29/us/politics/nafta-talks-conclude-in-montreal-with-signs-of-progress-and-risk.html?rref=collection%2Fsectioncollection%2Fpolitics&action=click&contentCollection=politics®ion=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=sectionfront (The previous talks had not gone so well either); Ana Swanson, *Nafta Talks' Extension May Make for Slow, Painful Demise*, N.Y. TIMES (Oct. 17, 2017), https://www.nytimes.com/2017/10/17/us/politics/nafta-negotiators-extend-talks-delaying-its-expected-demise.html?rref=collection%2Fsectioncollection%2Fpolitics&action=click&contentCollection=politics®ion=stream&module=stream_unit&version=latest&contentPlacement=3&pgtype=sectionfront.

²⁶ Rodrigo Cervantes, *Canadian Prime Minister Visits Mexico Amidst NAFTA Discussions*, FRONTERAS (Oct. 13, 2017), <http://www.fronterasdesk.org/content/10848/canadian-prime-minister-visits-mexico-amidst-nafta-discussions>.

²⁷ Elisabeth Malkin, *Mexico Braces for the Possible Collapse of Nafta*, N.Y. TIMES (Oct. 16, 2017), https://www.nytimes.com/2017/10/16/world/americas/mexico-nafta.html?rref=collection%2Fsectioncollection%2Fworld&action=click&contentCollection=world®ion=stream&module=stream_unit&version=latest&contentPlacement=6&pgtype=sectionfront&r=0; Jorge Valencia, *Mexico Preparing for Future Without NAFTA*, FRONTERAS (Nov. 22, 2017), <http://www.fronterasdesk.org/content/10903/mexico-preparing-future-without-nafta>.

²⁸ Ana Swanson, *Trump's Tough Talk on Nafta Raises Prospects of Pact's Demise*, N.Y. TIMES (Oct. 11, 2017), https://www.nytimes.com/2017/10/11/business/economy/nafta-trump.html?emc=edit_th_20171012&nl=todaysheadlines&nliid=22130518&r=0.

240 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

as emblematic of “unfair trade deals” into which the U.S has entered.²⁹ On January 26, 2017, President Trump tweeted: “The U.S. has a 60 billion dollar trade deficit with Mexico. It has been a one-sided deal from the beginning of NAFTA with massive numbers....”³⁰ This Article is not about the trade of legitimate goods under NAFTA, but about the trade of illegal products that come from Mexico – illicit drugs.

In the last Presidential debate in 2016, Mr. Trump stated: “We have to keep the drugs out of our country. We are -- right now, we’re getting the drugs, they’re getting the cash.”³¹ This view is supported by evidence prepared during the Obama Administration. The U.S. Drug Enforcement Administration in its 2015 National Drug Threat Assessment stated that:

Mexican transnational criminal organizations (TCOs) remain the greatest criminal drug threat to the United States; no other group can challenge them in the near term. These Mexican poly-drug organizations traffic heroin, methamphetamine, cocaine, and marijuana throughout the United States, using established transportation routes and distribution networks. They control drug trafficking across the Southwest Border and are moving to expand their share of US illicit drug markets, particularly heroin markets.³²

The U.S. Department of State agreed in its March 2017 International Narcotics Control Strategy Report:

Mexico is a major source and transit country for heroin, marijuana, and synthetic drugs destined for

²⁹ Rex Nutting, *Opinion: How Donald Trump Hijacked the Democrats’ Best Issue*, MARKETWATCH (Sept. 30, 2016), <http://www.marketwatch.com/story/how-hillary-clinton-could-beat-donald-trump-on-his-strongest-issue-2016-09-30>.

³⁰ Donald J. Trump (@realdonaldtrump), TWITTER (Jan. 26, 2017, 5:51 AM); see Ioan Grillo, *Trumps’ Mexican Shakedown*, N.Y. TIMES (Feb. 2, 2017), <https://www.nytimes.com/2017/02/02/opinion/trumps-mexican-shakedown.html>.

³¹ Blake, *supra* note 12.

³² U.S. DEP’T OF JUSTICE DRUG ENFORCEMENT ADMIN., 2015 NATIONAL DRUG THREAT ASSESSMENT SUMMARY, at v (2015), <https://www.dea.gov/docs/2015%20NDTA%20Report.pdf>.

the United States and a main transit country for cocaine from South America. Mexico is a source of illicit opium poppy and the primary supplier of heroin and opium derivatives to the U.S. domestic market. Seizures of clandestine laboratories have significantly increased, suggesting continued access to precursor chemicals. Narcotics trafficking and related violence in Mexico pose considerable problems to citizen security and economic development.³³

To counter this proliferating epidemic, since 2008 the U.S. government has provided over \$1.5 billion in equipment, training, and other support to Mexico as that country continues to build capacity and develop professionalization of its law enforcement apparatus. The money has also been used for the reform of the justice sector with a view to prevent crime and violence, and stem corruption.³⁴ With the Mexican government as its willing partner after the election of Felipe Calderón as President in 2006, the United States government earmarked money under the Mérida Initiative to help Mexico fight the drugs war.

This Article examines the war on drugs as persecuted by the United States and how it has been exported to Mexico. It also explores the increased efforts in the drugs war that the Trump administration, through the U.S. Department of Justice, is pursuing at a domestic level. Part I of this Article provides an outline of the dynamics in the quickly evolving and highly tense relationship between the United States and Mexico. Part II of this Article details the historical background of the U.S.-Mexico border region and demonstrates that the border has long been a contested site. Part III provides a picture of the war on drugs in the United States and how it has failed. And failed it has, for “more than \$1 trillion has been spent on more than 45 million drug arrests since President Nixon first coined the term

³³ U.S. DEP’T OF STATE, BUREAU FOR INT’L NARCOTICS & LAW ENFORCEMENT AFFAIRS, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT: VOLUME 1 DRUG AND CHEMICAL CONTROL 215 (2017), <https://www.state.gov/documents/organization/268025.pdf> [hereinafter INCSR Volume 1].

³⁴ *Id.*

242 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

‘the war on drugs,’ ... [y]et the rate of drug use in the United States remains unchanged.”³⁵

Part IV of this Article then details how the war on drugs in Mexico has made the U.S.-Mexico border region, like much of Mexico, even more insecure. It demonstrates how the efforts have led to a weakening of the Mexican State through an uptick in public insecurity in the country. In fact, in 2016, Mexico was the second deadliest country in the world according to the London, England-based International Institute for Strategic Studies which reported that the drug wars in Mexico cost 23,000 lives that year.³⁶ Deaths from small-arms fire in our southern neighbor are second only to the deaths resulting from the civil war in Syria.³⁷ Death rates continue to grow in 2017.³⁸ Part V concludes this Article with a look at the unfolding drug policy of the Trump Administration in the context of overall bilateral relations between the U.S. and Mexico, including bilateral security arrangements as well as NAFTA, the impugned trilateral trade pact.

This Article explores the manner in which, despite the efforts of the Mexican and U.S. governments, narco-trafficking organizations continue to grow their businesses, and in the process, destabilize Mexico, undermine its rule of law, and threaten U.S.-Mexico relations. Much of this is played out at the U.S.-Mexico border.³⁹

³⁵ *Inside the “War on Drugs.”* HARV. MAG. (Mar. 28, 2013), <http://harvardmagazine.com/2013/03/inside-the-war-on-drugs>.

³⁶ Elizabeth Roberts, *Mexico Was Second Deadliest Country in 2016*, CNN (May 9, 2017), <http://www.cnn.com/2017/05/09/americas/mexico-second-deadliest-conflict-2016/>.

³⁷ INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, ARMED CONFLICT SURVEY 2017, <http://www.iiss.org/en/publications/acs/by%20year/armed-conflict-survey-2017-8efc>.

³⁸ Kate Linthicum, *More and More People are Being Murdered in Mexico, and Once More Drug Cartels are to Blame*, L.A. TIMES (Mar. 3, 2017), <http://www.latimes.com/world/mexico-americas/la-fg-mexico-murders-20170301-story.html>.

³⁹ PAUL GANSTER & DAVID E. LOREY, *THE U.S.-MEXICAN BORDER INTO THE TWENTY-FIRST CENTURY* xxi (2d. ed. 2008). “The U.S.-Mexican border, for example, has long been the subject of negative stereotypes by both the United States and Mexico. The 1920’s saw the border depicted as a haven for gambling, prostitution, and vice, an image that has continued while other layers have been added. In the 1980s and 1990s, the border was frequently decried as a center of worker exploitation in assembly plants (*maquiladoras*), serious environmental problems, and out-of-control urban growth. The flow of illicit drugs across the border to consumers in the United States has produced the perception of a region characterized by drug wars and corruption.”

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 243

These trends require us to reconsider the border region as a contested site – one where the state of nature reigns and there are constant challenges to the primacy of the state. That is, the rule of law is lacking. Law enforcement officials do not have the monopoly of force in the region, and often lack effective control over their respective territories and jurisdictions. Organized crime in Mexico is rampant and private actors often fill the vacuum created by weak public institutions unable to fulfill their respective mandates or coopted by corruption or threat (*plata or plomo*).⁴⁰ While 22,409 registered murder investigations opened in 2011, a total of 23,101 murder investigations were opened in the first 11 months of 2017.⁴¹

Even the tourist areas are not immune. The U.S. State Department updated its travel advisory for Mexico on August 22, 2017 to include popular tourist locations such as Quintana Roo, in which Cancun is located, and Baja California Sur, in which Los Cabos is located. A subsequent updated travel advisory stated:

Gun battles between rival criminal organizations or with Mexican authorities have taken place on streets and in public places during broad daylight. The Mexican government dedicates substantial resources to protect visitors to major tourist destinations and has engaged in an extensive effort to counter criminal organizations that engage in narcotics trafficking and other unlawful activities throughout Mexico. There is no evidence that criminal organizations have targeted U.S. citizens based on their nationality. Resort areas and tourist destinations in Mexico generally do not see the level of drug-related violence and crime that

⁴⁰ Barbara Hollingsworth, 'Plata o Plomo' Losing the War on Drugs on Our Southern Border, WASH. EXAMINER (May 11, 2011), <http://www.washingtonexaminer.com/plata-o-plomo-losing-the-war-on-our-southern-border/article/145038>; Byron Pitts, "Silver or Lead" in Mexico: Bribes or Death, CBS NEWS (July 20, 2011), <http://www.cbsnews.com/news/silver-or-lead-in-mexico-bribes-or-death-20-07-2011/>.

⁴¹ Reuters in Mexico City, *Murder Statistics Reveal 2017 to be the Deadliest in Mexico's History*, THE GUARDIAN (Dec. 23, 2017), <https://www.theguardian.com/world/2017/dec/23/new-figures-reveal-2017-to-be-the-deadliest-year-in-mexicos-history>.

244 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

are reported in the border region or in areas along major trafficking routes.⁴²

A new State Department travel advisory rating system was unveiled in early January 2018,⁴³ rating parts of Mexico as dangerous as Syria and Yemen where there are active international conflicts underway.⁴⁴ Much of this violence has occurred during the time that the United States government and its Mexican counterparts worked together to fight the war on drugs in Mexico, through the Mérida Initiative.⁴⁵

II. THE UNITED STATES-MEXICO BORDER: A CONTESTED SITE

United States President Donald Trump clearly views Mexico as a cauldron of evil – composed of drug dealers, rapists, job thieves, and other “bad hombres”⁴⁶ – and the border region as a place of danger that must be tamed. Border regions are, by their very nature, contested sites.⁴⁷ Contraband – illegal narcotics, humans, arms, and

⁴² U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, MEXICO TRAVEL WARNING (AUG. 22, 2017), [HTTPS://TRAVEL.STATE.GOV/CONTENT/PASSPORTS/EN/ALERTSWARNINGS/MEXICO-TRAVEL-WARNING.HTML](https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html). *SEE ALSO* COLIN DWYER, *U.S. STATE DEPARTMENT EXPANDS TRAVEL WARNINGS FOR MEXICO’S BEACHSIDE TOURIST MECCAS*, NPR (AUG. 23, 2017), [HTTP://WWW.NPR.ORG/SECTIONS/TWOTWO-WAY/2017/08/23/545528706/STATE-DEPARTMENT-EXPANDS-TRAVEL-WARNINGS-FOR-MEXICO-S-BEACHSIDE-TOURIST-MECCAS](http://www.npr.org/sections/thetwo-way/2017/08/23/545528706/state-department-expands-travel-warnings-for-mexico-s-beachside-tourist-meccas).

⁴³ Carol Morello, *State Department Updates Travel Advisories to Make Them More Understandable*, WASH. POST (Jan. 10, 2018), https://www.washingtonpost.com/world/national-security/state-department-updates-travel-advisories-so-theyre-understandable/2018/01/10/7d54d92e-f614-11e7-b34a-b85626af34ef_story.html?tid=a_mcntx&utm_term=.8b86254b6886.

⁴⁴ Alex Horton, *Why the U.S. Considers Parts of Mexico Just as Dangerous to Visit as Syria and Yemen*, WASH. POST (Jan. 11, 2018), https://www.washingtonpost.com/news/worldviews/wp/2018/01/11/why-the-u-s-considers-parts-of-mexico-just-as-dangerous-to-visit-as-syria-and-yemen/?hpid=hp_hp-more-top-stories-2_wv-mexicodanger-910pm%3Ahomepage%2Fstory&utm_term=.acb13ab05eee.

⁴⁵ *See infra*, Part IVA.

⁴⁶ Vivian Salama, *Trump to Mexico: Take Care of 'Bad Hombres' or US Might*, ASSOCIATED PRESS, Feb. 2, 2017, <http://bigstory.ap.org/article/trump-mexico-take-care-bad-hombres-or-us-might>.

⁴⁷ ANGEL RABASA & JOHN E. PETERS, *UNGOVERNED TERRITORIES 1* (Miriam Polon ed., 2007). The term “contested site,” “contested space,” “contested terrain,” or

other uninspected goods – moves easily through these regions.⁴⁸ The contraband does so by evading state control, avoiding taxation, ignoring licensing, denying regularization, or navigating around other official sanctions, levies or other forms of inspection. The smuggling routes for illicit drugs, unregulated products, people without legal status, and illegal weapons are lucrative. It is clear why border regions are zones of insecurity – there is a scarcity of law enforcement authorities and officials are often on the smugglers’ payroll.⁴⁹ Such “border zones” or “zones of transit” have been defined as:

spaces of dispute produced by conflictive relations of power between multiple actors who permanently operate in between legality and illegality, interconnecting countries in unforeseen ways due to the permanent movement of commodities and labour power through clandestine and formal ways.⁵⁰

On a daily basis, the United States’ porous borders bring with it illegal immigration⁵¹ and narco-trafficking,⁵² generating a U.S.-

“ungoverned territory/ space” refers to “failed or failing states; poorly controlled land or maritime borders or airspace; or areas within otherwise viable states where the central government’s authority does not extend.” Both physical space and the level of state control are vital to an area’s characterization as an ungoverned territory. *Id.*

⁴⁸ James M. Cooper, *The Complicated Relationship: A Snapshot of the U.S.-Mexico Border*, Konrad Adenauer Foundation Washington Office (2010), reprinted in Konrad Adenauer Stiftung, KAS INTERNATIONAL REPORTS (10/10), at 35-58.

⁴⁹ RABASA & PETERS, *supra* note 47, at 12. The level of governance in a territory can be indicated by control over borders. The function of borders can be the “interface between nation-states...[or] barriers where states control the transnational movement of people and goods.”

⁵⁰ Soledad Álvarez Velasco, *Confronting Violence and Border Control along the Ecuador-Mexico-US Zone of Transit*, BORDER CRIMINOLOGIES BLOG (Nov. 6, 2015), <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/10/confronting>.

⁵¹ PAUL GANSTER & DAVID E. LOREY, *THE U.S.-MEXICAN BORDER INTO THE TWENTY-FIRST CENTURY* xvii (2d ed. 2008). “At the U.S.-Mexican border...only a tiny percentage of the people crossing the border on a regular basis do so illegally, yet this percentage frequently constitute the only border story deemed worth reporting in the mass media of both Mexico and United States.” *Id.*

⁵² U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-13-175, *SOUTHWEST BORDER SECURITY: DATA ARE LIMITED AND CONCERNS VARY ABOUT SPILLOVER CRIME ALONG THE SOUTHWEST BORDER* (2013), <http://www.gao.gov/assets/660/652320.pdf> (“Drug-related homicides have dramatically increased in recent years in Mexico along the nearly 2,000-mile border it shares with the United States.”).

246 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

Mexico border seemingly out of control.⁵³ For decades there has been a long-running call for better security at the border with Mexico.⁵⁴ This desire for strengthened border protection has only grown louder in recent years and became the major issue in the 2016 Presidential election in the United States.

The U.S.-Mexico border remains the third most dangerous in the world according to the International Organization for Migration.⁵⁵ It is no surprise then that the U.S.-Mexico border has continued being a contested site despite the best efforts of NAFTA, the post-9/11 militarization of the region, and the renewed national security focus of U.S. authorities.⁵⁶ The triple-threat of drug smuggling, illegal crossings,⁵⁷ and rising violence are the realities facing border communities.⁵⁸

The Mexican border functions as a drum that both the left and the right like to thump. For the left, it means imperialism. They decry the death of migrants, the newly built wall and the tens of thousands of armed agents patrolling the line. The right sees the border as the only thing separating us from the disintegration of our national security. They decry migrants (illegal invaders), violence spilling over the border and, in

⁵³ MICHAEL T. MCCAUL, H. COMM. ON HOMELAND SECURITY, A LINE IN THE SAND: CONFRONTING THE THREAT AT THE SOUTHWEST BORDER 4 (Comm. Print 2006).

⁵⁴ TIMOTHY DUNN, THE MILITARIZATION OF THE U.S.-MEXICO BORDER, 1978-1992, at 1 (1996) (“In the contemporary era, since the mid-1970s, ‘border control’ has emerged as a salient topic in U.S. politics, with concern for it often spurred on by sensationalist portrayals of undocumented immigration, drug trafficking, and occasionally even the threat of terrorism at critical issues for the U.S.-Mexico border region.”).

⁵⁵ See INT’L ORG. FOR MIGRATION, FATAL JOURNEYS: TRACKING LIVES LOST DURING MIGRATION (2014), <http://www.iom.int/files/live/sites/iom/files/pbn/docs/Fatal-Journeys-Tracking-Lives-Lost-during-Migration-2014.pdf>.

⁵⁶ Bill V. Mullen, *Along the Border*, in WHAT DEMOCRACY LOOKS LIKE: A NEW CRITICAL REALISM FOR A POST-SEATTLE WORLD 206 (Amy Schrager Lang & Cecilia Tichi eds., 2006) (“Finally, attention to the unfolding history of the U.S.-Mexico border in the wake of both Seattle and 9/11 reveals, or re-reveals, newly contested sites for possible struggle that we cannot afford to forget in light of efforts after 9/11 to erase, eradicate, and blur the memories of 1999, before and beyond.”).

⁵⁷ See Iyalet Shachar, *The Shifting Border of Immigration Regulation*, 30 MICH. J. INT’L L. 809-839 (2009).

⁵⁸ STAFF OF H. COMM. ON HOMELAND SEC., 109TH CONG., A LINE IN THE SAND: CONFRONTING THE THREAT AT THE SOUTHWEST BORDER 4 (COMM. PRINT 2006).

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 247

certain zany moments, see Islamic terrorists crossing the desert and leaving a litter of prayer rugs.⁵⁹

Tunnels run across the border;⁶⁰ holes in the border fence persist. Wide open spaces, some running for hundreds of miles, is the norm east of the San Diego sector and in parts of Arizona and Texas.

Federal Border Patrol officials confirmed that agents discovered a garage-size hole in a steel fence that divides the United States and Mexico just east of Nogales, Arizona. On August 3, 2014, agents found that runoff water from rainstorms during the weekend had also knocked down 60 feet of the rebar-reinforced steel fence just west of the Nogales-Mariposa Port of Entry near Interstate 19 in Nogales. That fence stood 18 to 26 feet high and extended at least seven feet underground. The Border Patrol said it was working on repairs for both fences and had agents monitoring the areas. The fence was built in 2011. It is constantly monitored by agents because smugglers and others who attempt to cross illegally routinely try to breach or knock down parts of it. The Border Patrol says it does not keep track of fence breaches or attempted breaches, but it does have a special unit devoted to finding and destroying tunnels used to smuggle drugs.⁶¹

The dangers of the United States-Mexico border are not new. The border area, or *la linea* as it is called in Mexico and by border communities in the U.S., has long been a contested site.⁶² It divides

⁵⁹ Charles Bowden, *Charles Bowden on the War Next Door*, HIGH COUNTRY NEWS (Mar. 1, 2010), <http://www.hcn.org/issues/42.4/the-war-next-door>.

⁶⁰ *Mexican Police Find Tijuana-San Diego Drugs Tunnel*, BBC NEWS (Oct. 22, 2015), <http://www.bbc.com/news/world-latin-america-34611997>; Liberty Zabala et al., *12 Tons of Drugs Seized in Border Tunnel Near Otay Mesa*, NBC SANDIEGO (Oct. 22, 2015), <http://www.nbcsandiego.com/news/local/Border-Tunnel-Otay-Mesa-San-Diego-Mexico-335872841.html>.

⁶¹ The Associated Press, *Arizona: Rain and Smugglers Damages Border Fence*, N.Y. TIMES (July 30, 2014), <http://www.nytimes.com/2014/07/31/us/arizona-rain-and-smugglers-damage-border-fence.html?src=recg&r=0>.

⁶² *See 50 Years Ago, a Fluid Border Made U.S. 1 Square Mile Smaller*, NPR (Sept. 25, 2014), <http://www.npr.org/2014/09/25/350885341/50-years-ago-a-fluid-border-made-the-u-s-1-square-mile-smaller>.

the so-called developed world with the developing world.⁶³ There are different rules, standards, societies, relationships with governmental authority, and political history – sometimes in the same space itself. Indeed, the two countries have occupied the same territory (albeit at different times). The U.S. won this territory through military conquest. This situation was solidified in and by the Treaty of Guadalupe Hidalgo in 1848,⁶⁴ an agreement which saw Mexico cede a huge portion of its national territory – what is present-day Arizona, California, New Mexico, parts of Colorado, Nevada and Utah – to the United States.⁶⁵

The two countries share much heritage, and the trappings of liberal democracies with federalized systems of governance.⁶⁶ Both republics were both forged by revolutions – in the United States in 1776, with further consolidation in 1789 and in Mexico, starting in 1908 and ending in the 1920s. They have shared a long, complex, and interrelated history with the loss of Mexican territory. For Samuel Huntington this is *Reconquista* with demographics, rather than military, being the tool for the taking back of Mexico's land lost in the U.S.-Mexican War of 1846-1848.⁶⁷

⁶³ Rebecca Morales & Jesús Tamayo-Sánchez, CHANGING BOUNDARIES IN THE AMERICAS, *Urbanization and Development of the United States-Mexico Border* 49-68, 49 (Lawrence Herzog ed. 1992). “[T]he U.S.-Mexican border [is] the most significant international border between an industrializing and a developed country.” Professor David Kennedy wrote just after NAFTA began that “[t]he income gap between the United States and Mexico is the largest between any two contiguous countries in the world.”

⁶⁴ Treaty of Peace, Friendship, and Limits and Settlement with the Republic of Mexico, Treaty of Guadalupe-Hidalgo, Mex-U.S., Feb. 2, 1848, 9 Stat. 929 (entered into force on July 4, 1848), <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=009/llsl009.db&recNum=975>.

⁶⁵ ROBERT D. KAPLAN, THE REVENGE OF GEOGRAPHY 33 (2012) (“Half the length of America’s southern frontier is an artificial boundary line in the desert established by treaties following the Mexican-American War of 1846-1848.”).

⁶⁶ Randal C. Archibold, *Name Change Is Suggested for Other U.S.*, N.Y. TIMES (Nov. 22, 2012), http://www.nytimes.com/2012/11/23/world/americas/leader-of-the-other-united-states-urges-changing-mexicos-name.html?_r=0. They almost shared a name: The United States. In his last days in office in November 2012, Mexican President Felipe Calderón attempted to change the official name of the country– from the United Mexican States to simply Mexico, but the name change never took place. *Id.*

⁶⁷ SAMUEL HUNTINGTON, WHO ARE WE?, 221 (2014) (“Mexican immigration is leading towards the demographic *Reconquista* of areas Americans took from Mexico by force in the 1830s and 1840s, Mexicanizing them in a manner comparable to, although different from, the Cubanization that has occurred in Southern Florida. It is also blurring the border between Mexico and America, introducing a very different culture, while also

The border itself has long been a lightning rod for the relations between the two states. For Professor Samuel Truett, “this land was contested and selectively unmade as social conflict and revolutionary struggles shook the foundations of the modern borderlands, dashing dreams of domestication and domination and conjuring the ghosts of frontiers past.”⁶⁸ Indeed the frontier has often shifted and remained, in parts, imprecise.⁶⁹ It is important to recognize that the border has not yet been fully demarcated.⁷⁰

Borderland studies provide an indispensable corrective to historical narratives that accept the territoriality to which all modern states lay claim.⁷¹ Likewise, historians reveal the insecurity of the border region. Professor Rachel St. John in *Line in the Sand* provides a wonderful history of the various joint boundary commissions over the years and details the brave work done by those charting the border, an area for decades that had been filled with raiding indigenous peoples, brutal arms dealers, and cattle rustlers.⁷²

Professor Truett similarly explains:

By mid-century, Sonora was deemed by many to be under the control of the Apache and a Wild West narrative that came with wildcat gold prospectors and other miscreants. Such judgments assimilated the region to an older idea of frontier space, one peopled

promoting the emergence, in some areas, of a blended society, half-American and half-Mexican.”).

⁶⁸ SAMUEL TRUETT, *FUGITIVE LANDSCAPES: THE FORGOTTEN HISTORY OF THE U.S.-MEXICO BORDERLANDS* 9 (2006) (showing “how Mexicans and Americans tried but ultimately failed to domesticate Sonora and Arizona in the years before the coming of the railroad.”); *see also* OSCAR J. MARTÍNEZ, *BORDER PEOPLE: LIFE AND SOCIETY IN THE U.S.-MEXICO BORDERLANDS* 5-10 (1994).

⁶⁹ *See* Marco Ramirez ERRE & David Taylor, *Unsettled Landscapes* (2014), <http://sitesantafe.org/unsettled-landscapes/marcos-ramirez-erre-david-taylor/> (last visited Mar. 20, 2017).

⁷⁰ *See* 50 Years Ago, *a Fluid Border Made the U.S. 1 Square Mile Smaller*, *supra* note 62.

⁷¹ *SEE* MICHIEL BAUD & WILLEM VAN SCHENDEL, *TOWARD A COMPARATIVE HISTORY OF BORDERLANDS*, 8 *J. WORLD HISTORY* 221-42 (1997).

⁷² RACHEL ST. JOHN, *LINE IN THE SAND: A HISTORY OF THE WESTERN U.S.- MEXICO BORDER* 42 (2011).

250 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

by savages, not real citizens, and thereby justified its annexation.⁷³

This negative image dates back to pre-Independence days. “As the colonies failed to flourish, border defenses were primarily left to state of local governments. In the absence of a strong central government, a few men known as caciques, or caudillos, took hold of state governments and rules with almost autonomy from Mexico City.”⁷⁴

Even after Independence, when Mexico finally broke free from Spain (and later France) this situation continued.⁷⁵ “Mexico was experiencing a period of adjustment after the armed conflict between the central government and the nation’s states. Far away from the nation’s center in Mexico City, Ciudad Juárez reaffirmed its regional pride.”⁷⁶

Nothing much has changed since the days when Mexico won its independence from Spain. Professor Michael Dear wrote: “The US-Mexico borderlands are among the most misunderstood places on earth. The communities along the line are far distant from the centers of political power in each nation’s capital. They are staunchly independent and composed of many cultures with hybrid loyalties.”⁷⁷

The two states, with their respective capital cities thousands of miles away in Washington, D.C. and in Mexico City, clearly did not exercise much control of the area in criminal justice, regional trade, and international relations.⁷⁸ So far from their respective capitals, the border communities on both sides of the divide were historically left to their own devices, using self-help remedies and engaging more with their counterparts on the other side instead of seeking advice from Washington D.C. or Mexico City, D.F.⁷⁹

⁷³ TRUETT, *supra* note 68, at 37.

⁷⁴ See TRUETT, *supra* note 68, at 28.

⁷⁵ See *id.*

⁷⁶ SERGIO GONZÁLEZ RODRÍGUEZ, *THE FEMICIDE MACHINE* 17 (Gabriela Jauregui ed. & trans. 2012) (2002).

⁷⁷ MICHAEL DEAR, *WHY WALLS WON’T WORK: REPAIRING THE US-MEXICO DIVIDE*, xii (2013).

⁷⁸ See TRUETT, *supra* note 68, at 28.

⁷⁹ See *id.* at 28, 37.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 251

“The borderlands have always been a place of strife.”⁸⁰ Oscar Martinez calls the region the “troublesome border.” This is for good reason.⁸¹ For more than a century, there was a perception of chaos fueled by raids on both sides of the border by armed indigenous tribes.⁸² With that violence came illegal U.S. mercenaries, post-war filibusters, corporate opportunists, land grabbers and other associated no *goodniks* all of whom sought to take advantage of lax border restrictions, general anarchy, and hunger for expansion under the guise of Manifest Destiny.⁸³ Michael Dear explains: “[T]he border during the nineteenth century was an extraordinarily violent place, lacking formal law enforcement agencies and institutions.”⁸⁴

Mexican authorities have long struggled to maintain effective control as police come under attack on a seemingly frequent basis.⁸⁵ The Mexican state still does not enjoy a monopoly of force.⁸⁶ In 1996, Timothy Dunn wrote that “[i]n the contemporary era, since the mid-1970s, ‘border control’ has emerged as a salient topic in U.S. politics, with concern for it often spurred on by sensationalist portrayals of undocumented immigration, drug trafficking, and occasionally even the threat of terrorism at critical issues for the U.S.-Mexico border region.”⁸⁷

Not much has changed over the last two decades since Dunn wrote those words. The difference is the magnitude of the same challenges, and the determination of the federal governments of each country to do something about the lawlessness of the United States-Mexico border. For Mexico it has been a full-fledged war on drugs that began in December 2006.⁸⁸ For the United States, it was the funding of this war on drugs in Mexico through the Mérida Initiative, which

⁸⁰ DEAR, *supra* note 77, at vi.

⁸¹ See generally CLAIRE F. FOX, THE FENCE AND THE RIVER: CULTURE AND POLITICS AT THE U.S.-MEXICO BORDER (1999).

⁸² DEAR, *supra* note 77, at 50.

⁸³ See *id.*

⁸⁴ *Id.* at 58.

⁸⁵ See DAVID A. SHIRK, COUNCIL ON FOREIGN RELATIONS, THE DRUG WAR IN MEXICO: CONFRONTING A SHARED THREAT 3 (2011)

⁸⁶ *Id.*

⁸⁷ DUNN, *supra* note 54, at 1.

⁸⁸ See DAVID A. SHIRK, COUNCIL ON FOREIGN RELATIONS, THE DRUG WAR IN MEXICO: CONFRONTING A SHARED THREAT 3 (2011)

252 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

commenced in 2008.⁸⁹ It should be no surprise that the war on drugs in Mexico has not provided the intended results, given that the one in the United States has long been a colossal failure.⁹⁰

III. THE WAR ON DRUGS

A. THE DOMESTIC FOCUS

U.S. President Richard M. Nixon first declared “the war on drugs” in June 1971, transforming the U.S. justice system toward a “tough on crime” policy with a strong focus on drug offenders.⁹¹ Until this time, U.S. presidents had not actively involved themselves in drug control policies.⁹² President Nixon leveraged the drug problem in the U.S. into a “central national-policy concern.”⁹³ State and federal legislators then passed new laws incentivizing the arrests and prosecution of drug offenders and implemented “expansive mandatory minimum penalties.”⁹⁴

Sentencing severity and police and prosecutorial discretion resulted, with the latter opening the door to “exacerbated racial disparities.”⁹⁵

⁸⁹ See generally Rissel Durand, *Containing the Spillover Effect: The Use of Rule of Law to Combat Drug-Related Violence in Mexico*, 36 HOUS. J. INT’L L. 217, 233-43 (describing Mexico and United States’ attempt to reform Mexico’s war on drugs with the Mérida Initiative as a “greater spillover effect into the U.S. border” because Mexico’s has not restored the rule of law, reduced drug violence, or decreased the flux of illegal substances into the United States). See also Carina Bergal, *The Mexican Drug War: The Case For a Non-International Armed Conflict Classification*, 34 FORDHAM INT’L L. J. 1042, 1065-72 (discussing the implications of Mexico’s drug war with drug-related violence increasing between 2006 to 2008 and drug cartels paying off government officials).

⁹⁰ George P. Shultz & Pedro Aspe, *The Failed War on Drugs*, N.Y. TIMES (Dec. 31, 2017), <https://www.nytimes.com/2017/12/31/opinion/failed-war-on-drugs.html>
<https://www.nytimes.com/2017/12/31/opinion/failed-war-on-drugs.html>.

⁹¹ Jessica M. Eaglin, *The Drug Court Paradigm*, 53 AM. CRIM. L. REV. 595, 601 (2016); see also Alyssa L. Beaver, *Getting a Fix On Cocaine Sentencing Policy: Reforming the Sentencing Scheme of the Anti-drug Abuse Act of 1986*, 78 FORDHAM L. REV. 2531, 2536 (2010) (discussing the history of cocaine and crack cocaine in the United States); see generally Richard Nixon: “Special Message to the Congress on Drug Abuse Prevention and Control,” June 17, 1971, <http://www.presidency.ucsb.edu/ws/?pid=3048>.

⁹² Mary Beth Lipp, *Social Justice in the 21st Century: A New Perspective On the “War On Drugs”*: *Comparing The Consequences of Sentencing Policies in The United States and England*, 37 LOY. L.A. L. REV. 979, 989 (2004).

⁹³ See *id.* at 989.

⁹⁴ Eaglin, *supra* note 91, at 600-01.

⁹⁵ *Id.*

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 253

Economically, these harsh policies resulted in an increase of \$260 billion to sustain the criminal justice system by 2015.⁹⁶ Not only were there increases in financial costs there were also high social costs; those previously incarcerated were at higher risk of being a repeat offender in the future due to multiple barriers to a successful reentry into society.⁹⁷

President Ronald Reagan built on Nixon's policy when he declared "war" in June 1982 stating that "... we can fight the drug problem, and we can win."⁹⁸ During his two administrations, he introduced a plethora of legislation meant to deter illegal drug use by implementing harsh and punitive measures such as: (1) The Comprehensive Crime Control Act of 1984;⁹⁹ (2) the Anti-Drug Abuse Act of 1986;¹⁰⁰ (3) the Anti-Drug Abuse Amendment Act of 1988;¹⁰¹ and (4) The Drug Free Workplace Act of 1988.¹⁰²

The Anti-Drug Abuse Act of 1986 ("1986 Act") mandated first-time offenders in possession of any amount of crack cocaine would result in a mandatory minimum sentence of five years in prison; this sentencing is equivalent to an offender who possessed powder cocaine of 100 times that amount.¹⁰³ The 100:1 ratio greatly impacts

⁹⁶ *Id.*; see also *Inside the "War on Drugs"*, HARV. MAG. (Mar. 28, 2013), <http://harvardmagazine.com/2013/03/inside-the-war-on-drugs>.

⁹⁷ Philip Keefer et al., *Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs*, in INNOCENT BYSTANDERS: DEVELOPING COUNTRIES AND THE WAR ON DRUGS 13 (Philip Keefer & Norman Loavza eds., 2010) ("The social costs of prohibition policies go far beyond the budgetary." Although statistics of incarcerated drug offenders do not show they are productive outside the drug sector, estimates of "production losses from the 660,000 incarcerated drug offenders at approximately \$40 billion annually (Executive Office of the President, the White House, 2004)").

⁹⁸ Lipp, *supra* note 92, at 990-91.

⁹⁹ The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837 (1984).

¹⁰⁰ Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986).

¹⁰¹ Anti-Drug Abuse Amendment Act of 1988, Pub. L. No. 100-690, 102 Stat. 4312 (1988).

¹⁰² The Drug-Free Workplace Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988) (the Drug-Free Workplace Act of 1988 is part of the Anti-Drug Abuse Amendment Act of 1988). See also Julia Buxton, *The Historical Foundations of the Narcotic Drug Control Regime*, 24 (World Bank Dev. Research Grp. Macroeconomics and Growth Team, Working Paper No. 4553, 2008) ("These measures raised federal penalties for all drug-related offenses, introduced mandatory minimum sentences, [and] asset seizure without conviction").

¹⁰³ Sarah Hyser, Comment, *Two Steps Forward, One Step Back: How Federal Courts Took the "Fair" Out of the Fair Sentencing Act of 2010*, 117 PENN ST. L. REV. 503, 504 (2012); see also Beaver, *supra* note 91, at 2548 (explaining that first time offenders are punished

254 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

the African American population because crack cocaine is disproportionately used by African Americans when compared to the Caucasian population.¹⁰⁴ “The 100:1 ratio was notoriously criticized for both its undue harshness and its disparate impact on the African American community.”¹⁰⁵

The 1986 Act also “eliminated the federal judicial flexibility” for individualized sentencing based on case-by-case circumstances, a discretion which paralleled the aims of the Sentencing Reform Act of 1984.¹⁰⁶ According to the National Association for the Advancement of Colored People, “In 2002, blacks constituted more than 80% of the people sentenced under the federal crack cocaine laws and served substantially more time in prison for drug offenses than did whites, despite the fact that more than two-thirds of crack cocaine users in the U.S. are white or Hispanic.”¹⁰⁷ Adding to the

severely because “the average sentence for an individual found guilty of possessing twenty-five grams of powder cocaine is fourteen months, while a defendant found guilty of possessing less than twenty-five grams of crack cocaine is subject to an average of sixty-five months”); Ashlee Riopka, *Equal Protection Falling Through the Crack: A Critique of the Crack-to-Powder Sentencing Disparity*, 6 ALA. C.R. & C.L. L. REV. 121, 124-25 (2015) (Congress rashly set low quantity threshold for the mandatory minimum crack based on various unfounded assertions that are now discredited: “(1) crack was more addictive, (2) crack produced different and more severe psychological effects, (3) crack was cheaper and thus attracted people who wouldn't otherwise be able to afford powder cocaine, especially young people, and (4) crack caused more crime”).

¹⁰⁴ Beaver, *supra* note 91, at 2549.

¹⁰⁵ Hyser, *supra* note 103, at 504. See also Lipp, *supra* note 92, at 995 (sentencing disparities from the 1988 Congressional amendments is the “subject of sharp and continued criticism”); Beaver, *supra* note 91, at 2549. 42 U.S.C. §§ 13701- 14223 (1994) (Congress responded to criticisms of sentencing disparities by passing the Violent Crime Control and Law Enforcement Act of 1994, which studied sentencing disparities for crack and cocaine. The report concluded, “the 100:1 ratio was unwarranted”; however, Congress still did not change the minimum sentencing guidelines) (current version at 34 U.S.C. §§ 12101-12643 (2017)). T. Michael Andrews, *Unequal Sentences: The Crack and Powder Cocaine Disparity*, 44 ARIZ. ATT'Y 22 (2008) (“commentators and lawyers have argued that this ‘Crack Statute’ unnecessarily pits powder cocaine at a lower sentencing level than it does for crack cocaine, thus creating a disparity in sentencing. Some have even called this disparity racist”).

¹⁰⁶ Lipp, *supra* note 95, at 992.

¹⁰⁷ David Borden, *If Hard Drugs Were Legalized, Would More People Use Them?* 12 CARDOZO PUB. L. POL'Y & ETHICS J. 569, 580 (2014); see also Andrew D. Black, Note, *"The War on People": Reframing "The War on Drugs" By Addressing Racism within American Drug Policy through Restorative Justice and Community Collaboration*, 46 U. LOUISVILLE L. REV. 177, 178 (2007) (The "War on Drugs" is really a war against a particular category of people: African-Americans. “While African-Americans only constitute 12% of the U.S. population and 13% of the country's total drug users, African-

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 255

conundrum of sentencing disparities, the U.S. Supreme Court does not “explicitly acknowledged” the 100:1 ratio as a contributor to racial disparity, nor has the Court chosen to resolve the circuit split regarding what it means to be “cocaine based.”¹⁰⁸ However, circuit courts are given some minute flexibilities when issuing sentencing through a series of cases, allowing them to consider the racial implications of the 100:1 ratio.¹⁰⁹

The Sentencing Reform Act (1984)¹¹⁰ provided for a Sentencing Commission to act as an independent agency of the judicial branch; its objectives were to guide federal courts, Congress, and the President to help them create an “effective crime policy, [as well as] compiling surveys on a broad range of sentencing trends.”¹¹¹ From 1995 to 2002, the Sentencing Commission continuously informed Congress that the sentences for crack cocaine offenses were unjustified; they stated the rationale behind the 100:1 ratio has since been disapproved.¹¹² In an attempt to comply with the goals of Congress, “the Commission recommend[ed] a decrease in the ratio from 100:1 to 20:1,” so the amount of crack cocaine needed to trigger the five-year mandatory minimum would now be twenty-five grams.¹¹³ Unfortunately, Congress rejected this proposal as well as prior proposals to amend the ratio.¹¹⁴ By 2007, the Sentencing

Americans account for 33% of all drug-related arrests, 62% of drug-related convictions, and 70% of drug-related incarceration.”).

¹⁰⁸ Beaver, *supra* note 91, at 2552.

¹⁰⁹ *Id.* (*Kimbrough v. United*, the lower court disregarded the Sentencing Guidelines “based on its opposition to the one-hundred-to-one ratio and the racial disparity it promulgates.” However, the decision was vacated by the U.S. Court of Appeals for the Fourth Circuit. In *Spears v. United States*, “the Supreme Court considered whether sentencing courts may adopt their own ratios of cocaine base to powder cocaine”); *see also* Andrews, *supra* note 105, at 22-23 (“On Dec. 10, 2007, in *United States v. Kimbrough*, the Court ruled that the Federal District Court from the Eastern District of Virginia did not abuse its discretion by calculating and considering the federal advisory guidelines, including the U.S Sentencing Commission’s reports criticizing the 100-to-1 powder-to-crack sentencing ratio. In its calculation, the district court had departed from the mandatory sentencing range by four and a half years.”).

¹¹⁰ Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (codified as amended in scattered sections of 18 U.S.C. (2012)).

¹¹¹ Beaver, *supra* note 91, at 2550.

¹¹² *See id.* at 2551.

¹¹³ *Id.*

¹¹⁴ *Id.*; *see also* Andrews, *supra* note 105, at 28 (“the disparity between the sentencing of crack and powder cocaine violations persists largely because of Congress’s inability to foresee changes in drug abuse and trends. Change can only happen through congressional action, in which Congress has rejected proposed amendments to the U.S Sentencing

256 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

Commission proactively decided to amend its own “Sentencing Guidelines for crack cocaine offenders, lowering the recommended sentence for most crack cocaine offenses.”¹¹⁵

By the time President Obama took office, he promised to “reduce drug use and the great damage it causes” with a new national policy that will treat drug offenders as a public health issue and will focus on prevention and treatment.¹¹⁶ Despite these campaign promises, the Obama administration spent their drug budget mainly on law enforcement instead of prevention and treatment programs.¹¹⁷ It was not until 2013 that the Obama administration released their “21st century approach to drug policy that balances public health programs, effective law enforcement, and international partnerships.”¹¹⁸

In 2010 President Barack Obama signed the Fair Sentencing Act of 2010 (“FSA”) in an attempt to correct sentencing disparities by “reducing, but not eliminating, the ratio between the two categories

Guidelines in 1995, 1997, 1999 and 2002”); *See generally* U.S. SENTENCING COMM’N, REPORT TO THE CONGRESS: IMPACT OF THE FAIR SENTENCING ACT OF 2010 4-6 (2015), http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RtC_Fair-Sentencing-Act.pdf (discussing the historical background in timeline form showing the USSC proposed reforms that have been rejected by Congress and important events since the FSA) [hereinafter U.S. SENTENCING COMM’N].

¹¹⁵ Beaver, *supra* note 91, at 2552 (providing that “[s]entencing ranges for first-time offenses involving five grams or more of crack cocaine were lowered from 62 to 78 months, to 51 to 63 months; first-time offenses involving fifty grams or more of crack cocaine were subject to 97 to 121 months, lowered from 121 to 151 months, before accounting for other relevant factors under the Guidelines”); *accord* Riopka, *supra* note 103, at 127-28. (The Sentencing Commission guidelines reduced the average crack cocaine sentence by fifteen months. “This amendment was applied retroactively to allow prisoners who met certain criteria to seek sentencing reductions”).

¹¹⁶ Martha Mendoza, *U.S. Drug War Has Met None of Its Goals*, NBC NEWS http://www.nbcnews.com/id/37134751/ns/us_news-security/t/us-drug-war-has-met-none-its-goals/#.Wq28oGZJmuV (last updated May. 13, 2010.) (Despite his campaign promises, Obama administration increased their budget for interdiction and law enforcement).

¹¹⁷ *Id.* (Obama requested a record \$15.5 billion for the drug war for 2011, about two thirds of it for law enforcement at the front lines of the battle: police, military and border patrol agents struggling to seize drugs and arrest traffickers and users. About \$5.6 billion was spent on prevention and treatment).

¹¹⁸ EXEC. OFFICE OF THE PRESIDENT OF THE U.S., NATIONAL DRUG CONTROL STRATEGY 36-42 (2013), https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2013_data_supplement_final2.pdf (referring to statistics in Tables 16-22).

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 257

of drug offenders.”¹¹⁹ The FSA “increased the amount of crack needed to trigger the mandatory minimum from five grams to twenty-eight grams” believing these reforms would shift the focus of mandatory sentencing minimums onto drug dealers, rather than low-level drug users.¹²⁰

In the last year of the Obama administration, the National Drug Control Strategy 2016 reports alcohol and tobacco use in youth have decreased; however, reduction of illegal drugs such as cocaine “cannot be assessed.”¹²¹ To date, the United States Budget still shows huge disparities between money spent on drug interdiction and counter drug activities when compared to the budget for prevention programs.¹²² It is important to note some positive changes have occurred under Obama; the supply of cocaine to Canada and the United States has declined, and cocaine use among the general population has fallen by 32 percent between 2006 and 2014.¹²³

Only four decades have passed since President Nixon’s declaration of the war on drugs in 1971 and the United States has already spent

¹¹⁹ Hyser, *supra* note 103, at 505. See Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010) (codified at 21 U.S.C. §§ 841, 844, 960); U.S. SENTENCING COMM’N, *supra* note 114, at 1 (discussing that the Commission’s study found “FSA reduced the disparity between crack and powder cocaine sentencing, reduced federal prison population, and appears to have resulted in fewer federal prosecution for crack cocaine.”).

¹²⁰ Riopka, *supra* note 103, at 129; see also U.S. SENTENCING COMM’N, *supra* note 114 at 11-27 (as a result of FSA, number of crack cocaine offenders sentenced in the federal system is about half of that in 2010, however the percentage of crack cocaine trafficking offenders based on ethnicity showed that “blacks” grew from “78.7% to 83.4% from 2010 to 2014.” The chart on page 23 shows that the average sentences for crack cocaine offenders are now closer to average sentences for powder cocaine offenders due to the FSA however there is still a significant amount of disparity).

¹²¹ EXEC. OFFICE OF THE PRESIDENT OF THE U.S., NATIONAL DRUG CONTROL STRATEGY 5 (2016) https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2016_ndcs_final_report.pdf (last visited February, 10, 2017) (referring to the statistics in Tables 1-1).

¹²² *Id.* (Drug interdiction and counterdrug activities was \$950.687 million in 2015, \$1,050,598 million in 2016 and requested amount of \$844.800 for 2017, whereas drug prevention programs were \$179.582 million, \$213.788 million and \$87.595 million respectively.).

¹²³ U.N. OFFICE ON DRUG & CRIME, WORLD DRUG REPORT 37-38 (2016), https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf.

258 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

close to a trillion dollars.¹²⁴ The U.S. also houses the largest prison population in the world with about “2.3 million behind bars.”¹²⁵ In 2015, the United States had a federal drug control budget of about \$25.5 billion and is one of the biggest contributors to global drug expenditures.¹²⁶

B. THE GLOBAL BATTLEFRONT

Even with such limited success domestically, the war on drugs has been refocused over time and made a part of foreign policy. The United States government expanded operations from the domestic scene to countries outside the homeland, focusing on Colombia in the 1990s and on Mexico starting in the late 2000s. Under this policy, “a significant part of drug control costs is transferred to producer and transit countries that are obliged by international agreements to implement supply-reduction interventions....”¹²⁷ Plan Colombia and the Mérida Initiative are examples of how the “bulk of the heavy cost in human life, violent crime, unsafe communities, corruption, and the loss of legitimacy of state institutions is borne outside the United States.”¹²⁸ Meja uses a hypothetical where all of all its cocaine consumption in was relocated to Canada, which illustrates how U.S. authorities would not want to “confront drug trackers at the cost of

¹²⁴ Richard Branson, *War on Drugs a Trillion-Dollar Failure*, CNN (Dec. 7, 2012, 6:05 PM), <http://www.cnn.com/2012/12/06/opinion/branson-end-war-on-drugs/>.

¹²⁵ *Id.* See also U.S. SENTENCING COMM’N, *supra* note 114, at 26 (The impact of passing the FSA shows that without it, 5,984 offenders would have had a higher sentence, receiving an average of 106 months. Based on the difference of sentencing pre and post-FSA, the Commission estimates the FSA will result in a savings of 15,320 bed-years to the Bureau of Prisons, and the retroactive impact on the federal prison population will result in reduced sentences of 6,880 crack cocaine offenders, saving 14,333 bed-years).

¹²⁶ DANIEL MEJA & JOANNE CSESTE, OPEN SOC’Y FOUND., *THE ECONOMICS OF THE DRUG WAR: UNACCOUNTED COSTS, LOST LIVES, MISSED OPPORTUNITIES 2* (2016), [https://www.unodc.org/documents/ungass2016//Contributions/Civil/OpenSociety/The_Economics_of_the_Drug_War -](https://www.unodc.org/documents/ungass2016//Contributions/Civil/OpenSociety/The_Economics_of_the_Drug_War_-_Unaccounted_Costs_Lost_Lives_Missed_Opportunities.pdf)

[Unaccounted Costs Lost Lives Missed Opportunities.pdf](https://www.unodc.org/documents/ungass2016//Contributions/Civil/OpenSociety/The_Economics_of_the_Drug_War_-_Unaccounted_Costs_Lost_Lives_Missed_Opportunities.pdf); see also EXEC. OFFICE OF THE PRESIDENT, FY 2015-2017 BUDGET AND PERFORMANCE SUMMARY: COMPANION TO THE NATIONAL DRUG CONTROL STRATEGY 1-2 (2016), https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2017/assets/ap_2_3_drug_control.pdf (revealing that in the 2016 National Drug Control Strategy, the President requested \$31.071 billion in Fiscal Year 2017 to reduce drug use and its consequences in the United States. The Drug Interdiction and Counterdrug Activities (incl. OPTEMPO and OCO) received a budget of \$1,409,348 million in 2015 and \$1,323,316 million in 2016 whereas the Department of Education received \$50.249 million and \$50.084 million respectively).

¹²⁷ Meja & Cseste, *supra* note 126, at 4.

¹²⁸ *Id.*

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 259

seeing the homicide rate in cities such as Seattle go up from its current level of about 5 homicides per 100,000 population to 150 per 100,000 to prevent cocaine shipments from reaching Vancouver.”¹²⁹ Mejia uses this hypothetical to mirror what occurs in Colombia, Mexico, and other Latin American countries.

Colombia, the main supplier of cocaine to the United States, was a main target country in the internationalized of the war on drugs. Negotiated during the administration of President Bill Clinton, Plan Colombia was a joint U.S.-Colombia initiative to combat cocaine production and tracking. This initiative has cost Colombia about 1.2 billion U.S. dollars per year with little evidence these expensive measures are actually effective to deter production, trafficking, and use of drugs.¹³⁰ Plan Colombia was also implemented to facilitate interdiction efforts such as seizing drugs before they reach the United States.¹³¹ Although this method is “more effective than spraying herbicides, the results are only temporary because it causes a displacement of drug tracking operations to other parts of Latin America.”¹³²

When United States invaded Afghanistan in 2001-2002, the Bush Administration expanded its policy on the war on drugs to an estimate of \$12 billion on counternarcotic measures.¹³³ In May 2003,

¹²⁹ *Id.*

¹³⁰ *E.g., id.* at 5 (explaining that aerial spraying of coca crops is the most used strategy to combat cocaine production; this strategy has little to no effect in reducing cocaine production instead studies have shown spraying to cause health problems and damages to the environment); *see also* Daniel Mejia, *Evaluating Plan Colombia*, in *INNOCENT BYSTANDERS: DEVELOPING COUNTRIES AND THE WAR ON DRUGS*, *supra* note 97, at 135; Jonathan D. Rosen, *The War on Drugs in Colombia: A Current Account of U.S. Policy* 68 (“the original estimates for Plan Colombia in terms of financial costs were \$7.5 billion. The U.S. would supply the Colombians with \$4 billion, while the rest of the resources would come from the international community, however, they did not support the initiative because it disagreed with the formula of Plan Colombia; therefore, Plan Colombia was financed entirely by the U.S. government.”).

¹³¹ Mejia & Cseste, *supra* note 126, at 5.

¹³² *Id.* (Colombia shifted to more interdiction and less crop eradication after 2007, coca production rose in Peru and Bolivia, cocaine processing facilities moved to Venezuela and Ecuador, and the bases of operation of drug traffickers were displaced to Mexico and Central America.).

¹³³ *Id.* at 9 (explaining that the \$12 billion used for counternarcotic measures is about four times the value of the national economy of Afghanistan in the period before the invasion.). *See generally* Christopher J. Coyne et al., *The War on Drugs in Afghanistan: Another Failed Experiment with Interdiction* (George Mason Univ., Working Paper in Econ. No. 15-37, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2613428;

260 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

the United States coordinated its “first official National Drug Control Strategy in Afghanistan.”¹³⁴ Despite these measures, Afghanistan still supplies ninety percent of heroin around the world.¹³⁵ Prior to invading Afghanistan, the Taliban prohibited the cultivation of opium.¹³⁶ Ironically, the invasion of Afghanistan to overthrow the Taliban helped the country diversify and vertically integrate its cultivation of opium.¹³⁷

Mexico was next designated as a target country as the war on drugs was exported from the United States. It took a long time for the traditionally suspicious Mexican authorities to agree to cooperate with the United States in stemming the emerging drug threat in Mexico.

The Merida Initiative is a major component of U.S.-Mexico counternarcotics cooperation. Since 2008, the program has delivered over \$1.5 billion in equipment, training, and other support to build capacity and to assist Mexico with law enforcement professionalization, justice sector reform, crime and violence prevention, and anti-corruption efforts. Furthermore, since 2009 the United States has provided security assistance program funding specifically for counternarcotics equipment and training to military personnel and law enforcement, including aviator qualification, medical aid, leadership development, and equipment supporting improved regional interoperability, communications, and maintenance.¹³⁸

Rosen, *supra* note 130, at 72 (DEA official explains the shift in the conceptualization of security after 9/11. “Prior to September 11th, 2011, the law enforcement community typically addressed drug trafficking and terrorist activities as separate issues, in the wake of the terrorist attacks in New York City, Washington, D.C., and Pennsylvania, these two criminal activities are virtually intertwined.”).

¹³⁴ Coyne et al., *supra* note 133, at 100.

¹³⁵ Jessica Saifee, *The War on Opium in Afghanistan*, HUFFINGTON POST: BLOG (May 5, 2016), <http://www.huffingtonpost.com/jessica-saifee/the-war-on-opium-in-afgha-b-9828506.html>.

¹³⁶ Luke Harding, *Taliban to Lift Ban on Farmers Growing Opium if US Attacks*, THE GUARDIAN (Sept. 24, 2001), <https://www.theguardian.com/world/2001/sep/25/afghanistan.terrorism8>.

¹³⁷ *See id.*; Coyne et al., *supra* note 133, at 98-00.

¹³⁸ INCSR Volume 1, *supra* note 33, at 215.

The Merida Initiative is an attempt by governments of allied countries to combat rising drug trafficking and other organized crime throughout Latin America.¹³⁹ The strategy under the Merida Initiative¹⁴⁰ has provided funds for border-security equipment, law enforcement training and resources, investment in economic sectors, and improving the coordination for international intelligence-sharing.¹⁴¹

Regardless of the early posturing by the Partido Revolucionario Institucional (“PRI”) administration of Enrique Peña-Nieto,¹⁴² the Mexican military is deployed throughout the entire country and will be for some time.¹⁴³ The border region is awash. There are still many checkpoints on the Mexican side of the U.S.-Mexico border, evidenced by the short drive from Tijuana to Tecate along Highway 2 where drivers will encounter two to three military checkpoints.

Mexico and the U.S. announced the Mérida Initiative in October 2007. This initiative is a package of assistance from the U.S. to Mexico and Central America that began in Fiscal Year 2008.¹⁴⁴ It was developed after the Mexican government requested support from the U.S. “As part of the Mérida Initiative’s emphasis on *shared responsibility*, the Mexican government pledged to deal with crime and corruption and the U.S. government pledged to address drug demand and the illicit trafficking of firearms and bulk currency to Mexico.”¹⁴⁵ “Between FY2008 and FY2014 the U.S. Congress appropriated over \$2.4 billion for Mérida Initiative programs in

¹³⁹ See generally <https://www.state.gov/j/inl/merida/> (last visited Apr. 8, 2017).

¹⁴⁰ See generally *id.*

¹⁴¹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-837, MERIDA INITIATIVE: THE UNITED STATES HAS PROVIDED COUNTERNARCOTICS AND ANTICRIME SUPPORT BUT NEEDS BETTER PERFORMANCE MEASURES 8 (2010), <http://www.gao.gov/new.items/d10837.pdf>.

¹⁴² Jon Burnett & Marisa Penaloza, *Mexicans Want New Approach to Bloody Drug War*, NPR (June 8, 2012) <http://www.npr.org/2012/06/08/154576485/mexicans-want-new-approach-to-bloody-drug-war>.

¹⁴³ Adam Isacson, *A Never-Ending Mission: Soldiers as Police in Mexico*, INSIGHT CRIME (June 13, 2013) <http://www.insightcrime.org/news-analysis/a-never-ending-mission-soldiers-as-police-in-mexico>.

¹⁴⁴ CLARE RIBANDO SEELKE & KRISTIN FINKLEA, CONG. RESEARCH SERV., R41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 1 (2017), <https://fas.org/sgp/crs/row/R41349.pdf>.

¹⁴⁵ *Id.* at 6

262 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

Mexico.”¹⁴⁶ In 2006, Mexico’s federal government invested an estimate of \$3.5 billion dollars in security and public safety. In 2014, the amount nearly tripled to an estimated \$10.2 billion dollars.¹⁴⁷ In 2017, Congress provided an estimated \$139 million for the Mérida Initiative. Currently, President Trump has proposed a budget request of \$85 million, a decrease of 38 percent from fiscal year 2017.¹⁴⁸ Mexico reduced its budget that funded for intelligence collection, crime prevention, and the prosecutorial unit in charge of investigating cases of disappeared persons.¹⁴⁹

The Mérida Initiative moved to break the power and impunity of criminal organizations; strengthen border, air, and maritime controls; improve the capacity of justice systems in the region; and curtail gang activity and diminish local drug demand.¹⁵⁰ By 2010, both countries (Mexico and U.S.) agreed that together they would disrupt—the operational capacity of organized criminal groups; institutionalize reforms to sustain the rule of law and respect for human rights; create a 21st century border; and build strong and resilient communities.¹⁵¹

Officials from Mexico and the United States described the Mérida Initiative as a “new paradigm” for bilateral security cooperation.¹⁵² Both governments decided to create multi-level working groups to implement bilateral security. Some welcomed the Mérida Initiative shift, but some argue that “[i]nitiatives to modernize the border and build resilient communities are further behind.” There has not been enough investment in border infrastructure to adapt to the increase

¹⁴⁶ *Id.* at 1.

¹⁴⁷ See M. en E. Reyes Tépac M., *El Presupuesto Público Federal para la FUNCIÓN SEGURIDAD PÚBLICA, 2013-2014*, LXII Legislatura [The Federal Public Budget for the PUBLIC SECURITY FUNCTION, 2013-2014, LXII Legislature] 44 (2014), <http://www.diputados.gob.mx/sedia/sia/se/SAE-ISS-02-14.pdf>. “[T]he year 2006 amounted to 50 thousand 936.25 million pesos (mp). For the year 2014, the amount increased to 149 thousand 846.38 mdp, which implies that this expense has tripled during this period.” *Id.*

¹⁴⁸ SEELKE & FINKLEA, *supra* note 144 at 2.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 6.

¹⁵¹ *Id.*

¹⁵² Press Release, U.S. Dep’t. of State, *Joint Statement on the Mérida Initiative: A New Paradigm for Security Cooperation*, U.S. DEP’T OF STATE (2007), <http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/93817.htm>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 263

in border crossing and trade.¹⁵³

Building “resilient communities” has not been successful considering the goals set by the U.S. government. In 2007, at the enactment of the Merida Initiative, there were “over two thousand drug-related homicides annually; by 2012, the number escalated to more than twelve thousand.”¹⁵⁴ In addition, in 2007, violence was primarily concentrated in approximately 50 municipalities along the border with Sinaloa. In 2011, violence had spread to over 240 municipalities throughout Mexico.¹⁵⁵ Some of the recommendations for the U.S. regarding security cooperation are to focus on building “resilient communities” and the modernization of the U.S.-Mexico border.¹⁵⁶ By 2016, reports of murders increased in many parts of the country.¹⁵⁷ The uptick continued in 2017.¹⁵⁸ By all accounts, Mexico appears to be losing the drugs war while the U.S. is, in part, paying the bills.¹⁵⁹

Both the U.S. and Mexican governments have failed to comply with some of their pledges under the Merida Initiative.¹⁶⁰ Mexico pledged to intensify its anticrime efforts and the U.S. pledged to address drug demand and illicit trafficking of firearms and bulk of currency to Mexico.¹⁶¹ Mexico has not kept its pledge because crime in Mexico has increased. “From 2007 to 2011, the homicide rate per 100,000 people in Mexico increased by an annual average of 15.4 percent.”¹⁶² The U.S. has also failed to comply with its pledge. In 2011, the Alcohol, Tobacco, Firearms, and Explosives (ATF) faced congressional scrutiny when information about Operation Fast and

¹⁵³ *Refocusing U.S.-Mexico Security Cooperation, Before the S. Subcomm. on W. Hemisphere & Global Narcotics Affairs*, 113th Cong. 3 (2013) (statement of Shannon K. O’Neil, Senior Fellow, Council on Foreign Relations), <http://www.cfr.org/mexico/refocusing-us-mexico-security-cooperation/p30950>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Gabriel Stargardter, *Mexico’s 2016 Murder Tally Exceeds Those of Many Countries at War: Study*, REUTERS, May 9, 2017, <https://www.reuters.com/article/us-mexico-violence/mexicos-2016-murder-tally-exceeds-those-of-many-countries-at-war-study-idUSKBN18529T>.

¹⁵⁸ *Id.*

¹⁵⁹ Jeremy Bender, *Mexico’s Drug War is Getting Even Worse*, BUSINESS INSIDER (May 14, 2015, 5:32PM), <http://www.businessinsider.com/mexicos-drug-war-is-taking-worse-turn-2015-5>.

¹⁶⁰ SEELKE & FINKLEA, *supra* note 144, at 7.

¹⁶¹ *Id.*

¹⁶² *Id.* at 2.

264 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

Furious became public. The ATF allowed “straw purchaser” to purchase large amounts of firearms. Two of the firearms were used in a shooting at the U.S.-Mexico border where a U.S. Border Patrol agent was killed.¹⁶³

IV. THE WAR ON DRUGS IS MAKING THE BORDER REGION EVEN MORE INSECURE

In the last decade, the U.S.-Mexico border has become ground zero in the war on drugs. The Rand Corporation in 2014 reported that:

The full scope and details of the threat posed by VDTOs [violent, drug-trafficking organizations] are not well understood, and optimal strategies to combat these organizations have not been identified. Furthermore, the associated security challenges are not confined to Mexico. Many are rooted in (or have spilled over into) neighboring countries, including the United States.¹⁶⁴

The drugs war has helped create a vacuum resulting in increased public insecurity.¹⁶⁵ “Mexico’s National Institute for Statistics and Geography (INEGI) reported that 72 percent of Mexicans believe their city is insecure and nearly 94 percent of crimes go unreported or uninvestigated.”¹⁶⁶ With many police forces in Mexico corrupted by the *narcotraficantes* and the Mexican military systemically violating human rights, citizen self-defense groups have risen all around the country. The magnitude of the violence is horrific, forcing

¹⁶³ *Id.* at 38.

¹⁶⁴ RAND CORPORATION (CHRISTOPHER PAUL, COLIN P. CLARKE, & CHAD C. SERENA), MEXICO IS NOT COLOMBIA, ALTERNATIVE HISTORICAL ANALOGIES FOR RESPONDING TO THE CHALLENGE OF DRUG-TRAFFICKING ORGANIZATIONS xi (2014).

¹⁶⁵ It is important to note that the situation is very fluid but there are moments of capture by journalist and analysts along the border. Most instructive are works by Charles Bowden (“Murder City”), John Gibler, (“To die in Mexico”), Tom Barry (“Border Wars 2011”), and Ed Villuemy (“Mexerica”) - a literature, which is informed and poetic and, thus, so disturbing.

¹⁶⁶ INCSR Volume 1, *supra* note 33, at 215.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 265

some analysts, diplomats, and pundits to consider Mexico a failed state.¹⁶⁷

A. THE DRUGS WAR AND THE COLLAPSING MEXICAN STATE

Mexico continues to suffer from a lack of public security: “Drug-related homicides have dramatically increased in recent years in Mexico along the nearly 2,000-mile border it shares with the United States.”¹⁶⁸ The *narcotraficantes* and their smuggling networks have divided much of Mexico into a network of *plazas*, territory over which they have control and from which they can move illicit drugs north to the United States.¹⁶⁹ The stakes are very high. The annual value of the illegal drugs industry involving the cartels from Mexico vary from 30 to 50 billion dollars.¹⁷⁰

It is no surprise then that the drugs war has come to influence all that is happening in Mexico. One cannot look at the border without understanding that the problems in the region, and those that abut the 2,000-mile border are also problems that exist in Mexico. At the writing of this Article, an estimated 150,000 people have been killed in the drugs war in Mexico.¹⁷¹ The murder rate in Mexico, ten years after the war on drugs was launched by the Mexican government, is

¹⁶⁷ TED GALEN CARPENTER, *THE FIRE NEXT DOOR: MEXICO’S DRUG VIOLENCE AND THE DANGER TO AMERICA* 120 (2012).

¹⁶⁸ U.S. GOV’T ACCOUNTABILITY OFFICE, *Data Are Limited and Concerns Vary About Spillover Crime Along the Southwest Border* 2 (2013), <http://www.gao.gov/assets/660/652320.pdf>.

¹⁶⁹ Kristina Davis, *A Short History of Mexican Drug Cartels*, SAN DIEGO UNION TRIB. (Oct. 21, 2016, 12:20PM), <http://www.sandiegouniontribune.com/news/baja-california/sd-me-prop64-sidebar-20161017-story.html>.

¹⁷⁰ Patrick Radden Keefe, *Cocaine Incorporated*, N.Y. TIMES (June 15, 2012), <http://www.nytimes.com/2012/06/17/magazine/how-a-mexican-drug-cartel-makes-its-billions.html?pagewanted=all&r=0>.

¹⁷¹ Jesselyn Cook, *October was Mexico’s Deadliest Month on Record*, HUFFINGTON POST (November 22, 2017, 3:09 PM), https://www.huffingtonpost.com/entry/mexico-october-deadliest-month_us_5a158a7ee4b09650540e9189; see also *Known Abusers, but Victims Ignored: Torture and Ill-Treatment in Mexico*, Amnesty Int’l (Oct. 11, 2012), <http://www.amnestyusa.org/research/reports/known-abusers-but-victims-ignored-torture-and-ill-treatment-in-mexico>; Luis Gómez Romero, *A Decade of Murder and Grief: Mexico’s Drug War Turns Ten*, THE CONVERSATION (Dec. 11, 2016, 6:18 PM), <http://theconversation.com/a-decade-of-murder-and-grief-mexicos-drug-war-turns-ten-70036>.

266 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

at levels not seen since the height of that offensive.¹⁷² In 2016, the murder rate increased by 22 percent,¹⁷³ and that is only the murders that were reported. The Interior Department of Mexico reported that Mexico had 20,789 homicides in 2016, compared to 17,034 in 2015. Baja California was hardest hit while Veracruz has increasingly become a hotbed of violence, forcing the Mexican government to send even more federal troops there to quell the carnage.¹⁷⁴

Law enforcement authorities seem incapable of stopping the cycle of murders and the level of violence. They are, in fact, part of the problem.¹⁷⁵ Graves are regularly found, sometimes dumped in the center of Mexican cities in full daylight.¹⁷⁶ The few members of the media who are brave enough to report what is truly going on, detail the dozens of bodies that are exhumed in mass graves.¹⁷⁷ Innocent bystanders are killed in mechanic shops, mutilated bodies are left hanging in the middle of public plazas, and teenagers are slaughtered at birthday parties. The majority of this violence is related to the drugs war – either cartel on cartel violence or security officials and law enforcement action against the cartels. Law enforcement

¹⁷² CARRIE KAHN, *WITH MURDERS ON THE RISE, 2017 ON TRACK TO BE ONE OF MEXICO'S DEADLIEST YEARS*, NPR (APR. 4, 2017, 5:17 PM), [HTTP://WWW.NPR.ORG/SECTIONS/PARALLELS/2017/04/04/522621303/WITH-MURDERS-ON-THE-RISE-2017-ON-TRACK-TO-BE-ONE-OF-MEXICOS-DEADLIEST-YEARS](http://www.npr.org/sections/parallels/2017/04/04/522621303/with-murders-on-the-rise-2017-on-track-to-be-one-of-mexicos-deadliest-years).

¹⁷³ *Mexico Sees 22 Percent Rise in Murders in 2016*, ASSOCIATED PRESS, Feb. 3, 2017, <http://www.bigstory.ap.org/article/15b6a61bee364b4c8475e29cd3fe69f7/mexico-sees-22-percent-rise-murders-2016>.

¹⁷⁴ PAULINA VILLEGAS, *MORE THAN 250 HUMAN SKULLS ARE FOUND IN MASS GRAVE IN MEXICO*, N.Y. TIMES (MAR. 14, 2017), [HTTPS://WWW.NYTIMES.COM/2017/03/14/WORLD/AMERICAS/MEXICO-VERACRUZ-MASS-GRAVE.HTML?HP&ACTION=CLICK&PGTYPE=HOMEPAGE&CLICKSOURCE=STORY-HEADING&MODULE=SECOND-COLUMN-REGION®ION=TOP-NEWS&WT.NAV=TOP-NEWS&R=0](https://www.nytimes.com/2017/03/14/world/americas/mexico-veracruz-mass-grave.html?hp&action=click&pgtype=homepage&clicksource=story-heading&module=second-column-region®ion=top-news&wt.nav=top-news&R=0).

¹⁷⁵ Gabriel Stargardter, *Mexico Charges 14 Federal Police in Attack on CIA Officers*, REUTERS (Nov. 9, 2012, 4:13 PM), <http://www.reuters.com/article/2012/11/09/us-mexico-drugs-idUSBRE8A81HU20121109>.

¹⁷⁶ See RODRÍGUEZ, *supra* note 76; see also DIANA WASHINGTON VALDEZ, *THE KILLING FIELDS: HARVEST OF WOMEN* (2006). See also Loan Grillo, *The Paradox of Mexico's Mass Graves*, N.Y. TIMES (July 13, 2017), <https://www.nytimes.com/2017/07/19/opinion/mexico-mass-grave-drug-cartel.html>.

¹⁷⁷ Tracy Wilkinson, *Dozens of Bodies, Many Mutilated, Dumped in Mexico*, L.A. TIMES (May 13, 2012), <http://articles.latimes.com/2012/may/13/world/la-fg-mexico-bodies-20120514>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 267

authorities are either ineffective or corrupt, or a combination of both, to end this cycle of violence.¹⁷⁸

It was not for lack of trying on the part of former Mexican President Felipe Calderón. From the moment he stepped into office in December 2006, President Calderón took on the cartels head on using all the institutions of the state. Indeed the ranks of the Secretaría de la Defensa Nacional (SEDENA) grew by more than six percent during Calderón's time in office.¹⁷⁹ The problem was that most of them – particularly federal, state and municipal police authorities – are corrupt and act in concert with one or more of the drug cartels. Entire police forces have been discharged, like the port city of Veracruz.¹⁸⁰ Only in late December 2011 did the municipality fire all its police officers, leaving the Mexican Navy in charge of public security until a new police force is installed. Police who are not corrupt look the other way to not become a target themselves. Throughout the country, Mexican police have turned on each other with shoot-outs between different agencies and even some against the other within the same police force.¹⁸¹ There is little faith in the administration of justice and police authorities.¹⁸²

This sense has only grown under the rule of President Enrique Peña Nieto. The case of the missing 43 students became another lightning rod for the Mexican general public to question whether there is any

¹⁷⁸ Peter Cynkar, *Mexico's Drug War*, U.S. FOREIGN POL'Y OPINION BRIEFINGS (Apr. 4, 2012), <http://www.gallup.com/poll/153743/opinion-briefing-future-mexico-drug-war.aspx> (Five years after Mexico launched its aggressive war on drugs, Gallup finds fewer Mexicans reporting that gangs and drugs are commonplace where they live. Yet gangs remain a neighborhood fixture for 46% of Mexicans surveyed in 2011 and 33% said drug trafficking goes on. Fewer Mexicans feel safe and their confidence in their police and their military has decreased.).

¹⁷⁹ Catherine Daly, et al., *Armed with Impunity*, UNIV. OF SAN DIEGO: TRANS BORDER INSTITUTE 16 (2012), https://justiceinmexico.org/wp-content/uploads/2014/09/2012_ARMEDWITHIMPUNITY.pdf.

¹⁸⁰ See *All 348 Mexico City Airport Police Replaced*, CBS NEWS (Aug. 19, 2012, 11:54 PM), <http://www.cbsnews.com/news/all-348-mexico-city-airport-police-replaced/>.

¹⁸¹ Laurence Iloff, *Three Police Shot Dead at Mexico City Airport*, WALL ST. J. (June 26, 2012), <http://online.wsj.com/article/SB10001424052702304458604577488572095866392.html>.

¹⁸² Mark Browne, *Corruption Concerns in Mexico Drive Growing Levels of Public Distrust in Gov't*, CNS NEWS (May 19, 2016, 8:19 PM), <http://www.cnsnews.com/news/article/mark-browne/corruption-concerns-mexico-drive-growing-levels-public-distrust-govt> (according to a poll, sixty-one percent of Mexicans surveyed believe Mexico is heading in the wrong direction).

effective governance in their country.¹⁸³ On September 26, 2014, in the small southern city of Iguala, 43 students from the local teacher trainer Ayotzinapa College were reportedly on their way to disrupt a speech by the wife of the mayor of Iguala, Maria de los Angeles Pineda. She was a reported drug cartel operative, and the students were allegedly set to accuse her of corruption. En route, the trainee teachers were apprehended by local police at gunpoint, handed over to a drug cartel whose henchmen tortured and killed them, burning and hiding the bodies.¹⁸⁴ The mayor, José Luis Abarca Velásquez, had sent police to intercept the students and send a message to quell dissent. The local police, law enforcement in Guerrero state (Mexico's most murder-plagued state), and the federal government, did little in the aftermath of the mass abduction. In fact, the police initially kidnapped the unarmed student teachers only 100 yards from a local military base, after shooting one in the head and injuring four others.¹⁸⁵ President Peña Nieto's first reaction was that the situation was not his government's problem but a local matter, a statement that he retracted a few days later. The country's Attorney General opened an investigation ten days after the mayor of Iguala and his wife fled the town. It was a month after the disappearance that the mayor and his wife, on the run for weeks, were arrested in Mexico City.¹⁸⁶ The Governor of Guerrero, Angel Aguirre, took a leave of absence from his post.¹⁸⁷ Twenty-two municipal police from Iguala were also arrested for the disappearances.¹⁸⁸

¹⁸³ Lorne Matalon, *Mexico Marks Día De La Revolución: Patriotism, Protest And Revulsion*, FRONTERAS DESK (Nov. 21, 2014), <http://www.fronterasdesk.org/content/9859/mexico-marks-d%C3%AD-de-la-revoluci3n-patriotism-protest-and-revulsion> ("It's not just the crime itself that's roiling Mexico. It's the perception that the government's reaction was slow.").

¹⁸⁴ Daniel Wilkinson, *Law and Disorder in Mexico*, FOREIGN POL'Y (Nov. 18, 2014), <http://foreignpolicy.com/2014/11/18/law-and-disorder-in-mexico/> [hereinafter Wilkinson *Law & Disorder*].

¹⁸⁵ *Id.*

¹⁸⁶ Cook, *supra* note 171; see also Pablo Ferri Tórtola, *Testigo Revela Ejecuciones en El Estado de Mexico*, Esquire Latino (Sept. 14, 2014), <http://www.esquirelat.com/reportajes/14/09/17/esclusiva-esquire-Testigo-revela-ejecuciones-ejercito/>.

¹⁸⁷ Randal C. Archibold, *In Mexico, an Embattled Governor Resigns*, N.Y. TIMES MAG (Oct. 23, 2014), http://www.nytimes.com/2014/10/24/world/americas/in-mexico-an-embattled-governor-resigns.html?_r=0.

¹⁸⁸ Tracy Wilkinson, *Murder Charges for Mexican Soldiers Raise More Questions*, L.A. TIMES (Oct. 1, 2014, 2:38 PM), <http://www.latimes.com/world/mexico-americas/la-fg-murder-charges-mexican-soldiers-questions-20141001-story.html> [hereinafter Wilkinson *Murder Charges*] (Some 80 people in total were arrested.); see also Carrie Kahn, *Burnt*

While there were 50 unidentified victims, most of whom were chopped into bits and set on fire,¹⁸⁹ discovered around the State of Guerrero during a massive search, DNA tests concluded that these were not the students.¹⁹⁰ It was not for more than two months after the forced disappearances that the first body from the group of missing students was identified.¹⁹¹

Across Mexico, there was much public frustration and indignation over the lack of progress in the investigation into the disappearance of the students.¹⁹² Around the country, tens of thousands of people took to the streets in dozens of large protests held to force the government to do more to complain of the corruption and violence that plagued Mexico.¹⁹³ Protesters occupied dozens of municipal government buildings¹⁹⁴ and shut down two airports.¹⁹⁵ In Mexico City, the police dispersed a peaceful protest with a brutal response. Many of those arrested, including journalists and bystanders, complained of arbitrary arrest and other criminal actions, which were later substantiated by the National Human Rights Commission.¹⁹⁶ The Chief of Police of Mexico City resigned soon thereafter.¹⁹⁷

Remains of Missing Mexican Student Identified; 42 Still Not Found, NPR (Dec. 8, 2014, 4:57 AM), <http://www.npr.org/2014/12/08/369276260/burnt-remains-of-missing-mexican-student-identified-42-still-not-found>.

¹⁸⁹ H.T., *Outrage, at Last*, THE ECONOMIST (Oct. 8, 2014), <http://www.economist.com/blogs/americasview/2014/10/massacres-mexico> (On October 4, 2014, 28 charred bodies were dug up in mass graves near Iguala, but those bodies may not be the remains of the any of the remaining 43 missing students.).

¹⁹⁰ Dudley Althaus, Juan Montes & Santiago Perez, *Missing Students Part of Mexican Scourge*, WALL ST. J., Nov. 6, 2014, at A12.

¹⁹¹ *Mexico Missing Student 'Identified' From Remains*, BBC NEWS (Dec. 7, 2014), <http://www.bbc.com/news/world-latin-america-30365680>.

¹⁹² Tess Vigeland, *Still Few Answers in Killing of 43 Students in Mexico*, NPR (Nov. 22, 2014, 5:20 PM), <http://www.npr.org/2014/11/22/365993098/still-few-answers-in-killing-of-43-students-in-mexico> (interviewing Daniel Wilkinson, the Managing Director of the Americas division of Human Rights Watch).

¹⁹³ *Mexico Missing Students: Thousands March in Protest*, BBC NEWS (Dec. 2, 2014), <http://www.bbc.com/news/world-latin-america-30288706>.

¹⁹⁴ Dudley Althaus, *Unrest Escalates in Mexico Towns*, WALL ST. J., Nov. 14, 2014, at A9.

¹⁹⁵ David Luhnow, *Mexico Hit by Unrest, Scandal*, WALL ST. J., Nov. 15-16, 2014, at A1.

¹⁹⁶ See Daniel Wilkinson, *Law and Disorder in Mexico*, HUMAN RIGHTS WATCH (Nov. 18, 2014, 5:28 PM) <https://www.hrw.org/news/2014/11/18/law-and-disorder-mexico>.

¹⁹⁷ *Mexico City Police Chief Resigns After Violent Protests*, BBC NEWS (Dec. 6, 2014), <http://www.bbc.com/news/world-latin-america-30357772>.

270 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

The U.S. Embassy issued a travel advisory for U.S. citizens, warning them not to travel to Guerrero state.¹⁹⁸ Concerning the cities of Acapulco, Ixtapa, and Zihuatanejo, the travel advisory stated:

“[Y]ou should exercise caution and stay within tourist areas.... You should also exercise caution and travel only during daylight hours on highway 95D (cuota/toll road) between Mexico City and Acapulco and highway 200 between Acapulco and Zihuatanejo/Ixtapa. In Acapulco, defer non-essential travel to areas further than 2 blocks inland of the Costera Miguel Aleman Boulevard, which parallels the popular beach areas.... In general, the popular tourist area of Diamante, just south of the city, has been less affected by violence.”¹⁹⁹

Mexican President Peña Nieto put forward a legislative package to reform Mexico’s police forces, allowing for the replacement of Mexico’s most corrupt municipal police forces.²⁰⁰ To promote the reforms, the beleaguered Mexican President visited Guerrero state, missing the town of Iguala. For that duty, he sent his Interior Minister and national security advisor instead, having them talk about the economic impact the case of the missing students was having on the country, rather than focusing on the poor record of enforcing human rights or investigating corruption among the police and the political class.²⁰¹ A panel of independent experts, appointed by the Inter-American Commission on Human Rights, released a report that rejected the Mexican Government’s account of what happened to the 43 unarmed students, and underlines the coordination between municipal, state and federal law enforcement authorities, including the Army, in obstructing the judicial

¹⁹⁸ *New State Dept. Warning Exempts Most Mexico Tourist Spots*, USA TODAY (Nov. 21, 2012, 11:02 AM), <http://www.usatoday.com/story/dispatches/2012/11/21/state-department-updates-mexico-travel-warnings/1719053/>.

¹⁹⁹ U.S. DEP’T OF STATE, <https://mx.usembassy.gov/security-alert-u-s-embassy-mexico-city-mexico-march-16-2018/> (last updated on Mar. 18, 2018) (providing warnings to citizens about traveling to Mexico).

²⁰⁰ AP, *Mexican President Submits Police Reform Bill*, NBC NEWS (Dec. 2, 2014, 5:04 PM), <http://www.nbcnews.com/news/latino/mexican-president-submits-police-reform-bill-n260171>.

²⁰¹ *Mexico Missing Students: Pena Nieto Visits Guerrero*, BBC NEWS (Dec. 4, 2014), <http://www.bbc.com/news/world-latin-america-30341058>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 271

investigation.²⁰² The Mexican Government reopened the investigation after public pressure.²⁰³ In short, the missing 43 students has become the rallying point for Mexican discontent with the drugs war, the complicity of police forces at every level of government, and the willful disregard (if not complete co-option) of many in the political elite in the illicit drugs industry.²⁰⁴ After approximately 14 months investigating the disappearance of the 43 students, the Organization of American States' Inter-American Commission on Human Rights found evidence of many compliance issues among authorities that point to a high level of corruption.²⁰⁵ To this day, the missing students and their families have not received justice.

The Mexican military has fared no better. Mexican security forces have lost the trust of the Mexican people.²⁰⁶ The late Charles Bowden, a long-time border journalist, summarized it best:

The war in Mexico is for drugs and the enormous money to be made by supplying American habits, a torrent of cash that the army, the police, the government, and the cartels all lust for. Second, the Mexican army is a government-financed criminal

²⁰² United Nations Office of the High Commissioner for Human Rights, *Mexico: UN Experts Welcome Inter-American Commission on Human Rights Report on Disappeared, Executed and Tortured Students*, (Sept. 9, 2015),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16406&LangID=E>; Audie Cornish, *Report Questions Mexico's Account of 2014 Student Killings*, NPR (Sept. 7, 2015, 4:32 PM), <http://www.npr.org/2015/09/07/438354757/report-questions-mexicos-account-of-2014-student-killings>; see also Micaela Smith, *Panel of Experts Rejects Mexican Government's Account of Ayotzinapa Disappearances*, JUST. IN MEX. (Sept. 18, 2015), <https://justiceinmexico.org/tag/inter-american-commission-for-human-rights/>.

²⁰³ *Mexico Reopens Investigation Into 43 Missing Students*, BBC NEWS (Oct. 21, 2015), <http://www.bbc.com/news/world-latin-america-34589099>.

²⁰⁴ See Patrick J. McDonnell & Cecilia Sanchez, *It's Been Two Years Since 43 Mexican Students Disappeared, and We Still Don't Know Exactly What Happened to Them*, L.A. TIMES (Sept. 26, 2016, 6:35 PM), <http://www.latimes.com/world/mexico-americas/la-fg-mexico-ayotzinapa-20160926-snap-story.html>.

²⁰⁵ Francisco Goldman, *Still No Justice for Mexico's Missing Students*, N.Y. TIMES, (March 1, 2017) <https://www.nytimes.com/2017/03/01/opinion/still-no-justice-for-mexicos-missing-students.html?mcubz=3>.

²⁰⁶ CARPENTER, *supra* note 167, at 131 (“[T]he Mexican military may be going down the same path of drug-related corruption that had already widely infected the police and other governmental institutions. And the military was considered the last bastion against that plague.”).

272 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

organization, a fact which Mexicans learn as children.²⁰⁷

Since late 2006, when Felipe Calderón became President, the Mexican Army has been deployed to patrol streets, to man checkpoints on highways, and to conduct raids.²⁰⁸ For many, this is a problem and not a solution as rumors circulate that leaders are on the payroll of the *narcos*.²⁰⁹ According to Human Rights Watch's World 2012 Report,²¹⁰

Mexico has experienced a dramatic surge in homicides in recent years, driven in large part by the violent struggle between and within powerful criminal organizations to control the drug trade and other lucrative illicit businesses such as human trafficking. Efforts by the administration of President Felipe Calderón to combat organized crime have resulted in a significant increase in killings, torture, and other abuses by security forces, which only make the climate of lawlessness and fear worse in many parts of the country. Journalists, human rights defenders, and migrants are targeted for attack by criminal groups and members of security forces, yet Mexico has failed to provide these vulnerable groups with protection or to adequately investigate the

²⁰⁷ CHARLES BOWDEN, *MURDER CITY: CIUDAD JUÁREZ AND THE GLOBAL ECONOMY'S NEW KILLING FIELDS* 202 (2010).

²⁰⁸ Daly et al., *supra* note 179, at 9. Looking back at the 2006-2012 period, "the Mexican public holds mixed feelings about the Calderón administration's strategy. On the one hand, in a March 2012 poll by Consulta Mitofsky, 43% of respondents indicated that they viewed the Mexican government's strategy as a "failure," and 53% thought that organized crime was winning the fight against government forces. Only 28% felt Calderón's strategy had been successful. Nevertheless, more than two-thirds of those surveyed support using the military to combat organized crime. As one observer noted, "The majority of the Mexican population isn't angry that Calderón is using the military to fight organized crime. They're angry that he's done such a lousy job of it."

²⁰⁹ Randal C. Archibold, *Mexico Holds 4 High-Ranking Army Officers*, N.Y. TIMES, (May 18, 2012), <http://www.nytimes.com/2012/05/19/world/americas/mexico-detains-3-generals-tied-to-drug-cartel.html>. In May 2012, the Mexican government detained three high-ranking Army Generals who played a role in drug trafficking, including a former second-highest ranking official in the Defense Ministry for the first two years of Calderon's presidency.

²¹⁰ HUMAN RIGHTS WATCH, *WORLD REPORT 2015: MEXICO* (2015), <https://www.hrw.org/world-report/2016/country-chapters/mexico>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 273

crimes against them. Efforts to implement comprehensive reform of the criminal justice system, which would address endemic problems such as torture to extract confessions, continued to progress slowly in 2011, leaving in place a system rife with abuses.²¹¹

The Army, known for his massacre of students and the dirty war against student leaders and others deemed subversives in 1968,²¹² was particularly brutal during President Calderón's drugs war. Thousands of complaints against the Army have been logged with the National Commission for Human Rights ("CDNH") since 2006.²¹³ The general public has lost much confidence in the military, already held in disrepute, during Calderón's administration. Indeed, the expanded use of the military has put the legitimacy of the Mexican armed forces at risk.²¹⁴ According to seasoned journalist Charles Bowden, "

They [the public] read that the Mexican army can be rough, but never grasp the fact that the Mexican army historically has been stationed all over the country in order to repress and terrorize the people of Mexico.²¹⁵

There are current concerns about human rights violations and the involvement of the police and military in those violations. Some reports show the involvement of Mexican security forces in

²¹¹ HUMAN RIGHTS WATCH, WORLD REPORT 2012: MEXICO (2012), <http://www.hrw.org/world-report-2012/mexico>.

²¹² ELENA PONIAŁOWSKA, MASSACRE IN MEXICO (1991) (Helen R. Lane trans., Octavio Paz intro.); see also Richard Nelsson, *How the Guardian Reported Mexico City's Tlatelolco Massacre of 1968*, THE GUARDIAN (Nov. 15, 2015, 11:17 PM), <https://www.theguardian.com/cities/from-the-archive-blog/2015/nov/12/guardian-mexico-tlatelolco-massacre-1968-john-rodga>; Sam Dillon, *Mexico City Journal: Anniversary of '68 Massacre Brings Facts to Light*, N.Y. TIMES (Sept. 14, 1998), <http://www.nytimes.com/1998/09/14/world/mexico-city-journal-anniversary-of-68-massacre-brings-facts-to-light.html>.

²¹³ Daly et al., *supra* note 179, at 21. CDNH has registered an increase in reported human rights violations with regard to the military since 2006. A growing number of complaints against SEDENA were recorded after Calderon took office: 182 in 2006; 367 in 2007; 1,230 in 2008; 1,800 in 2009; 1,415 in 2010; 1,626 in 2011. Only about 2% of *quejas* (complaints) have resulted in CNDH recommendations, SEDENA reports more than 5,661 complaints have been resolved. *Id.* at 23.

²¹⁴ *Id.* at 17.

²¹⁵ BOWDEN, *supra* note 207, at 193.

extrajudicial killings, kidnappings for ransom, and torture. The military has committed many human abuses since tasked with public security. A November 2011 Human Rights Watch (“HRW”) report maintains that cases of torture, enforced disappearances, and extrajudicial killings have increased significantly in states where federal authorities (police and military) have been deployed to fight organized crime.²¹⁶ According to Mexico’s Department of Defense (“SEDENA”), human rights complaints have increased from 182 in 2006 to approximately 1,800 in 2009, but declined to 1,626 in 2011.²¹⁷ International human rights groups identified the problem as the government’s failure to hold military and police officials accountable for their abuses.²¹⁸

In the agreement for Mérida Initiative assistance, the U.S. government included a section that states that if the Mexican government does not address human rights violations, 15 percent of the Department of State International Narcotics Control and Law Enforcement (“INCLE”) and Foreign Military Financing (“FMF”) assistance would be held until a report is received stating that the Mexican government is taking action.²¹⁹ In August 2012, the U.S. State Department held back assistance because Mexico was not meeting the conditions.²²⁰ It withheld about \$18 million dollars until it could consult with the Mexican government to address some key human right issues.²²¹ This happened again in October 2015.²²² For the fiscal year 2017, the Foreign Operations Bill included restrictions that corresponded to \$5 million in FMF.²²³

²¹⁶ HUMAN RIGHTS WATCH, NEITHER RIGHTS NOR SECURITY: KILLINGS, TORTURE, AND DISAPPEARANCES IN MEXICO’S “WAR ON DRUGS” (2011)

<https://www.hrw.org/report/2011/11/09/neither-rights-nor-security/killings-torture-and-disappearances-mexicos-war-drugs>; *see also* HUMAN RIGHTS WATCH, WORLD REPORT 2013: EVENTS OF 2012 (2013), https://www.hrw.org/sites/default/files/wr2013_web.pdf.

²¹⁷ Daly et al., *supra* note 179, at 11.

²¹⁸ HUMAN RIGHTS WATCH, WORLD REPORT 2013: EVENTS OF 2012 29 (2013), https://www.hrw.org/sites/default/files/wr2013_web.pdf.

²¹⁹ SEELKE & FINKLEA, *supra* note 144, at 12.

²²⁰ *Id.*, at 28

²²¹ *Id.*

²²² Elisabeth Malkin & Azam Ahmed, *U.S. Withholds \$5 Million in Antidrug Aid to Mexico as Human Rights Rebuke*, N.Y. TIMES (Oct. 20, 2015),

<http://www.nytimes.com/2015/10/20/world/americas/us-withholds-5-million-in-antidrug-aid-to-mexico-over-human-rights.html? r=0;>

²²³ *Id.* *See also* SEELKE & FINKLEA, *supra* note 144, at Table A-I.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 275

Enrique Peña Nieto's administration, which came into power in December 2012, has struggled with Mexico's war on drugs. When he took over Los Pinos, Mexican President Enrique Peña Nieto said very little about continuing the war on the cartels that his predecessor, Felipe Calderón, started in December 2006. As then-President-elect Peña Nieto explained in Washington, D.C. to U.S. President Barack Obama, and again in his inauguration speech on December 1, 2012, the drugs war would not be the sole or metanarrative for his Presidency.²²⁴ Instead, the newly elected Mexican President committed his administration to a focus on economic growth. President Peña Nieto took a page from the PRI's playbook during its seven-decade reign following the Mexican Revolution and contended that peace and prosperity would come to Mexico with large spending projects. President Enrique Peña Nieto's focus on the economy, including the reform of the tax code and the privatization of parts of the nationalized petroleum industry, does not cease operation of the drugs war or the Mexican military's fight against the *narcotraficantes*.

During a firefight between members of the Mexican Army and suspected drug traffickers on June 30, 2014 at a warehouse in Tlatlaya, a small town in the southern state of Mexico, soldiers reportedly killed 22 gunmen.²²⁵ According to a report by the National Human Rights Commission,²²⁶ at least a dozen were killed execution style by the soldiers after they had surrendered. According to the report, three women who had witnessed the massacre, two of whom were beaten and all three of whom were threatened with rape, were forced by state prosecutors to sign statements that exonerated the soldiers.

Federal prosecutors took three months to begin investigating the killings. The federal Attorney General's office sprung into action only after the Latin American edition of *ESQUIRE* magazine

²²⁴ Adam Thomson, *Mexico Leader Shifts Focus on Drugs War*, *FIN. TIMES* (July 2, 2012), <https://www.ft.com/content/2f95e762-c471-11e1-a98c-00144feabdc0>.

²²⁵ Jan Martínez Ahrens, *Mexican Army Detains Eight Soldiers Over Tlataya Massacre*, *EL PAIS* (Sept. 26, 2014, 7:42 PM), http://elpais.com/elpais/2014/09/26/inenglish/1411753274_928587.html.

²²⁶ Clayton Conn, *Mexico: Tlatlaya Massacre Witnesses Released*, *TELE SUR* (Dec. 16, 2014), <http://www.telesur.tv/english/news/Mexico-Tlatlaya-Massacre-Witnesses-Released-20141216-0056.html>.

276 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

published an interview with one of the witnesses of the massacre,²²⁷ and the Associated Press had also broken the story. Seven soldiers were finally charged by the Attorney General's office: three for "aggravated homicide" and "altering the crime scene," and one lieutenant for his role in covering up the crime.²²⁸ The charges brought did not repair the reputational damage caused by the mishandling of this incident, rather it further disgraced the administration of justice and severely damaged the public's opinion of Peña Nieto's administration. Consequently, FOREIGN POLICY magazine declared in a headline that in Mexico, "[t]he authorities are not to be trusted."²²⁹ Daniel Wilkinson stated in the accompanying article that:

many Mexicans consider to be an essential truth that the Iguala tragedy has exposed about their country: Its public security institutions are not functioning as safeguards of public security. On the contrary, they are a central part of the problem — whether it's police colluding with murderous gangs, soldiers executing civilians, prosecutors torturing witnesses, or senior officials using the law to justify inaction in the face of such atrocities.²³⁰

In the waning days of the Calderón administration, Ted Galen Carpenter correctly envisioned that, "A more probable danger than the chance that Mexico could become a failed state is that Calderón's use of the military for law enforcement could transform the country in undesirable, authoritarian ways."²³¹ Although Mexico's Drug War has persisted for a decade, nothing has changed.²³² The situation has escalated in Mexico to the extent that activists have called for the International Criminal Court to investigate the situation.²³³

²²⁷ Pablo Ferri Tórtola, *supra* note 186.

²²⁸ Wilkinson Murder Charges, *supra* note 188.

²²⁹ Daniel Wilkinson Law & Disorder, *supra* note 196.

²³⁰ *Id.*

²³¹ CARPENTER, *supra* note 167, at 146.

²³² Daniel Barker Flores, *Mexico: The War on Drugs — A Decade of Conflict With No End in Sight*, PULS AMERICA (Jan. 1, 2017),

<http://www.pulsamerica.co.uk/2017/01/mexico-war-drugs-decade-conflict-no-end-sight/>.

²³³ See Jesús Pérez Caballero, *Will the International Criminal Court Investigate Mexico's 'Drug War'?*, INSIGHT CRIM. (Nov. 5, 2014), <http://www.insightcrime.org/news-analysis/international-criminal-court-mexico-drug-war>; see also Carina Bergal, *The*

When President Peña Nieto was elected, he promised to reduce the violence with a focus on decreasing the murders and kidnappings, rather than using military force.²³⁴ Indeed, the “continued levels of bloodshed and violence in Mexico reflect that there has been little change in government policy between the Calderón administration and that of Peña-Nieto.”²³⁵

B. GENERAL PUBLIC INSECURITY IN MEXICO

For years Mexicans trusted some of its media to speak truth to power. Since 2006, this has no longer been the case. Sadly, little news is reported because the Mexican media are often the targets of cartel violence, making it difficult to receive accurate reports about incidences in the country.²³⁶ The media is told what to print by the *narcotraficantes*.²³⁷ Journalists have been killed in Mexico City, Tijuana, Ciudad Juárez, and elsewhere in the country.²³⁸ Blogs became increasingly more prevalent, bypassing more traditional mainstream media;²³⁹ but unable to continue reporting unscathed, some bloggers are forced to remain anonymous due to security concerns.²⁴⁰ Social media reporters using Twitter and Facebook have

Mexican Drug War: The Case for a Non-International Armed Conflict Classification, 34 FORDHAM INT’L LAW J. 1042 (2011).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Tracy Wilkinson, *Mexico Cartel Attacks on Press Take Toll on Drug War Coverage*, L.A. TIMES (July 24, 2012), <http://articles.latimes.com/2012/jul/23/world/la-fg-mexico-press-20120724>; see also Tracy Wilkinson, *Mexico Journalists’ Killings Solved? Critics Doubt It*, L.A. TIMES (Aug. 17, 2012), <http://www.latimes.com/news/nationworld/world/la-fg-mexico-journalists-20120817.0.3054999.story>.

²³⁷ Don Winslow, *Mexican Journalists Risk Death to Tell the Truth*, TIME (June 28, 2017) <http://time.com/4836655/mexican-cartels-free-press-don-winslow/>.

²³⁸ Editorial Board, *In Mexico, journalism is literally being killed off*, WASH. POST (May 21, 2017), https://www.washingtonpost.com/opinions/in-mexico-journalism-is-literally-being-killed-off/2017/05/21/fd2ef5ae-3ccd-11e7-9e48-c4f199710b69_story.html?utm_term=.7fa1a7d738e5.

²³⁹ See <http://www.blogdelnarco.com> (last visited Apr. 10, 2017). See generally THE FUGITIVE REPORTERS OF BLOG DEL NARCO, DYING FOR THE TRUTH: UNDERCOVER INSIDE THE MEXICAN DRUG WAR 3 (2012); Robert Beckhusen, *Que Malo, Narcos! Mexico Attacks Cartels with Comics*, WIRED (Sept. 9, 2011, 2:00 PM), <http://www.wired.com/2011/09/mexico-attacks-cartels-with-comics/>.

²⁴⁰ Rory Carroll, *‘They Stole Our Dreams’: Blogger Reveals Cost of Reporting Mexico’s Drug Wars*, THE GUARDIAN (Apr. 3, 2013, 2:56 PM), <https://www.theguardian.com/world/2013/apr/03/mexico-blog-del-narco-drug-wars> (“She [Lucy, the blogger] and her colleague live in daily fear of retribution, either from

278 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

also been killed.²⁴¹ It is suspected that the cartels have added technologically savvy individuals to its payroll, thus calling into question whether anyone can be truly anonymous on the web.²⁴² A leading regional newspaper in Chihuahua, *Norte de Ciudad Juarez*, ceased publishing to protest the impunity that cartels enjoy as they murder journalists.²⁴³

Many Mexican cities, including Monterrey, Mexico's third largest urban center and its technology center, live in a culture of fear.²⁴⁴ Mexico is experiencing a brain drain to the United States as the professional and entrepreneurial class flees from the breakdown in the rule of law.²⁴⁵ Kidnapping has been a default crime for organized criminal gangs, with high expenses used to hasten transactions. In the border region, these numbers surge exponentially. Based upon thousands of household polls, Mexico's National Institute of Statistics reported an estimate of 100,000 kidnappings in Mexico.²⁴⁶

the cartels or government forces. She revealed that a young man and woman tortured, disembowelled and hung from a bridge in September 2011 – murders which shocked even atrocity-hardened Mexicans – were collaborators on the blog.”)

²⁴¹ Belén Marty, *Mexican Narcos Murder Citizen Journalist, Tweet Photo of Her Corpse*, PAMAM POST (Oct. 21, 2014, 11:04 AM), <http://panampost.com/belen-marty/2014/10/21/mexican-narcos-murder-citizen-journalist-tweet-photo-of-her-corpse/>; see also Melissa del Bosque, *Another Citizen Journalist Silenced in Tampaulipas*, TEX. OBSERVER (Oct. 17, 2014, 4:10 PM), <http://www.texasobserver.org/reynosafollow-twitter-user-citizen-journalist-murdered/>.

²⁴² See Melissa del Bosque, *Why Blog del Narco Has Become the Most Important Website in Mexico*, THE GUARDIAN (Apr. 3, 2013, 2:56 PM), <http://www.theguardian.com/world/2013/apr/03/mexico-drugs-blog-del-narco> (“The cartels tried to dispatch Blog del Narco much like they had Mexico's other media outlets. The blog suffered hundreds of cyber attacks. Anonymous and unsubstantiated rumors began to circulate that the site favored one cartel over another. In 2011, the website suffered a debilitating cyber attack and was offline several days before it switched servers. Then a man and woman were killed and hung from a bridge in the border city of Nuevo Laredo with a sign warning that they had been killed for working on anonymous websites like Blog del Narco. “This is what will happen to all the Internet snitches. Be warned, we are watching you, Sincerely Z [Los Zetas].”).

²⁴³ *Mexico Newspaper Stops Printing After Reporter Shot Dead*, BBCnews.com (Apr. 3, 2017), <http://www.bbc.com/news/world-latin-america-39475381>.

²⁴⁴ Daniel Hernandez, *In Monterrey, Mexico, a Culture of Fear Is Evident*, L.A. TIMES (Apr. 3, 2012), <http://articles.latimes.com/2012/apr/03/world/la-fg-mexico-monterrey-fear-20120403>.

²⁴⁵ Omar Millán, *Mexico's Brain Drain to U.S. 'A Phenomenal Loss'*, SAN DIEGO RED (Dec. 13, 2011), <http://www.sandiegored.com/noticias/21150/Mexico-s-brain-drain-to-U-S-a-phenomenal-loss/>.

²⁴⁶ Vladimir Hernandez, *Our World: Kidnapped in Mexico*, HUFFINGTON POST (Mar. 14, 2016, 2:58 PM), http://www.huffingtonpost.com/vladimir-hernandez/our-world-kidnapped-in-mexico_b_9462258.html.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 279

The study also indicated that out of the 100,000 kidnappings, about one percent are reported to the police.²⁴⁷ Accordingly, “[t]hat one percent is actually very close to the figure that the government puts out — between 1,500 to 1,700 a year.”²⁴⁸ Ciudad Juárez has become “the gateway to a Mexican hell: a subject for extreme tourism and yellow journalism. The world reduced to a crime tabloid article.”²⁴⁹

The internal costs to Mexico from the drugs wars are increasing – not just in lost output, a drop in tourism, and worries from foreign investors – because when less drugs cross the border, domestic use of illicit drugs increases. As a natural consequence, if the drugs cannot enter the United States, they have to go somewhere. The domestic market for drug consumption has increased so exponentially that drug use is now one of Mexico’s growth industries.²⁵⁰ The costs of drug addiction to society are well documented, and in Mexico, it is no different. The estimated economic cost of illicit drug use to Mexico in 2004 was estimated at \$4.3 billion.²⁵¹ By 2015, the total economic impact of the drug-fueled violence in Mexico was estimated to be \$134 billion, some 13 percent of the country’s GDP.²⁵² By 2017, the Sydney-based Institute for Economics and Peace estimated the economic impact of overall violence in Mexico cost about \$180 billion, which comprises about eighteen percent of the country’s gross domestic product.²⁵³

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ RODRÍGUEZ, *supra* note 76, at 21.

²⁵⁰ Ken Ellingwood, *Mexico Grapples With Drug Addiction*, L.A. TIMES, (Oct. 15, 2008), <http://www.latimes.com/world/la-fg-mexaddict15-2008oct15-story.html>.

²⁵¹ Viridiana Rios, *Evaluating the economic impact of Mexico’s drug trafficking industry*, Graduate Students Political Economy Workshop, Institute for Quantitative Social Sciences, Harvard University (Spring, 2008), at 1 https://scholar.harvard.edu/files/vrios/files/rios2008_mexicandrugmarket.pdf.

²⁵² Camila Schippa, *This is how much violence costs Mexico’s economy*, WORLD ECONOMIC FORUM (May 2, 2016), <https://www.weforum.org/agenda/2016/05/this-is-how-much-violence-costs-mexicos-economy/>. In 2011, the market for private security alone was estimated in Mexico to be 1% of GDP, or \$8 billion. Devon Duff & Jen Rygler, *Drug Trafficking, Violence and Mexico’s Economic Future*, Knowledge @ Wharton (Jan. 21, 2011), <http://knowledge.wharton.upenn.edu/article/drug-trafficking-violence-and-mexicos-economic-future/>.

²⁵³ Jose Valencia, *Study: Economic Impact Of Violence in Mexico Is Almost a Fifth of Country’s GDP*, FRONTERAS (Apr. 4, 2017), <http://www.fronterasdesk.org/content/10624/study-economic-impact-violence-mexico-almost-fifth-country-s-gdp>.

280 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

For decades, long before taxes incentivised building factories to supply the U.S. marketplace, Ciudad Juárez and Tijuana were centers of entertainment and vice with a permissive culture that took advantage of laxer law enforcement and supplied Americans' endless appetite and budget for low-cost fun.²⁵⁴ Not everyone had proximity to these vice cities, so the illicit products made their way north, making "[t]he primary gateway for illicit drug smuggling to the United States the Southwest Border."²⁵⁵ Billions of dollars worth of cocaine, marijuana, methamphetamines, and MDMA are supplied annually by Mexican drug cartels – the *narcotraficantes* – to the United States.²⁵⁶ In turn, billions of dollars are laundered annually by international banks operating in the United States and Mexico.²⁵⁷ Mexico is also on the supply side of the labor market, providing the millions of Mexicans who make their way across the border to work, most often without legal status to do so, to take advantage of comparably higher wages. Some of these wages are sent back to Mexican villages to sustain families, which are lacking male heads of household. These towns then reproduce the conditions for young men to join gangs that assist the narco-trafficking organizations with low cost murderers (*sicarios*) for hire.²⁵⁸ Transnational criminal organizations traffic drugs, engage in extortion and prostitution rackets, deal arms, and made kidnapping a cottage industry in Mexico.²⁵⁹ No place is truly safe in Mexico – including the border

²⁵⁴ RODRÍGUEZ, *supra* note 76, at 18. The 1950s were the golden age of Ciudad Juárez's nightlife fame. The city became a fleeting space where the US tourist could dream of having a Mexican prostitute and, by symbolic displacement, all of Mexico for a moment. An extension of the Santa Fe international bridge to El Paso, Texas, Avenida Juárez became a brittle, colorful stage: a film location that tried to mask the barbarity of the border while remaining true to the city's tradition of delivering low-cost sexual services and entertainment. *Id.*

²⁵⁵ U.S. DEP'T. OF JUST. NAT'L DRUG INTELLIGENCE CENTER, No. 2011-Q0317-001, NATIONAL DRUG THREAT ASSESSMENT 1 (2011), <https://www.justice.gov/archive/ndic/pubs44/44849/44849p.pdf> [hereinafter NATIONAL DRUG THREAT ASSESSMENT], at 2.

²⁵⁶ *Id.* at 3.

²⁵⁷ Ioan Grillo, *A True Tale of Drug Cartels, Money Laundering, and Horse Racing*, N.Y. TIMES (Sept. 22, 2017), <https://www.nytimes.com/2017/09/22/books/review/bones-joe-tone-trevino-brothers.html>. John Burnett, *Awash in Cash, Drug Cartels Rely on Big Banks to Launder Profits*, NPR (Mar. 20, 2014), <https://www.npr.org/sections/parallels/2014/03/20/291934724/awash-in-cash-drug-cartels-rely-on-big-banks-to-launder-profits>.

²⁵⁸ TIME, *Sicarios: The Story Behind the Cartel Killers*, YOUTUBE.COM, <https://www.youtube.com/watch?v=akV7CTL7MBY> (Last visited Aug. 27, 2017).

²⁵⁹ Carlos Ballesteros, *Mexican Cartels Used Government Data to Kidnap and Extort Advocado Farmers*, NEWSWEEK (Oct. 30, 2017), <http://www.newsweek.com/cartels->

with the United States.

Criminals cross the border and commit crimes on the orders of narco-traffickers.²⁶⁰ Hits are ordered from Mexican cartels and carried out in the United States.²⁶¹ Mexican DTOs have been active across the United States.²⁶² A 2011 report from the U.S. Department of Justice found that drug cartels were operating in more than 1,000 cities around the United States.²⁶³

V. PRESIDENT TRUMP'S WAR ON DRUGS

President Donald Trump, in his inaugural address, announced that he would save the United States from “[t]he crime and the gangs and the drugs that have stolen too many lives and robbed our country of so much unrealized potential.” He continued, “This American carnage stops right here and stops right now.”²⁶⁴

kidnap-avocado-farmers-696301. Ronna Rísquez, Mexico’s Record high Kidnappings Fueled by Fractured Cartels, INSIGHT CRIME (Nov. 30, 2017), <https://www.insightcrime.org/news/brief/mexicos-record-high-kidnappings-fueled-by-fractured-cartels/>.

²⁶⁰ Harriet McLeod, *Mexican Drug Cartel Members Convicted of Kidnapping South Carolina Man*, REUTERS (Oct. 26, 2015, 4:54 PM), <http://www.reuters.com/article/us-south-carolina-kidnapping-idUSKCN0SK2M120151026>.

²⁶¹ *Cartel Enforcer Gets Life Sentence for 9 California Killings*, ASSOCIATED PRESS, Nov. 3, 2015, <http://bigstory.ap.org/article/7e722785e6904e93948eda511fdb7854/cartel-enforcer-faces-life-sentence-9-california-killings>. Michael Tarm, *Cartels Dispatch Agents Deep Inside US*, REAL CLEAR POLITICS, Apr. 1, 2013, https://www.realclearpolitics.com/articles/2013/04/01/mexican_drug_cartels_dispatch_agents_deep_inside_us_117740.html (“[Jack] Riley [head of the Drug Enforcement Administration’s Chicago office] sounds a similar alarm: ‘People think, ‘The border’s 1,700 miles away. This isn’t our problem.’ Well, it is. These days, we operate as if Chicago is on the border.’ Border states from Texas to California have long grappled with a cartel presence. But cases involving cartel members have now emerged in the suburbs of Chicago and Atlanta, as well as Columbus, Ohio, Louisville, Ky., and rural North Carolina. Suspects have also surfaced in Indiana, Michigan, Minnesota and Pennsylvania.”).

²⁶² Niraj Chokshi, *Where 7 Mexican Drug Cartels are Active Within the U.S.*, WASH. POST (Feb. 26, 2014), <https://www.washingtonpost.com/blogs/govbeat/wp/2014/02/26/where-7-mexican-drug-cartels-are-active-within-the-u-s/>.

²⁶³ NATIONAL DRUG THREAT ASSESSMENT, *supra* note 255, at 11.

²⁶⁴ *Donald Trump’s Inaugural Address: Full Text as Prepared for Delivery*, WASH. POST (Jan. 20, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/01/20/donald-trumps-inaugural-address-full-text-as-prepared-for-delivery/?utm_term=.cda4ee831b81.

282 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

This theme – that the scourge of drug abuse has so blighted parts of the country – was a mainstay during long campaign season, one that had played out for over a year and a half. While campaigning in New Hampshire, candidate Trump lamented the opioid addiction crisis that has so plagued the state.²⁶⁵ With only 24 days left in the campaign, Trump’s campaign released his plan of sorts:

When I won the New Hampshire primary, I promised the people of New Hampshire that I would stop drugs from pouring into your communities. I am now doubling-down on that promise, and can guarantee you – we will not only stop the drugs from pouring in, but we will help all of those people so seriously addicted get the assistance they need to unchain themselves.²⁶⁶

He continued by stating that, after his election victory, “we will aggressively prosecute traffickers of illegal drugs, and provide law enforcement and prosecutors with the resources and support they need to do their jobs.”²⁶⁷

A few days later, in the third and last Presidential debate, Mr. Trump claimed that heroin was streaming across the U.S.-Mexico border by stating, “The single-biggest problem is heroin that pours across our southern borders, just pouring, and destroying their youth and is poisoning the blood of their youth and plenty of other people.”²⁶⁸

²⁶⁵ Damian Garde, *Trump is ‘Doubling Down’ on the Opioid Crisis With Promises of Expanded Treatment*, STAT NEWS (Oct. 15, 2016), <https://www.statnews.com/2016/10/15/trump-opioid-expanded-treatment/>; Harrison Jacobs, *Where Hillary Clinton and Donald Trump Stand on the Opioid Epidemic*, BUS. INSIDER (Sept. 24, 2016, 3:26 PM), <http://www.businessinsider.com/clinton-and-trump-on-opioid-drug-addiction-treatment-2016-9>.

²⁶⁶ *Donald Trump Outlines Plan to End Opioid Epidemic in America*, DONALDJTRUMP (Oct. 15, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-in-portsmouth-nh>.

²⁶⁷ Donald J. Trump, Remarks at the Cross Insurance Center in Bangor, Maine (Oct. 15, 2016) (transcript available at The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=119172>).

²⁶⁸ Jon Greenberg & Linda Qiu, *Trump Says Heroin Pours Across the Southern Border*, POLITIFACT (Oct. 19, 2016, 10:07 PM), <http://www.politifact.com/truth-o-meter/statements/2016/oct/19/donald-trump/trump-says-heroin-pours-across-southern-border/>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 283

President Trump was correct. Indeed, the U.S. Drug Enforcement Administration in its 2015 National Drug Threat Assessment stated that “[h]eroin is most commonly brought to the United States overland across the Southwest Border (mostly Mexican heroin, some South American heroin)...”²⁶⁹ The DEA report continued by explaining that, “[W]alls have not stopped drugs, especially heroin. It is the easiest drug to traffic in small batches across a border because it is so easily condensed — and easy to cut later.”²⁷⁰

It is no secret that “many ordinary people traffic small amounts of heroin ‘*a la hormiga*’ — antlike.”²⁷¹ Migrants take it, often against their will or to garner a discount by human traffickers, as they trek through the desert, which can involve a four-day trip at great peril. As the United Nations Office on Drugs and Crime reported, cocaine from South America coming into the U.S. is primarily in small amounts.²⁷² The police report that only “ant traffic” passes through the country, with most shipments smaller than two kilograms.²⁷³ While marijuana and crystal meth are far too bulky to allow for such individualized trafficking, heroin is compact and lucrative enough to make the risk worth the reward.²⁷⁴

President Trump often conflates the war on drugs with his war on illegal immigration – to expel the millions of undocumented immigrants in the United States back to their respective home countries. The U.S. President has said, “We’ve ordered the Department of Homeland Security and Justice to coordinate on a

²⁶⁹ 2015 NATIONAL DRUG THREAT ASSESSMENT SUMMARY, *supra* note 32, at 35.

²⁷⁰ Sam Quinones, *Why Trump’s Wall Won’t Keep Out Heroin*, N.Y. TIMES (Feb. 16, 2017), <https://www.nytimes.com/2017/02/16/opinion/sunday/why-trumps-wall-wont-keep-out-heroin.html?src=recg>.

²⁷¹ *Id.*

²⁷² United Nations Office on Drugs and Crime, *Cocaine from South America to the United States* 43

https://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_cocaine_SAmerica_US.pdf.

²⁷³ JULIE MARIE BUNCK & MICHAEL ROSS FOWLER, DRUG TRAFFICKING AND THE LAW IN CENTRAL AMERICA: BRIBES, BULLETS, AND INTIMIDATION 36, 37, & 138 (2002), <http://lib.proxy.cwsl.edu:2188/stable/10.5325/j.ctt7v5pv>.

²⁷⁴ See generally, Claire Ribando Seelke & Liana W. Rosen, HEROIN PRODUCTION IN MEXICO AND U.S. POLICY, CONG. RESEARCH SERV. INSIGHT (2016), <https://fas.org/sgp/crs/row/IN10456.pdf>.

284 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

plan to destroy criminal cartels coming into the United States with drugs.”²⁷⁵

As a candidate, President Trump did not fully articulate his policies concerning the illicit drug industry.²⁷⁶ His views on the United States’ southern neighbor, however, were much more pronounced: forcibly return to Mexico the estimated 6.1 million undocumented migrants²⁷⁷ by enforcing the immigration laws; deter and punish further migration by beefing up border security; and, reduce the integration of the U.S. and Mexican economies by reworking international trade rules. He planned to accomplish the latter first by withdrawing from the Trans-Pacific Partnership (to which Mexico is a party), and then by renegotiating NAFTA, or by ending the trade pact should these negotiations fail.

On February 23, 2017, the White House confirmed that federal enforcement authorities would fully enforce the laws, even if they contradict state laws.²⁷⁸ The Attorney General in the Trump Administration, Jeff Sessions, began fighting the war on drugs with full-force. As a federal prosecutor and Senator, Sessions doggedly rejected the reductions in drug crime sentencing that the previous administration was pursuing. Bill Piper of the Drug Policy Alliance said, “When it comes to drug policy reform, Senator Sessions has

²⁷⁵ Gabby Kaufman, *Trump: Drugs are ‘Cheaper Than Candy Bars’*, YAHOO NEWS (Feb. 16, 2017), <https://www.yahoo.com/news/trump-drugs-are-cheaper-than-candy-bars-184233436.html> (last visited Feb. 27, 2017).

²⁷⁶ Tessa Stuart, *What the Drug War Could Look Like Under President Trump*, ROLLING STONE (Dec. 22, 2016), <http://www.rollingstone.com/politics/features/what-the-drug-war-could-look-like-under-president-trump-w457192>; see also Eric Levitz, *Will the Trump Administration Launch a Civil War Over Legal Weed?*, NEW YORK (Nov. 18, 2016), <http://nymag.com/daily/intelligencer/2016/11/will-the-trump-administration-go-to-war-against-legal-weed.html>; cf. Jenna Johnson, *Post Politics: Trump Softens Position On Marijuana Legalization*, WASH. POST (Oct. 29, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/10/29/trump-wants-marijuana-legalization-decided-at-the-state-level/?utm_term=.533b336a7d03.

²⁷⁷ Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CENTER (Nov. 3, 2016), <http://www.pewresearch.org/fact-tank/2016/11/03/5-facts-about-illegal-immigration-in-the-u-s/> (revealing that “there were 11.1 million unauthorized immigrants in the U.S. in 2014, a total unchanged from 2009 and accounting for 3.5% of the nation’s population. The number of unauthorized immigrants peaked in 2007 at 12.2 million, when this group was 4% of the U.S. population.”).

²⁷⁸ Kevin Liptak, *White House: Feds Will Step Up Marijuana Law Enforcement*, CNN (Feb. 24, 2017, 9:27 AM), <http://www.cnn.com/2017/02/23/politics/white-house-marijuana-donald-trump-pot/index.html>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 285

nearly single-handedly blocked bipartisan sentencing reform.”²⁷⁹ For Piper, “Jeff Sessions is a nightmare. He is a threat to progress, especially marijuana reform, sentencing reform, and asset forfeiture reform.”²⁸⁰

In his confirmation hearing, Attorney General Sessions stated in his opening statement:

The country is in the throes of a heroin epidemic with overdose death triple between 2010 to 2014, triple, nearly 50,000 people a year die from drug overdose. Meanwhile the illegal drugs [pour] across the southern border into every city and town in the country bringing violence, addiction and misery.²⁸¹

Mr. Sessions also responded to Senator Dick Durbin’s accusations of support of mandatory drug sentencing guidelines by stating:

I stepped out against my Republican administration said on the floor of the Senate that I believe the crack-cocaine laws were too harsh and particularly it was disadvantageous to the African-American community where most the punishments were fallen. It’s not fair and we have to fix it so I to say I took a strong stand on that and I did not agree, you and I did not agree on the retroactivity because of a lot of these are the part in cases and may not have been totally driven by the mandatory minimums, so I thought the Court had basically now agreed that it is retroactive. I don’t know what group is not been covered by but a

²⁷⁹ Bill Piper, *Justice Demands We Stop Jeff Sessions*, USA TODAY (Dec. 7, 2016, 2:30 PM), <http://www.usnews.com/opinion/thomas-jefferson-street/articles/2016-12-07/we-must-stop-jeff-sessions-from-becoming-donald-trumps-attorney-general>; see also Leon Neyfakh, *The War on Drugs Is Coming Back*, SLATE (Nov. 21, 2016), http://www.slate.com/articles/news_and_politics/crime/2016/11/jeff_sessions_could_bring_back_the_worst_of_the_war_on_drugs.html.

²⁸⁰ Press Release, Drug Policy Alliance, Senate Judiciary Committee Holding Confirmation Hearings on Jeff Sessions for Attorney General This Week (Jan. 8, 2017), <http://www.drugpolicy.org/news/2017/01/senate-judiciary-committee-holding-confirmation-hearings-jeff-sessions-attorney-general>.

²⁸¹ Attorney General Confirmation Hearing, Day 1 Part 1, C-SPAN (Jan. 10, 2017), <https://www.c-span.org/video/?420932-1/attorney-general-nominee-jeff-sessions-testifies-confirmation-hearing&live>.

286 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

large group was covered by a court decision. You and I discussed it.²⁸²

Attorney General Jeff Sessions has rolled back much of the progress made during the Obama years.²⁸³ Eric Holder had provided that “prosecutors more discretion four years ago, the number of cases carrying mandatory minimum sentences have dropped and the prosecution of high-level drug offenders had increased — without impacting the rates at which people cooperated with authorities or pleaded guilty.”²⁸⁴

On May 12, 2017, Attorney General Sessions sent out a memorandum to all U.S. Attorney’s offices instructing prosecutors to seek the strongest possible charges and sentences in their work: “It is a core principle that prosecutors should charge and pursue the most serious, readily provable offense,” [he wrote.] “This policy fully utilizes the tools Congress has given us. By definition, the most serious offenses are those that carry the most substantial guidelines sentence, including mandatory-minimum sentences.”²⁸⁵

In seeking the maximum punishment for drug offences,²⁸⁶ these policies counter what has demonstrated progress and results in pursuing the war on drugs. Attorney General Sessions brought Steven H. Cook into his inner circle at the Justice Department, appointing him as one of his top lieutenants. Cook, a former President of the National Association of Assistant U.S. Attorneys has been tasked to undo the criminal justice policies of Obama and

²⁸² Press Release, Drug Policy Alliance, *supra* note 280.

²⁸³ Jay Willis, *Jeff Sessions’ Reason for Rebooting the Discriminatory War on Drugs is Nonsensical*, GQ (May 13, 2017), <http://www.gq.com/story/jeff-sessions-mandatory-minimums-war-on-drugs>.

²⁸⁴ Pete Williams, *Attorney General Sessions Orders Tougher Drug Crime Prosecutions*, NBC NEWS (May 12, 2017), <http://www.nbcnews.com/news/us-news/attorney-general-sessions-orders-tougher-drug-crime-prosecutions-n758111>.

²⁸⁵ Matt Ford, *Jeff Sessions Reinigorates the Drug War*, THE ATLANTIC (May 12, 2017), <https://www.theatlantic.com/politics/archive/2017/05/sessions-sentencing-memo/526029/>.

²⁸⁶ Attorney General Jeff Sessions, *Remarks on Efforts to Combat Violent Crime and Restore Public Safety Before Federal, State and Local Law Enforcement* (Mar. 15, 2017) (transcript available at U.S. DEP’T. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-efforts-combat-violent-crime-and-restore>).

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 287

former Attorney General Eric H. Holder Jr.²⁸⁷ He succeeded, with relish.²⁸⁸

The New York Times reported that “the Office of Management and Budget had placed the White House’s Office of National Drug Control and Policy (“ONDCP”) on the chopping block.”²⁸⁹ In response, over 70 medical and drug policy organizations, including the Addiction Policy Forum, Johns Hopkins Bloomberg School of Public Health, Smart Approaches to Marijuana and the Major County Sheriffs of America co-authored the letter with the title “Retain the Office of National Drug Control Policy.”²⁹⁰ To date, drug treatment courts and other diversion programs for low-level offenders including social services have not been slashed as some pundits predicted.²⁹¹

President Trump took a page from the playbook of President Ronald Reagan. Addressing a group of Chiefs of Police in the Oval Office, President Trump said his administration will fight a “ruthless” war against illegal drugs and assist state and local officials in stopping gang members, “many of whom are not even legally in our country.”²⁹²

The Obama administration’s permissive, relaxed policy towards legalized marijuana in many U.S. states was undone starting on

²⁸⁷ Sari Horwitz, *How Jeff Sessions Wants To Bring Back The War On Drugs*, WASH. POST (Apr. 8, 2017), https://www.washingtonpost.com/world/national-security/how-jeff-sessions-wants-to-bring-back-the-war-on-drugs/2017/04/08/414ce6be-132b-11e7-ada0-1489b735b3a3_story.html?utm_term=.9110910029c9.

²⁸⁸ MATTHEW ROZSA, *JEFF SESSIONS IS REVIVING THE WAR ON DRUGS, AND IT’S GOING TO HURT MINORITIES*, SALON.COM, APR. 10, 2017, [HTTP://WWW.SALON.COM/2017/04/10/JEFF-SESSIONS-IS-REVIVING-THE-WAR-ON-DRUGS-AND-ITS-GOING-TO-HURT-MINORITIES/](http://www.salon.com/2017/04/10/jeff-sessions-is-reviving-the-war-on-drugs-and-its-going-to-hurt-minorities/)

²⁸⁹ Jacqueline Alemany, *Will President Trump Slash the Office of Drug Policy?*, CBS NEWS (Feb. 23, 2017), <https://www.cbsnews.com/news/will-president-trump-slash-the-office-of-drug-policy/>.

²⁹⁰ *Id.*

²⁹¹ *Id.* To date, the ONDCP has yet to be slashed; see also Matt Gonzales, *Trump’s Proposed Budget Spares Office of National Drug Control Policy*, DRUGREHAB.COM (Mar. 20, 2017), <https://www.drugrehab.com/2017/03/20/trump-eliminate-office-national-drug-control-policy/>.

²⁹² Michael W. Chapman, *Trump on Drug War: ‘We’re Going to be Ruthless ... We Have No Choice’*, CNS NEWS (Feb. 10, 2017), <http://www.cnsnews.com/news/article/michael-w-chapman/trump-drug-war-were-going-be-ruthless-we-have-no-choice>.

288 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

January 20, 2017.²⁹³ President Obama pursued a policy to stop federal raids on state permitted marijuana dispensaries, and Congress banned the DEA from using federal funds to undertake these raids in states where marijuana is legal. Initially, it was unclear what would be the Trump administration's policy on marijuana.²⁹⁴ A key indicator would emerge by looking at Trump's inauguration committee, which included Sheldon Adelson and Mel Sembler, two of the biggest donors to campaigns to block medical marijuana and marijuana legalization.²⁹⁵ A new policy emerged,²⁹⁶ even though Trump advisor Roger Stone is a proponent of legalized marijuana efforts.²⁹⁷

The Trump administration has put states that have legalized recreational marijuana on notice that federal law enforcement agents could soon be targeting them.²⁹⁸ According to then-White House Press Secretary Sean Spicer, the Trump administration "had no plans to continue the permissive approach of the Obama administration and viewed recreational marijuana use as a flagrant violation of federal law."²⁹⁹ In January 2018, Attorney General Jeff Sessions ended the rules that left alone states which had legalized marijuana

²⁹³ ADAM BATES, *OPINION: NO GOOD WILL COME OF SESSIONS REIGNING THE WAR ON DRUGS*, NEWSWEEK (APR. 12, 2017), [HTTP://WWW.NEWSWEEK.COM/NO-GOOD-WILL-COME-SESSIONS-REIGNING-WAR-DRUGS-582493](http://www.newsweek.com/no-good-will-come-sessions-reigning-war-drugs-582493).

²⁹⁴ "On the rare occasion Trump has addressed the issue, he's expressed support for medical marijuana and, on the issue of legalization more broadly, he's said he thinks 'we should leave it up to the states.'" Tessa Stuart, *What the Drug War Could Look Like Under President Trump*, ROLLING STONE (Dec. 22, 2016), <http://www.rollingstone.com/politics/features/what-the-drug-war-could-look-like-under-president-trump-w457192>.

²⁹⁵ Tessa Stuart, *What the Drug War Could Look Like Under President Trump*, ROLLINGSTONE (Dec. 22, 2016), <https://www.rollingstone.com/politics/features/what-the-drug-war-could-look-like-under-president-trump-w457192>.

²⁹⁶ Alemany, *supra* note 289.

²⁹⁷ ANDREW BLAKE, *ROGER STONE URGES TRUMP TO NOT INTERFERE WITH STATES THAT HAVE LEGALIZED MARIJUANA*, WASH. TIMES (JUNE 24, 2017), [HTTP://WWW.WASHINGTONTIMES.COM/NEWS/2017/JUN/24/ROGER-STONE-FORMER-TRUMP-ADVISOR-URGES-PRESIDENT-A/](http://www.washingtontimes.com/news/2017/jun/24/roger-stone-former-trump-advisor-urges-president-a/).

²⁹⁸ Evan Halper & Patrick McGreevy, *Trump Administration Signals a Possible Crackdown on States Over Marijuana*, L.A. TIMES (Feb. 23, 2017), <http://www.latimes.com/politics/la-na-pol-trump-marijuana-20170223-story.html>.

²⁹⁹ *Id.* (Press Secretary Spicer told reporters "When you see something like the opioid addiction crisis blossoming around so many states ... the last thing we should be doing is encouraging people....").

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 289

use, creating uncertainty in the burgeoning medical and recreational marijuana industry.³⁰⁰

President Trump has described the United States as “drug-infested” and has asserted that drugs are “cheaper than candy bars.”³⁰¹ He also referred to New Hampshire as a “drug-infested den” on January 27, 2017, in a leaked conversation with Mexican President Enrique Peña Nieto.³⁰² After President Trump’s inauguration, it did not take long for the Department of Justice to reignite the domestic war on drugs and undo what the Obama Administration had accomplished.³⁰³ The Justice Department would resume the dated practice of filing the most serious provable charges and pursuing the harshest possible sentences against federal criminal defendants, a process that led to record incarcerations of minorities in the United States.³⁰⁴

Jeff Sessions’ tenure as Attorney General has been under a cloud of instability during much of July 2017 due to President Trump’s public criticism. Through Twitter, public addresses, and a highly controversial New York Times interview, the President made clear his disappointment in Sessions’ recusal concerning the federal investigation into the Russian election interference. When questioned about his pick to lead the Justice Department, the President said, “We will see what happens. Time will tell, time will tell.” It is unclear how much any would-be successor would change the policies that Attorney General Sessions has been pursuing.

³⁰⁰ Laura Jarrett, *Sessions Nixes Obama-Era Rules Leaving States Alone That Legalize Pot*, CNN (Jan. 4, 2018), <http://www.cnn.com/2018/01/04/politics/jeff-sessions-cole-memo/index.html>.

³⁰¹ Kaufman, *supra* note 275.

³⁰² Liam Stack, *Trump Called New Hampshire a ‘Drug-Infested Den’, Drawing the Ire of Its Politicians*, N.Y. TIMES (Aug. 3, 2017), https://www.nytimes.com/2017/08/03/us/trump-new-hampshire-drug-den.html?_r=0.

³⁰³ Attorney General Jeff Sessions, *Remarks at DEA360 Heroin and Opioid Response Summit*, (May 11, 2017) (transcript available at U.S. DEP’T. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-dea360-heroin-and-opioid-response-summit>). Joseph Tanfani & Evan Halper, *Sessions Restores Tough Drug War Policies That Trigger Mandatory Minimum Sentences*, L.A. TIMES (May 12, 2017), <http://www.latimes.com/politics/la-na-politics-sessions-drugwar-20170511-story.html>.

³⁰⁴ Colin Dwyer, *Sessions Tells Prosecutors to Seek ‘Most Serious’ Charges, Stricter Sentences*, NPR (May 12, 2017) <http://www.npr.org/sections/twotwo-way/2017/05/12/528086525/sessions-tells-prosecutors-to-seek-most-serious-charges-strict-sentences>.

290 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

In the meantime, Attorney General Sessions has continued to pursue his hardened strategy of guns and badges, rather than treatment beds at the Department of Justice. He also traveled to El Salvador, visiting a prison and meeting with law enforcement officials in the beleaguered Central American country, in order to link President Trump's war on drugs with the criminal organization Mara Salvatrucha (MS13).³⁰⁵ He also linked U.S. immigration policy and the prevalence of violent gangs in the United States.³⁰⁶

An unanswered question of the Trump administration is who will direct the Office of National Drug Control Policy. President Trump's first nominee, after months of waiting for confirmation hearings, withdrew his name from consideration.³⁰⁷ Representative Tom Marino was the main sponsor of a 2016 law that weakened government attempts to lessen the spread of opioid drugs in the United States.³⁰⁸ That President Trump nominated Representative Marino, knowing his role in neutering the Drug Enforcement Administration efforts to end the epidemic, speaks to his sincerity about a new war on drugs. In fact, three institutions critical to fighting the war on drugs – the Office of National Drug Control Policy, the Drug Enforcement Administration, and the Department of Health and Human Services – are currently without leadership.³⁰⁹

Notwithstanding this, President Trump has taken to heart his election promise to end the scourge of drugs that plagues the United States by combating this leading global street gang. MS13 emerged during the civil wars that ravaged Central America and were fought by the Reagan Presidency. The Trump administration emulated the Reagan administration through the return of tough mandatory

³⁰⁵ Camila Domonske, *Attorney General Sessions Heads to El Salvador to Discuss Gang Violence*, NPR (July 27, 2017), <https://www.npr.org/sections/thetwo-way/2017/07/27/539747978/attorney-general-jeff-sessions-heads-to-el-salvador-to-discuss-gang-violence>.

³⁰⁶ *Id.*

³⁰⁷ *TOM MARINO: CONTROVERSIAL TRUMP DRUG CZAR PICK WITHDRAWS*, BBC NEWS (OCT. 17, 2017), [HTTP://WWW.BBC.COM/NEWS/WORLD-US-CANADA-41655117](http://www.bbc.com/news/world-us-canada-41655117).

³⁰⁸ Peter Nicholas & Michelle Hackman, *Drug-Czar Pick Withdraws Name* WALL ST. J. (Oct. 18, 2017), <https://www.wsj.com/articles/donald-trumps-pick-for-drug-czar-tom-marino-withdraws-name-from-consideration-1508244954?mg=prod/accounts-wsj>.

³⁰⁹ Peter Baker, Glenn Thrush & Maggie Haberman, *Health Secretary Tom Price Resigns After Drawing Ire for Chartered Flights*, N.Y. TIMES (Sept. 29, 2017), https://www.nytimes.com/2017/09/29/us/politics/tom-price-trump-hhs.html?_r=0c.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 291

federal sentencing policies. President Trump added the construction of a border wall and the strong enforcement of immigration laws to his arsenal of tools to fight the war on drugs. The objective of these additions is to rid communities of dangerous offenders who are without legal status to be in the United States. Whether these initiatives will make any dent in the opioid crisis devastating the country³¹⁰ remains unclear.

VI. CONCLUSION: PRESIDENT TRUMP, THE WAR ON DRUGS, AND THE FUTURE OF UNITED STATES-MEXICO RELATIONS

The U.S.-Mexico border remains a contested site despite efforts like NAFTA, the Security and Prosperity Partnership, and other unilateral, bilateral (with Mexico), and trilateral (with Mexico and Canada) responses.³¹¹ These initiatives to create a vertically integrated supply chain for the North American continent were also designed to curtail Mexican immigration into the United States by providing jobs south of the border.³¹² However, the jobs that were created after 1994 did not stay in Mexico,³¹³ but instead went to China after the People's Republic of China joined the World Trade Organization in 2001.³¹⁴

In his inaugural address, President Trump announced:

For many decades, we've enriched foreign industry at the expense of American industry...And spent

³¹⁰ Owen Amos, *Why Opioids Are Such An American Problem*, BBC NEWS (Oct. 25, 2017), <http://www.bbc.com/news/world-us-canada-41701718>.

³¹¹ James M. Cooper, *The Rise of Private Actors along the United States-Mexico Border*, 33 WISC. J. INT'L L. 101, 101 (2015).

³¹² Lori Wallach, *NAFTA at 20: One Million U.S. Jobs Lost, Higher Income Inequality*, HUFF. POST, http://www.huffingtonpost.com/lori-wallach/nafta-at-20-one-million-u_b_4550207.html; see also James McBride & Mohammed Aly Sergie, *NAFTA's Economic Impact*, COUNCIL ON FOREIGN RELATIONS (Jan. 24, 2017), <https://www.cfr.org/backgroundunder/naftas-economic-impact>.

³¹³ Kevin Gallagher & Enrique Dussel Peters, *How China Crashed the Nafta Party*, THE GUARDIAN (Jan. 2, 2014), <https://www.theguardian.com/global-development/poverty-matters/2014/jan/02/china-crashed-nafta-party-free-trade>.

³¹⁴ Jordan Weissmann, *Waking the Sleeping Dragon*, SLATE (Sept. 28, 2016), http://www.slate.com/articles/business/the_next_20/2016/09/when_china_joined_the_wto_it_kick_started_the_chinese_economy_and_roused.html.

trillions of dollars overseas while America's infrastructure has fallen into disrepair and decay. We've made other countries rich while the wealth, strength, and confidence of our country has disappeared over the horizon. One by one, factories shuttered and left our shores, with not even a thought about the millions upon millions of American workers left behind. The wealth of our middle class has been ripped from their homes and then redistributed across the entire world.³¹⁵

Before and after the 2016 Presidential election, Mr. Trump floated ideas for new policies to punish U.S. companies that close manufacturing operations in the U.S. to open in countries with cheaper labor costs.³¹⁶ Listing Mexico as a principal villain, Mr. Trump promised that U.S. companies attempting to sell products made in factories overseas for sale in the U.S. would be subject to taxes and other charges.³¹⁷ He promised that trade deals that were unfair to U.S. workers and U.S. trade deals would be scrapped.³¹⁸ After advising the eleven other countries in the Trans-Pacific Partnership that the U.S. would not go forward with the regional trade deal,³¹⁹ President Trump turned his attention to NAFTA. In his third day in office, President Trump announced, "We're going to start some negotiations having to do with NAFTA. Anybody ever hear of NAFTA? I ran my campaign somewhat based on NAFTA. But we're going to start renegotiating on NAFTA, on immigration, and on security at the border."³²⁰

³¹⁵ Donald Trump's Inaugural Address, *supra* note 264.

³¹⁶ Ylan Q. Mui, *Trump Warns of 'Retribution' for Companies That Offshore Jobs, Threatening 35 Percent Tariff*, WASH. POST (Dec. 4, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/12/04/trump-warns-of-retribution-for-companies-that-offshore-jobs-threatening-35-percent-tariff/?utm_term=.b47cfaae37cf.

³¹⁷ Ylan Q. Mui, Matea Gold & Max Ehrenfreund, *Trump Threatens 'Consequences' for U.S. Firms That Relocate Offshore*, WASH. POST (Dec. 1, 2016), https://www.washingtonpost.com/politics/trump-threatens-consequences-for-us-firms-that-relocate-offshore/2016/12/01/a2429330-b7e4-11e6-959c-172c82123976_story.html.

³¹⁸ Eric Gradner, *Trump's impossibly ambitious trade promises*, CNN (July 11, 2017), <https://www.cnn.com/2017/07/11/politics/trump-trade-promises/index.html>.

³¹⁹ Peter Baker, *Trump Abandons Trans-Pacific Partnership, Obama's Signature Trade Deal*, N.Y. TIMES (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html>.

³²⁰ Eric Bradner, *Trump to Begin Renegotiating NAFTA With Leaders Of Mexico*,

Although he considered utilizing Article 2205 of NAFTA, which provides a withdrawal process, President Trump opted for negotiations to refashion the pact, which began in mid-August 2017.³²¹ Despite these fast-tracked negotiations, President Trump continued to bash the trade agreement with Canada and Mexico. As the first set of renegotiations had just ended,³²² President Trump, at a campaign-style rally in Phoenix, Arizona, publicly doubted that the U.S. could reach a deal to renegotiate NAFTA, and suggested that his administration would instead terminate the trade pact with Canada and the United States.³²³ This announcement occurred just five days before the start of the second round of negotiations, and President Trump again threatened via Twitter to withdraw from NAFTA.³²⁴ In early April, as negotiations continued past their seventh round, President Trump threatened again to withdraw from NAFTA, as he reacted a “caravan” protest in Mexico heading towards the U.S. border.³²⁵

All of this was bad news for Mexico, a country that relies greatly on the U.S. for a market for its exports and for direct foreign

Canada, CNN (Jan. 22, 2017), <http://www.cnn.com/2017/01/22/politics/trump-renegotiate-nafta/index.html>.

³²¹ Luis Gomez, *Why Trump's Flip On NAFTA Has Confused Republicans, Supporters*, S.D. DIEGO UNION TRIB. (Apr. 28, 2017), <http://www.sandiegouniontribune.com/opinion/the-conversation/sd-trump-sends-mixed-messages-in-nafta-reversal-20170428-htmstory.html>.

³²² Rodrigo Cervantes, *As NAFTA Talks Start, Trade Deficit Arguments Prevail*, FRONTERAS (Aug. 16, 2017), <http://www.fronterasdesk.org/content/10772/nafta-talks-start-trade-deficit-arguments-prevail>.

³²³ JACOB PRAMUK, *TRUMP: WE'LL 'PROBABLY' END UP TERMINATING NAFTA*, CNBC (AUG. 22, 2017), [HTTPS://WWW.CNBC.COM/2017/08/22/TRUMP-WELL-PROBABLY-END-UP-TERMINATING-NAFTA.HTML](https://www.cnbc.com/2017/08/22/TRUMP-WELL-PROBABLY-END-UP-TERMINATING-NAFTA.HTML).

³²⁴ Reuters Staff, *Trump Renews Threat to Scrap NAFTA Going Into Next Round of Talks*, REUTERS (Aug. 27, 2017), <https://www.reuters.com/article/us-trade-nafta-idUSKCN1B70NA> (A similar strategy to that of President Trump came from his representative in the midst of the fourth set of rapid negotiations for NAFTA in Washington D.C. Robert Lighthizer, the U.S. Trade Representative, “traded barbs with his Mexican and Canadian counterparts” in front of reporters.); *see also* Jacob. M. Schlesinger & William Mauldin, *U.S. Nafta Negotiator Takes Aim at Rivals*, WALL ST. J. (Oct. 18, 2017), <https://www.wsj.com/articles/nafta-partners-prolong-talks-into-next-year-1508270560> (“Frankly, I’m surprised and disappointed by the resistance to change from our negotiating partners.”).

³²⁵ Philip Rucker & David Weigel, *‘No more DACA deal,’ Trump says as he threatens to ‘stop’ NAFTA if Mexico doesn’t better secure border*, WASH. POST (Apr. 2, 2018), https://www.washingtonpost.com/news/post-politics/wp/2018/04/01/deal-on-daca-no-more-trump-says/?utm_term=.7091fa1e03b9.

294 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

investment.³²⁶ Mexico's economy has been in dire shape for several years and the country's peso has plummeted since President Trump first announced his candidacy for the highest office of the United States.³²⁷ Mexico's economy is dependent on the United States for parts, for technology, and for foreign exchange.³²⁸ Mexico's economy also relies heavily on remittances from Mexicans working in the United States. In fact, the wages that Mexicans earned in the United States accounted for more money than petroleum sales or tourism revenue in 2016, when Mexicans sent home some \$26 billion.³²⁹

None of the actions from the Trump administration regarding Mexico bode well for our southern neighbor.³³⁰ Mexican President Enrique Peña Nieto vowed to resist U.S. pressure to pay for President Trump's proposed border wall and the future of the free trade area.³³¹ Mexico has contingency plans for a world without NAFTA.³³² After a meeting with U.S. Secretary of State Rex Tillerson on Feb. 23, 2017, Mexican Foreign Ministry Luis Videgaray

³²⁶ *But see* Shasta Darlington & Patrick Gillespie, *Mexican Farmer's Daughter: NAFTA Destroyed Us*, CNN (Feb. 9, 2017), <http://money.cnn.com/2017/02/09/news/economy/nafta-farming-mexico-us-corn-jobs/index.html>.

³²⁷ Pan Kwan Yuk & Jude Webber, *Mexico Peso Drops By Most In 3 Months As Bulls Take A Break*, FIN. TIMES (Apr. 19, 2017), <https://www.ft.com/content/364efd68-8b41-3ba4-8ac2-283e08af7c83>. *See also* Ben Bartenstein, *Mexico Peso Forecast to Go From First to Worst Amid Trump Threat*, BLOOMBERG (Mar. 15, 2017), <https://www.bloomberg.com/news/articles/2017-03-15/mexico-peso-forecast-to-go-from-first-to-worst-amid-trump-threat>.

³²⁸ Leonardo Martinez-Diaz, *Mexico's Economic Challenges*, BROOKINGS (Sept. 5, 2007), <https://www.brookings.edu/opinions/mexicos-economic-challenges/>.

³²⁹ *The Bank of Mexico Says Money Sent Home By Mexicans Overseas Hit Nearly \$24.8 Billion Last Year, Overtaking Oil Revenues as a Source of Foreign Income for the First Time*, U.S. NEWS (Feb. 2, 2016, 3:51 PM), <https://www.usnews.com/news/business/articles/2016-02-02/mexico-remittances-nearly-248b-in-2015-topping-oil-income>.

³³⁰ Nicole Gaouette, *Tillerson Crosses the Border to Rebuild Ties With Mexico*, CNN (Feb. 22, 2017, 1:08 PM), <http://www.wtae.com/article/tillerson-crosses-the-border-to-rebuild-ties-with-mexico/8963953> ("President Donald Trump's rhetoric and policies have cranked up the tension in US-Mexico relations to a high not seen in decades.").

³³¹ *MEXICO'S PEÑA NIETO VOWS TO DEFEND 'NATIONAL DIGNITY'*, BBC NEWS (SEPT. 2, 2017), <HTTP://WWW.BBC.COM/NEWS/WORLD-LATIN-AMERICA-41138825>; MALKIN, *SUPRA* NOTE 27.

³³² Mark Stevenson, *Mexico Girds For Possibility Of World Without NAFTA*, ASSOCIATED PRESS, Aug. 31, 2017, <http://abcnews.go.com/International/wireStory/mexico-girds-possibility-world-nafta-49543861>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 295

stated, “There’s a concern among Mexicans, there’s irritation [about] what has been perceived as policies that might be harmful for the Mexicans and for the Mexican industry.”³³³

If Mexico’s economy continues to sink through a policy of neglect by the U.S. government or by design, the illicit drug industry will surely attract those who are without work. More jobs in legitimate industries are required to end the allure of the narco industry. Moreover, Mexico relies on the U.S. for foreign aid in the form of training in anti-drug efforts,³³⁴ intelligence sharing, and other military assistance under the Mérida Initiative. Some of this aid may be diverted to help pay for the wall along the U.S.-Mexico border.³³⁵

The United States, too, stands much to lose by alienating Mexico. The United States needs an able and focused partner in Mexico to hinder the flow of drugs across the border and a consumer base to buy U.S. goods. Mexico is a large consumer of U.S. corn, beans, and wheat.³³⁶ Some \$2 billion in corn is sold to Mexico each year.³³⁷ Many U.S. jobs depend on export industries.³³⁸ The United States sells electricity to the Mexican market.³³⁹ More than a quarter of

³³³ *Mexico Foreign Minister Vents 'Irritation' at Rex Tillerson*, BBC NEWS (Feb. 23, 2017), <http://www.bbc.com/news/world-us-canada-39068021>.

³³⁴ INCSR Volume 1, *supra* note 33. “As of September 2016, 238,000 federal, state, and municipal police officers received nationwide standardized training in their responsibilities as first responders in the new criminal justice system through Merida programming. In cooperation with Mexican authorities, the United States has also trained prosecutors, judges, investigators, and forensics specialists on the new criminal justice system and provided equipment for 15 percent of all courtrooms in Mexico.”

³³⁵ Gardiner Harris & Kirk Semple, *Rex Tillerson Arrives In Mexico Facing Twin Threats to Relations*, N.Y. TIMES (Feb. 22, 2017), <https://www.nytimes.com/2017/02/22/world/americas/rex-tillerson-mexico-border-relations.html>.

³³⁶ Kirk Semple, *Mexico Ready to Play the Corn Card in Trade Talks*, N.Y. TIMES (Apr. 2, 2017), <https://www.nytimes.com/2017/04/02/world/americas/mexico-corn-nafta-trade.html>.

³³⁷ Patrick Gillespie, *Mexico Ready to Retaliate by Hurting American Corn Farmers*, CNN (Feb. 13, 2017, 12:06 PM), <http://money.cnn.com/2017/02/13/news/economy/mexico-trump-us-corn/index.html>.

³³⁸ ALEXIA FERNÁNDEZ CAMPBELL, *NEARLY 5 MILLION U.S. JOBS DEPEND ON TRADE WITH MEXICO*, THE ATLANTIC (DEC. 9, 2016), <HTTPS://WWW.THEATLANTIC.COM/BUSINESS/ARCHIVE/2016/12/MEXICO-NAFTA-TRADE/510008/>

³³⁹ Clifford Krauss & Azam Ahmed, *Trump’s Anti-NAFTA Stance Is on a Collision Course with Natural Gas*, N.Y. TIMES (June 26, 2017), <https://www.nytimes.com/2017/06/26/world/americas/rick-perry-mexico-gas-energy-industry-electricity-natural->

296 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

Mexico's electricity is powered by American natural gas, leaving it especially vulnerable to any upheavals from a trade battle with the United States. In turn, Mexico supplies low cost goods for U.S. consumers, including high-end technology goods like televisions and drones.³⁴⁰ The economies of the U.S. and Mexico are highly integrated.³⁴¹ It takes far too much time to get parts into the United States from Asia. The deterioration of the relationship between Mexico and the United States will injure both U.S. agricultural producers and energy traders.³⁴²

Also at risk is the assistance that Mexican authorities provide to the United States authorities in terms of security cooperation. Extradition will no longer be an option;³⁴³ intelligence sharing will be a thing of the past. High-level cartel leaders have been extradited over the years, culminating in Joaquín “El Chapo” Guzmán being sent to the U.S. to stand trial in federal court in New York City on the last day President Obama was in office.³⁴⁴ The continuation of this kind of cooperation is increasingly unlikely given the other issues impacting the U.S.-Mexico relationship.

With more anti-Mexico and anti-Mexican rhetoric from the Trump administration, the U.S. will lose assistance with slowing down migrants from the Golden Triangle of Central America – El Salvador, Guatemala and Honduras – many of whom have been unaccompanied minors arriving at U.S. ports of entry claiming

[gas.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news&r=1](#) (“But selling natural gas to Mexico is also a godsend for the American energy industry, which is lobbying the White House to emphasize just how crucial the relationship with Mexico is.”).

³⁴⁰ Irina Ivanova, *What Does the U.S. Import from Mexico? A Whole Lot*, MONEYWATCH (Jan. 27, 2017), <https://www.cbsnews.com/news/what-does-the-u-s-import-from-mexico-a-whole-lot/>.

³⁴¹ George Friedman, *Mexico Has Chance to be the World's 'Next Great Power'*, BUSINESS INSIDER (Mar. 18, 2016), <http://www.businessinsider.com/mexico-could-be-worlds-next-great-power-2016-3>.

³⁴² Campbell, *supra* note 338.

³⁴³ INCSR Volume 1, *supra* note 33, at 216 (“The current U.S.-Mexico extradition treaty has been in force since 1980, and Mexico remains one of the United States’ strongest extradition partners. Moreover, a bilateral mutual legal assistance treaty in force since 1991 fosters a broad range of cooperation in criminal matters.”).

³⁴⁴ Azam Ahmed, *El Chapo, Mexican Drug Kingpin, Is Extradicted to the U.S.*, N.Y. TIMES (Jan. 19, 2017), <https://www.nytimes.com/2017/01/19/world/el-chapo-extradited-mexico.html?r=0>.

2018] THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS 297

asylum.³⁴⁵ Mexico has been curtailing the rising tide of asylum seekers and economic migrants coming from Central America with its Plan Frontera Sur (Southern Border Plan),³⁴⁶ but this program could be terminated. Indeed, Mexico's Foreign Minister Luis Videgaray stated cryptically at his press briefing with U.S. Secretary of State Rex Tillerson on February 23, 2017, "We also have control of our borders and we will exercise it fully."³⁴⁷ In this case, exercising control also means not exercising it, potentially allowing Central Americans to flow through Mexico en route to *el norte* (the United States).³⁴⁸

By alienating Mexico, or worse, destabilizing the country (and damaging its currency), the U.S. will lose a major ally in the war on drugs.³⁴⁹ Mexico has been fighting the war on drugs since the inauguration of Felipe Calderon's administration in December 2006, but that fight has not been an unmitigated success. William Brownfield, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, however, did praise the efforts of Mexico's government to fight the war on drugs.³⁵⁰

The U.S. Department of State's International Narcotics Control Strategy Report from March 2017 stated:

³⁴⁵ Luis Arriola Vega, *Mexico's Not-So-Comprehensive Southern Border Plan*, RICE UNIV. BAKER INSTITUTE FOR PUBLIC POLICY (Aug. 5, 2016), http://www.bakerinstitute.org/media/files/files/329273a1/BI-Brief-080516-MEX_Border.pdf; see also Christopher Wilson & Pedro Valenzuela, *Mexico's Southern Border Strategy: Programa Frontera Sur*, WILSON CENTER MEXICO INSTITUTE (July 11, 2014), <https://www.wilsoncenter.org/publication/mexicos-southern-border-strategy-programa-frontera-sur>.

³⁴⁶ Stephanie Nolen, *Southern Exposure: The Costly Border Plan Mexico Won't Discuss*, GLOBE AND MAIL (Jan. 5, 2017), <http://www.theglobeandmail.com/news/world/the-costly-border-mexico-wont-discuss-migration/article30397720/>.

³⁴⁷ *Mexico's Foreign Minister Rejects Trump Deportation Policy*, BBC NEWS (Feb. 23, 2017), <http://www.bbc.com/news/world-latin-america-39054999>.

³⁴⁸ For Mexico's Southern Border plan, see *MEXICO'S MOST RECENT IMMIGRATION ENFORCEMENT EFFORTS*, CONG. RESEARCH SERV. (2016), http://www.centerforhumanrights.org/PFS_Petition/Ex18_CRS_PFS_Report030916.pdf.

³⁴⁹ See generally, *Mexico Warns US Over Border Wall Funding*, BBC NEWS (Feb. 25, 2017) <http://www.bbc.com/news/world-latin-america-39086053>.

³⁵⁰ Gardiner Harris, *State Dept. Official Praises Mexican Efforts in War on Drugs*, N.Y. TIMES (Mar. 2, 2017), <https://www.nytimes.com/2017/03/02/world/americas/drug-narcotics-mexico-state-department.html?mabReward=CTM1&recp=1&action=click&pgtype=Homepage®ion=CCColumn&module=Recommendation&src=rechp&WT.nav=RecEngine>.

Narcotics trafficking and related violence remain a substantial challenge for citizen security. Nevertheless, Mexico continues its efforts to counter transnational criminal organizations, reform its judiciary and prisons, improve border security, and professionalize police. These efforts have strengthened Mexico's public institutions while helping to weaken organized crime. Illicit drug cultivation is a particular challenge, with data trends suggesting illicit opium poppy cultivation will continue to grow. The United States will continue bilateral cooperation to work towards achieving security goals shared by both nations.³⁵¹

The question will be how much bilateral cooperation there will be concerning security and anti-narco activities in the context of the trade and immigration relations between the countries. On one hand, President Trump has declared war on street gangs like Mara Salvatrucha in an effort to fight the opioid crisis.³⁵² On the other, the Trump Administration's Department of State could end the Merida Initiative, curtailing funding for Mexican law enforcement support.³⁵³ This latter policy will counteract against the first policy. According to the Congressional Research Service:

Supporting Mexico's efforts to reform its criminal justice system is widely regarded as crucial for combating criminality and better protecting citizen security in the country. U.S. support for those efforts has increased significantly as a result of the development and implementation of the Merida Initiative, a bilateral partnership launched in 2007 for which Congress appropriated more than \$2.6 billion from FY2008 to FY2016.³⁵⁴

³⁵¹ INCSR Volume 1, *supra* note 33, at 219.

³⁵² Jerome R. Corsi, *President Trump Declares War on Salvadoran Street Gang*, MS-13, LAW ENFORCEMENT CHARITABLE FOUNDATION (June 27, 2017), <http://www.lecf-inc.org/entry.php?q=72>.

³⁵³ See Danny Vinik, *How Trump's Attack on Mexico Could Hurt Border Security*, POLITICO (Jan. 27, 2017), <http://www.politico.com/agenda/story/2017/01/trump-mexico-border-security-cooperation-000291>.

³⁵⁴ SEELKE & FINKLEA, *supra* note 144, Summary, 1.

Abandoning the U.S.'s efforts in coordinating the war against drugs in Mexico may not be the best strategic long-term move.³⁵⁵ A military option would be even more fraught with challenges.³⁵⁶ As such, President Trump's early efforts are definitely not enough insufficient. He initially signed three new executive orders: Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking. At the signing ceremony, the President stated about one of these: "This executive order addresses multiple kinds of trafficking, including human and drug trafficking."³⁵⁷ These executive orders fulfilled President Trump's campaign promises to combat rising drug addiction and overdose deaths in the United States using law enforcement and the Border Patrol.³⁵⁸ "Designed to restore safety in America," one of the orders establishes a new Task Force on Crime Reduction and Public Safety.³⁵⁹ The Task Force is designed to develop "strategies to reduce crime, including, in particular, illegal immigration, drug trafficking, and violent crime."³⁶⁰

Working with Mexico can only augment the war on drugs. Regardless, Mexico has continually demonstrated its good faith

³⁵⁵ Jorge Valencia, *Study: In Drug War, US Should Support Civilian Instead Of Military Efforts*, FRONTERAS (Mar. 1, 2017), <http://www.fronterasdesk.org/content/10595/study-drug-war-us-should-support-civilian-instead-military-efforts>.

³⁵⁶ Alex Horton, *Trump Talked About Sending Troops to Battle 'Tough Hombres' in Mexico. Can He Do That?* WASH. POST (Aug. 4, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/08/04/trump-talked-about-sending-troops-to-battle-tough-hombres-mexico-can-he-do-that/?utm_term=.28391c654b20.

³⁵⁷ Britni de la Cretaz, *President Trump Signs Executive Order Ramping Up The War on Drugs*, The Fix (Feb. 13, 2017) <https://www.thefix.com/president-trump-signs-executive-order-ramping-war-drugs>; see Exec. Order No. 13773, 82 F.R. 10691 (Feb. 9, 2017) available at <https://www.federalregister.gov/documents/2017/02/14/2017-03113/enforcing-federal-law-with-respect-to-transnational-criminal-organizations-and-preventing> (*Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking*).

³⁵⁸ Emily Ngo, *Donald Trump: Orders 'Designed to Restore Safety in America'*, NEWSDAY (Feb. 9, 2017), <http://www.newsday.com/news/nation/donald-trump-orders-designed-to-restore-safety-in-america-1.13097631>.

³⁵⁹ Laura Jarrett, *Trump Signs Three New Executive Orders on Crime Reduction*, CNN (Feb. 10, 2017), <http://www.cnn.com/2017/02/09/politics/trump-executive-orders-crime-reduction/>

³⁶⁰ *Id.*

300 THE UNITED STATES, MEXICO, AND THE WAR ON DRUGS [Vol. 25.2

towards its more powerful northern neighbor.³⁶¹ Even with the the demands from the Trump administration that Mexico to pay for the border wall and its threats to withdraw from NAFTA, the Mexican government pledged aid for victims of Hurricane Harvey.³⁶² That is what a good neighbor does.

In his inaugural address in 1933, U.S. President Franklin Delano Roosevelt pledged to “dedicate [the United States] to the policy of the good neighbor, the neighbor who resolutely respects himself and, because he does so, respects the rights of others.”³⁶³ It would be instructive for President Trump to read the words of Chester Lloyd Jones who wrote in *World Affairs* only a few months before the start of the Second World War:

Each of the parties will summon the other to be a good neighbor. If we can reach a compromise we will be such. If not, we may agree to disagree or each may take measures to defend what he considers are his “rights.” If a conflict comes on differences as to legal principles which each party considers to rest on bed rock the bright light of good neighborhood begins to pale of is extinguished.³⁶⁴

³⁶¹ Guillermo Ortiz, *Mexico Has Been a Good Neighbor for America*, FIN. TIMES (Feb. 2, 2017), <https://www.ft.com/content/45fd32d2-e328-11e6-9645-c9357a75844a>; Enrique Krauze, *Trump Threatens a Good Neighbor*, N.Y. TIMES (Jan. 17, 2017), https://www.nytimes.com/2017/01/17/opinion/trump-threatens-a-good-neighbor.html?_r=0.

³⁶² *Houston Flood: Tillerson Thanks Mexico for Aid Offer*, BBC NEWS (Aug. 31, 2017), <http://www.bbc.com/news/world-us-canada-41107619>.

³⁶³ Franklin Delano Roosevelt, *Inaugural Address* (Mar. 4, 1933) (transcript available at AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=14473>).

³⁶⁴ 102 CHESTER LLOYD JONES, *WORLD AFFAIRS: THE GOOD NEIGHBOR POLICY AND MEXICAN RELATIONS* 44 (1939), [HTTPS://WWW.JSTOR.ORG/STABLE/20663217](https://www.jstor.org/stable/20663217).