

## “National Security” and the Violation of Women:

Militarized Border Rape at the US-Mexico Border

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The US-Mexico border represents an uneasy “union” of the First and Third Worlds. Due to disparaging levels of nation-state power, it is a contentious region that has been militarized to violently reinforce the territory of the United States. In this region, daily attacks occur against border crossers in the form of brutal beatings and assaults—including rape and harassment—by the state and by racist vigilantes. Due to the hypermasculine nature of war and militarism, the use of rape as a tactic against women is well documented.

In this article, I explore documented rape cases involving Immigration and Naturalization Service (INS) officials or Border Patrol agents<sup>1</sup> at the US-Mexico border by accessing data from nongovernmental organizations, government committees, and US newspapers.<sup>2</sup> Each of the women in the case studies took some action against the INS,<sup>3</sup> with some of them using an advocate to move their cases forward through an investigation. (Data indicate that some men report being raped at the border, but the vast majority of rapes involve women victims/survivors, at this border and throughout the world.)<sup>4</sup> In this article, I argue that rape is routinely and systematically used by the state in militarization efforts at the US-Mexico border, and provoked by certain factors and dynamics in the region, such as the influence of military culture on Border Patrol agents.

US-Mexico border militarization rests on two key elements: the introduction and integration of military units in the border region (the war on drugs and national security concerns provide primary justification for involving military units); and the modification of the Border Patrol to resemble the military via its equipment, structure, and tactics. At one time, domestic duties were not part of the US military’s mandate. But this regulation changed with the approval of numerous Department of Defense (DOD) authorization acts which facilitated the integration of military units in the border region and loosened restrictions placed on the military for domestic duties.

The 1982 DOD Authorization Act nullified a one-hundred year statute prohibiting cooperation between the army and civilian law enforcement, and changing the role of the military in domestic affairs. This act encouraged an alliance between civilian law enforcement and the military, and subsequent DOD Authorization Acts advanced and expanded this cooperation. Ideological and institutional shifts have also had a role in border militarization. Transferring the INS from the Department of Labor to the jurisdiction of the Department of Justice in 1940,<sup>5</sup> altered the classification of immigration as an issue of labor to one of

national security. And more recently, by moving the INS to the Department of Homeland Security (the INS has been renamed "US Citizenship and Immigration Services"), the link between immigration and national security issues has intensified.

Sociologist Timothy Dunn draws on low-intensity conflict (LIC) military doctrine to contextualize the militarization of the US-Mexico border. LIC doctrine advocates for "unconventional, multifaceted, and relatively subtle forms of militarization" and emphasizes "controlling targeted civilian populations." The US military-security establishment drafted this doctrine to target Third World uprisings and revolutions, particularly in Central America. LIC doctrine is characterized by the following:

an emphasis on the internal defense of a nation; an emphasis on controlling targeted civilian populations rather than territory; and the assumption by the military of police-like and other unconventional, typically nonmilitary roles, along with the adoption by the police of military characteristics.<sup>6</sup>

Dunn's study demonstrates that these aspects of LIC doctrine have been actualized in the border region, indicating that a form of "war" exists there. And in every war, in every military conflict, rapes occur because sexual assault is in the arsenal of military strategies; it is a weapon of war, used to dominate women and psychologically debilitate people viewed as the "enemy."

In the context of mass war rape in the former Yugoslavia, Susan Brownmiller likens female bodies to territory.<sup>7</sup> "Rape of a doubly dehumanized object—as woman, as enemy—carries its own terrible logic. In one act of aggression, the collective spirit of women *and* of the nation is broken, leaving a reminder long after the troops depart." Beverly Allen extends this analogy to the imperialist practice of colonization.<sup>8</sup>

Acts of sexual violence which target undocumented (primarily Mexican) women at the US-Mexico border are certainly informed by a legacy of colonialism, which dates back to the forced imposition of a border in 1848.<sup>9</sup> More than 150 years later, migrant women's bodies continue to denote an "alien" or "threatening" presence subject to colonial domination by US officials. Many women who cross the border report that being rape was the "price" of not being apprehended, deported, or of having their confiscated documents returned. This price is unique to border regions in general; while militarized rapes are part of a continuum of violence against women, I call these violations militarized *border* rapes because of the "power" associated with the border itself. In this setting, even legal documentation can provide a false sense of security, because militarization efforts have socially constructed an "enemy" and Mexican women and other migrants fit that particular profile.

My goal in this article is to make visible a form of military rape which has not been previously considered in the range of military rapes by feminist scholars. Militarized border rape is overlooked because many of the world's border regions are not considered war zones. For example, the US-Mexico border conflict is not typically thought of as a "war," because opposing military forces (or insurgents)

are not trying to kill each other. But a war is underway at the US-Mexico border, facilitated by cooperating military and civilian units, and the adoption of a militaristic identity in border patrolling efforts. Furthermore, the stance of the US government on immigration suggests that the United States views itself in some form of war with undocumented migrants. Calls to "shut down" the border, or to build an entire wall along the two-thousand mile border, are frequently reported in the news and supported by members of Congress as a way to "protect" the United States.<sup>10</sup> And when engaged in any form of war, women are always disproportionately affected.

Feminist scholar Cynthia Enloe explores three conditions under which rape has been militarized. Observes Enloe, "'recreational rape' is the alleged outcome of not supplying male soldiers with 'adequately accessible' militarized prostitution; 'national security rape' as an instrument for bolstering a nervous state; and 'systematic mass rape' as an instrument of open warfare."<sup>11</sup> She also contends that certain conditions which allow militarized rapes are in place on the US-Mexico border:

A regime is preoccupied with national security; a majority of civilians believe that security is best understood as a military problem; national security policy making is left to a largely masculinized policy elite; and the police and military security apparatuses are male-dominated.<sup>12</sup>

In my view, a variation of national security rape and systematic rape characterize the reality in this border region. First, national security entails the control of labor, migration, and women. In the 1990s, the US government expanded the definition of national security to include "domestic political concerns and perceived threats to culture, social stability, environmental degradation, and population growth."<sup>13</sup> During this time, immigrants and refugees became top national security issues.<sup>14</sup> And in the aftermath of 9/11, the US-Mexico border was completely shut down for several days due to national security reasons, reifying the classification of the US-Mexico border as an area of national security.<sup>15</sup> With a masculinized elite emphasizing the normalcy and role of militarism with regards to "national security," broader definitions of security have become marginalized. For example, the provision of basic necessities—such as shelter, health care, and food—is not seen as a "security issue" by the US government, though international human rights standards and laws do characterize the meeting of basic human needs in this way.

The cases of militarized border rape discussed here can be categorized as a form of "national security rape" for two reasons: first, the absence of legal documents positions undocumented women as "illegal" and as having committed a crime. Thus, law-abiding citizens need "protection" from these criminals; the existence of undocumented women causes national insecurity, and they are so criminalized that their bodily integrity does not matter to the state. Second, national security rape privileges certain interests; in other words, Arizona ranchers who pick up arms to "protect" their property, or recently formed "Minute men patrols"

along the US-Mexico border (specifically in Arizona and California) are seen as legitimate because they are protecting their property, land, and families. Their actions are supported by the state because they are literally taking the issue of national security into their own hands.<sup>16</sup>

Occurrences of rape are systematic if they fall into a pattern, suggesting that they have not been left to chance, according to Enloe. "They have been the subject of prior planning. Systematic rapes are *administered* rapes."<sup>17</sup> In the cases highlighted here, the planning involved is palpable. These were not random acts of violence against women; they were violent crimes which involved planning and efforts to avoid being caught. Additionally, the rapists capitalized on their institutional power over undocumented women, and each man followed their own "script" in attacking these women. These individual patterns became clear during court testimonials by victims/survivors.

Notably, because of the prevalence of sexual violence at the border, a Mexican immigrant woman told the National Network for Immigrant and Refugee Rights in Oakland, California that women heading north routinely use birth-control pills because they anticipate possible sexual assaults. This suggests border rapes are neither random, nor isolated.

### Militarized Border Rape at the US-Mexico Border

If they decide to prosecute, women who have been sexually assaulted in the US-Mexico border region confront not only an individual, but directly challenge several powerful institutions—the INS (INS officials tend to conduct these investigations), the US government, the US legal system. And even in more "fair courts," proving rape is extremely difficult.<sup>18</sup> Undocumented women are further disadvantaged because of unfamiliarity with the US judicial process and language or communication barriers.

The rape cases detailed below occurred between 1989 and 1996, and all involved INS or Border Patrol officials.

### Juanita's Story

Juanita Gómez and a female cousin crossed through the hole in the border fence between Nogales, Sonora, and Nogales, Arizona, on September 3, 1993.<sup>20</sup> They were on their way to meet two male friends at a nearby McDonald's to go shopping. Larry Selders, a Border Patrol agent, stopped all four people, but only detained Gómez and her cousin in his Border Patrol vehicle. According to both women, Selders told them that he would not take them to the Border Patrol station for processing and deportation to Mexico if they would have sex with him. Both women refused. He eventually asked Gómez's cousin to step outside of his vehicle. When he drove off alone with Gómez, Selders raped her.

Gómez and her cousin eventually found each other at the Mexican consulate in Nogales, Arizona, and informed officials at the Mexican consulate. The consulate immediately contacted the Nogales Police Department and Border Patrol to inform them of the situation. But one of the Nogales detectives did not believe the women's statements, asked them if they were prostitutes, and threatened them with jail time if they failed to pass a lie detector test. However, after this que-

tioning, Gómez and her cousin identified Selders in a photo lineup. Despite their identification, the incompetence of the police led to the loss of other important evidence such as Selders's clothes. In addition, the police seized the wrong Border Patrol vehicle and realized the error a week and a half later.

Selders eventually entered a "no contest" plea on a reduced charge on July 25, 1994. The county attorney decided to reduce the original charge of "rape and kidnapping" to "attempted transporting of persons for immoral purposes... while married." This crime is the lowest felony class, and the charge upset many immigrant rights advocates. Selders received a one-year prison sentence on October 7, 1994, and served only six months of the sentence. But he resigned from the Border Patrol in August 1994.<sup>21</sup>

Selders also attempted to secure immunity from prosecution on federal charges, but he was unable to plea-bargain with the US attorney in Arizona because investigators found Gómez's story to be credible. In April 1995, a federal grand jury in Tucson, Arizona, indicted Selders for Gómez's rape.<sup>22</sup> He plead guilty in federal court to violating Gómez's civil rights, and received a fourteen month sentence in the federal trial, receiving credit for time served.

Despite the unfairness of his sentence, on October 13, 1999 Gómez received a \$753,045 settlement.<sup>23</sup> Her attorney successfully argued the rape could have been prevented if Selders had been held accountable for previous acts of violence against women; three other women testified at Gómez's trial that Selders attacked them as well.<sup>24</sup> Unlike Gómez, these women had been afraid to file charges, and the start-up of limitations in their cases expired by the time of her trial. Since Selders was a government employee at the time of the incident, the US government paid the monetary award to Gómez.

### Edilma, Maria, and Rosa

On October 6, 1989, Edilma Cadilla, a US citizen, was driving her car on the highway in Imperial County, California, and was stopped at a checkpoint in the area. Border Patrol agent Luis Santiago Esteves began to question her during this routine stop, but allowed her to continue driving. Further down the road, Esteves pulled her over, asked her additional questions, and then talked about himself, eventually getting her phone number. Edilma believed these questions were official.

Edilma's boyfriend called Esteves's supervisor in El Centro to report the suspicious stop, and the supervisor told him that she should notify the office if Esteves attempted to call her. Three days later, on October 9, Esteves called and purportedly requested a date for the weekend. When she turned him down,

Esteves told her that was "too bad" because he wanted to take her out dancing, get drunk, and have her "sexually abuse his body." She told him she had a boyfriend and he then asked if she could fix him up with one of her friends.<sup>25</sup>

After Edilma reported the phone call to Esteves's supervisor, the Border Patrol relocated Esteves to the Calexico, California, border crossing point. But Esteves

received no disciplinary action for his inappropriate behavior towards Edilma,<sup>26</sup> and he remained as a Border Patrol employee where his new position enabled him to continue having contact with women.

On December 16, 1989, Esteves had problems in Calexico. He stopped Maria, a young woman from the area, and asked to see her immigration papers. While on duty, he asked for her phone number and for a date later that evening. She initially agreed to the date, but called him later to say she could not go out with him. Esteves looked for her at her workplace and then pursued her at a shopping center. Maria agreed to the date on the condition that they first stop at her house to get her mother's approval. He agreed to the request, but indicated he wished to stop at his place to change out of his Border Patrol uniform before going to her house. According to the court records,

Esteves told her he wanted her to "be with him." At this point, Maria describes him "changing" his attitude and he became angry. He told her she had to have sex with him. He told her to take a shower. Esteves positioned a gun on each side of the bed on two nightstands....<sup>27</sup>

Fearful for her life, Maria complied with Esteves's sexual orders. According to Maria's testimony at the trial, Esteves "force[d] an object into her vagina, placed his hands into various parts of her body, orally copulated her and forced her to have intercourse with him."<sup>28</sup> She testified that none of these sexual acts were consensual. She escaped from his apartment when he left the room after the rape. Maria received assistance from people passing in a car. The police were immediately notified, and Esteves was subsequently arrested. But Maria did not show up to the preliminary hearing in court, and the charges against Esteves were dropped. He resumed active duty as an agent.

The third incident in June 1991 involved Rosa, a minor. Rosa was talking to family members at the US-Mexico border fence. She and her mother were on the US side, and family members were on the Mexico side. Esteves approached them for documentation. During the conversation, Esteves learned from Rosa's mother that Rosa had an upcoming deportation hearing. Esteves informed them he could be of assistance to Rosa in that hearing.

He reportedly took Rosa out a few times after meeting her at the border. On June 28, 1991, he took Rosa out around 10:45 p.m. and bought her alcoholic drinks before taking her to the vacant apartment of a coworker. At this time, Esteves apparently instructed her to take off her clothes. She stated in her testimony that Esteves "ordered her to masturbate." At first she refused, but eventually complied when "he placed his hand on his gun." She testified that throughout the encounter Esteves assaulted her.

[Esteves] repeatedly slapped her and at one point, he punched her. Rosa contends that Esteves then sodomized her. At one point he told her, "I know what I'm doing. And I am capable of everything and if I want I can rape your mother." According to Rosa's testimony, Esteves

then told her that he wanted to sell Rosa to his friends. Finally, he told her that he wanted to have sex with her and another woman."<sup>29</sup>

The police arrested Esteves again in July 1991 and prosecuted him for the rapes of Maria and Rosa. He was acquitted for Rosa's rape, but convicted in Maria's case, and Rosa's testimony likely played a role in securing this conviction. In July 1992, Esteves received a twenty-four year prison sentence for the felony rape charge. However, he was released on December 22, 1994.<sup>30</sup>

Like Selders and Riley, Esteves used the threat of revealing the lack of legal documents to gain the upper hand with these women, even suggesting he could be of assistance in a deportation hearing. Legal documents quite literally control the lives of immigrants, so when a US official "seems" helpful regarding matters which may determine your future, it adds another layer of vulnerability. Esteves manipulated this reality to his advantage. Edilma's story also reflects Esteves's violent past with women; he allegedly bear his first wife, raped his second wife, and threatened to rape the second wife's ten-year-old daughter.<sup>31</sup> Esteves continued to target young women; he understood how his official position provided him with sufficient discretion and authority.

#### Luz and Norma

Luz López and Norma Contreras filed an INS complaint against an El Paso Border Patrol agent who sexually assaulted them on March 7, 1996. The agent arrested them near the Rio Grande River and detained them in his vehicle. López and Contreras, both from Guatemala, were each twenty-three years old at the time of the assault. According to the complaint the women filed against the agent:

[The agent] lifted up Contreras' dress, pushed her legs open, pulled aside her underwear and struck his fingers in her vagina. The other woman, López, was told to undo the buttons on her jumpsuit and the agent put his hands inside her top and felt her breasts. The two women said they stared at each other, paralyzed by terror.<sup>32</sup>

López said: "We feared the worse. We didn't know where he was going to take us. Just the sight of him with a badge and a gun was enough to intimidate anyone." The agent briefly left the women in the car. He spoke to another agent, who was alone in a different vehicle nearby. Both men returned to the car. At this time, "in full view of the second agent, the arresting agent assaulted both women again." The women were then taken to the Border Patrol office. At the office, the same agent allegedly committed a third sexual assault by the same agent "in a detention cell and in a bathroom." After torturing them for several hours, "the agent gave the women one dollar each and released them" into the United States.<sup>33</sup>

Following the ordeal, López and Contreras filed a formal complaint against both agents. The women stayed in El Paso in order to cooperate with the investigation. They recounted the attacks to male Office of Inspector General (OIG) investigators, identified the agent from photographs, and received rape counseling. The OIG began an investigation, but did not pursue the complaints, accusing

López and Contreras of “lying and threatened to prosecute them.”<sup>34</sup> The women then filed a lawsuit, which is still pending, against the Border Patrol. As in all cases of rape, the women were severely traumatized from the ordeal, and Contreras attempted to commit suicide later that same year.

This case demonstrates the systematic nature of militarized border rape; the officer reportedly raped López and Contreras in different locations, indicating some prior planning. Furthermore, the agent was protected during an OIG investigation which rehumanized the women; officials questioned the women’s credibility, and attempted to discredit their story. Contreras attempted suicide in 1996 largely due to this insensitive investigation.

While documenting rape cases in the former Yugoslavia, UN officials described the risks of subjecting women to repeated interviews about their sexual assaults:

Health care providers are concerned about the effects on women of repeatedly recounting their experiences without adequate psychological and social support systems in place. The danger of subjecting women to additional emotional hardship in the course of interviews is a real one. There have been reports of women attempting suicide after being interviewed by the media and well-meaning delegations.<sup>35</sup>

### Factors Associated with Militarized Border Rape

With the integration of aspects of LIC doctrine in its border enforcement efforts, for example, the occurrence of militarized border rapes is not surprising because systematic rapes occurred in the war zones throughout the Central American region where this doctrine was initially implemented. The access to wide, discretionary (and unaccountable) power and an ineffective complaints protocol are factors that perpetuate militarized border rape. And the hiring of military personnel and the “code of silence” ensure that militarized border rapes continue and remain central to border enforcement.

- The level of militarization produces warlike characteristics that make rape and other human rights violations an inevitable consequence of border militarization efforts

Several aspects of LIC doctrine apply to the militarization efforts at the US-Mexico border.<sup>36</sup> UN monitors have documented the systematic rape of women during war, and have categorized rape as a war crime, a weapon of war, and a form of torture. War-like conditions at the border reinforce a climate in which rape and the systematic degradation of women are fundamental strategies. Furthermore, agent impunity and the absence of institutional accountability have created a border climate in which rape occurs with little consequence.

- The recruitment of former military personnel to join the border enforcement staff reinforces the militarization of the border.

The 1996 federal immigration policy increased the presence of agents at the border and the INS hired individuals at an unprecedented rate. In addition to hiring “agents with dubious pasts, including criminal records and checkered careers with police agencies and the military,”<sup>37</sup> the INS engaged in an effort to recruit former military officers. San Diego’s INS is among the most successful in hiring former military officers.<sup>38</sup> A high concentration of former military agents in the Border Patrol tends to make border enforcement more compatible with the maintenance of a war zone.

- The “code of silence” found in law enforcement and military culture prevents agents from reporting on each other.

Law enforcement and military cultural norms obfuscate human rights violations because agents do not report one another during or after incidents of wrongdoing. The “code of silence” is integral to the militarized border system because it maintains the system’s legitimacy. The code is difficult to penetrate and if an individual breaks it, they will likely experience negative consequences.

- Border enforcement agents have wide discretionary power while on the job.

Since “much of their work is unsupervised,” border enforcement agents have a great deal of discretion on the job.<sup>39</sup> It is impossible to micro-manage the agents’ work and conduct when in the field. This unaccountability can produce an environment of impunity.

For example, since 1989, the INS has reported “only one registered complaint for every 17,000 arrests.”<sup>40</sup> Furthermore, Human Rights Watch, Amnesty International, the Citizens’ Advisory Panel (organized by the INS), and the state advisory committees to the US Commission on Civil Rights all concluded no effective or useful mechanisms exist to enable victims of human rights violations to file formal complaints against border enforcement agents.<sup>41</sup> According to the Citizens’ Advisory Panel, “in 1996, 99% of the complaints received by the Justice Department’s Civil Rights Division were not prosecuted. Furthermore, most cases investigated by the Federal Bureau of Investigations do not result in criminal charges or presentation to a grand jury.”<sup>42</sup>

The nonexistence of a standardized complaints form and appeals process are systematic and structural shortcomings that allow the INS to minimize the situation at the border. Moreover, the lack of a standardized process and the option of reporting incidents to duty supervisors of the local Border Patrol offices lead to underreporting of abuses. The existing format presents overwhelming obstacles in getting complaints properly investigated.<sup>43</sup> In addition, an increase in border enforcement agents is never met with a proportionate increase of investigative staff.<sup>44</sup>

According to the INS-organized Citizens’ Advisory Panel, the INS complaint protocol is completely inadequate for what it is meant to do—ininvestigate allegations of civil rights abuses.<sup>45</sup> Since complaints must be provable beyond a reason-

able doubt before proceeding with an investigation, the likelihood of achieving this standard is difficult, leading to a low number of thorough investigations. (Thus, the evidence against the border enforcement agents or INS officials in the rape cases included here was clearly convincing, or they would not have been investigated at all.)

### Human Rights and US Accountability

Women all over the world migrate for several reasons: to reunite with family members, to seek economic opportunities via employment, to flee domestic violence,<sup>46</sup> or to escape political strife and instability in their homelands.<sup>47</sup> Human rights treaties seek to ensure basic security and protection—including the right to be free from the threat of sexual violence—in border regions. Yet, the US-Mexico border system supports, protects, and reinforces an environment where militarized border rape routinely occurs.

Human rights establish international standards and “allow groups to hold the US government accountable for its acts of commission and omission with regard to the violation of the human rights of women.”<sup>48</sup> Given the actions involved in this region—undocumented people, US officials, and, in some cases, US citizens or residents “mistaken” as undocumented people by US officials—these standards may challenge the system at the US-Mexico border because they provide “a counter-hegemonic language through which the self-justifications of the rich and powerful can be discredited, and the system’s legitimacy contested.”<sup>49</sup>

Indeed, the desire to protect national (capitalist) interests, institutions, and structures is integral to the legitimacy of the US-Mexico border system. And the strategies employed by the US government to protect state military institutions from international laws and standards are brazen examples of US exceptionalism.<sup>50</sup> Not surprisingly, the US government has grown increasingly dismissive and undermining of international laws and treaties which support human rights. Nevertheless, a human rights framework has great potential for facilitating cross-border alliances and for placing the border situation in its rightful context; the border crisis is clearly an international matter because of who is involved, as well as the factors—trade, militarism, violence, and political instability—which spur migration.

### Conclusion

Rape is among the most underreported crimes in peacetime throughout the world. Shame and secrecy often silence the victims because of the stigma attached to rape. Rape continues to be underreported during wartime... Many women will not talk about their experience of rape for fear of reprisals. Some were reluctant to tell the experts the names of the perpetrators because of fear for their own and their family’s safety.<sup>51</sup>

This UN report addressed the specific situation in the former Yugoslavia, but many of its arguments are relevant to all forms of rape.<sup>52</sup> As Beverly Allen argues, rape occurs when fear and insecurity are joined with power and immunity from pros-

ecution in a sexist social system. All rape is related in that “it derives from a system of dominance and subjugation that allows, and in fact often encourages, precisely the violent crime of rape as a way of maintaining that system.”<sup>53</sup>

Militarization requires militarized border rape. My goal in highlighting actual cases of militarized border rape is to highlight the humanity of migrant women; rape statistics can be useful in conveying the crisis’ severity, but they can also create a sense of detachment from the victims/survivors themselves. The women in these cases displayed courage and agency, and their bold acts revealed some realities about how rape is used as a weapon at the US-Mexico border. Their stories represent an urgent call to hold the United States accountable for human rights violations.

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