

MIGRATION OF RESPONSIBILITY: THE TRUST DOCTRINE AND THE TOHONO O'ODHAM NATION

Karrie A. GURBACKI*

ABSTRACT. *This article discusses the impact of the influx of migrants from Mexico and Central America on the American Southwest. Specifically, it discusses how Native American tribes of the Southwest, especially the Tohono O'odham Nation, have become a magnet for illegal border crossings due to lax enforcement policies on tribal land. As a result, the tribe has encountered a surge in drug-trafficking, violence, and environmental destruction on its reservation. The article first analyzes the trust doctrine between the Native American tribes and the United States federal government. It concludes with a discussion of the monetary and equitable relief available to the Tohono O'odham Nation in the form of damage awards and increased border protection.*

KEY WORDS: *Immigration, Tohono-O'odham Nation, Native American tribes, US-Mexico relations, tribal sovereignty, trust doctrine, American Southwest.*

RESUMEN. *En este artículo se analiza el impacto de la afluencia de inmigrantes de México y América Central en el suroeste de Estados Unidos. En particular, se analiza cómo las tribus nativas norteamericanas, especialmente la nación Tohono O'odham, que viven en el suroeste se han convertido en un imán para los cruces ilegales de la frontera debido a las políticas de aplicación laxa en tierras tribales. Como resultado, la tribu ha detectado un aumento en el tráfico de drogas, la violencia y la destrucción del medio ambiente en su reservación. El artículo analiza la doctrina de la confianza entre las tribus de nativos americanos y el gobierno federal de los Estados Unidos, y concluye con una discusión de las reparaciones pecuniarias y equitativas a disposición de la nación Tohono O'odham, si desean recuperarse de los daños sufridos por los migrantes y fomentar más patrulla fronteriza.*

PALABRAS CLAVE: *Inmigración, nación Tohono-O'odham, tribus americanas nativas, relaciones México-Estados Unidos, soberanía tribal, doctrina de la confianza, sudoeste americano.*

* Juris Doctorate Candidate May 2014, Villanova University School of Law; Bachelor of Arts Political Science and Bachelor of Arts International Relations, State University of New York at Geneseo.

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I. INTRODUCTION

1. *The Immigration Crisis*

For many Americans living in the Southwest, the increase in the flow of illegal immigrants over the past decade has been a significant disruption. For the Tohono O’odham Nation, which partially spans the border of Mexico and Arizona, such trends spell possible disaster for the survival of the Tribe.

Throughout our nation’s history, immigration has played a vital role in the development and advancement of American society.¹ Since 2007, when illegal migrants outnumbered those who came here legally for the first time in American history,² the number of illegal crossings has decreased. Clearly, immigration still remains a problem reflected by \$18 billion spent on immigration enforcement, more than all federal law enforcement agencies combined.³ Fortunately, both political parties are moving in the direction of

¹ See Michal Czerwonka, *Immigration and Emigration*, THE NEW YORK TIMES, Feb. 26, 2013, <http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration-and-emigration/index.html>.

² See *id.* The current wave of immigration is the largest since the 1920s. For example, in 2007, 12 million illegal immigrants entered the United States. See also Carolina Moreno, *Border Crossing Deaths More Common as Illegal Immigration Declines*, THE HUFFINGTON POST, Feb. 26, 2013, http://www.huffingtonpost.com/2012/08/17/border-crossing-deaths-illegal-immigration_n_1783912.html. In 2011, 327,577 migrants attempted to cross the border illegally; a decline from 858,638 in 2007. However, death rates have increased, as 368 out of 327,577 people were discovered in 2011 compared to 398 out of 858,638 in 2007.

³ See Julia Preston, *Huge Amounts Spent on Immigration, Study Finds*, THE NEW YORK TIMES, Jan. 7, 2013, http://www.nytimes.com/2013/01/08/us/huge-amounts-spent-on-immigration-study-finds.html?_r=0 (According to a report published Monday by the Migration Policy Institute, a nonpartisan research group in Washington).

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