Undocumented Dominican Migration

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Reactive Policy

During the 1980 event known as the Mariel boatlift, some 125,000 undocumented Cuban migrants were transported to Key West, Florida. The following year, in response to Haitian migration and mindful of the Cuban exodus, President Ronald Reagan issued Executive Order 12,324 and, simultaneously, Presidential Proclamation 4,865. The latter provided that "the entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens." Reagan’s order and proclamation were the beginnings of current interdiction policy and of national security perceptions of migration as detrimental to U.S. interests and sovereignty.

Again in response to Haitian migration in May 1992 and pursuant to the suspended entry of undocumented migrants, President George H. W. Bush issued Executive Order 12,807. This order mandated continuing interdiction at sea and that the Coast Guard “return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws.” Bush’s order closely followed Reagan’s 1981 order, but with an important exception. The Reagan order concluded with recognition of "the strict observation of our international obligations concerning those who genuinely flee persecution in their homeland," and the Bush order concluded with an exemption to these obligations: "Nor shall this order be construed to require any procedures to determine whether a person is a refugee."

Bush’s order would appear to violate Article 33 of the United Nations Convention Relating to the Status of Refugees, which prohibits repatriation of endangered refugees (refoulement), but the prohibition was evaded by stating that Article 33 does not apply to migrants outside of U.S. territory. In 1993 the U.S. Supreme Court upheld this view in Sale v. Haitian Centers Council, which set a precedent for similar legislation. The United States could no longer screen migrants at sea and defend its borders, the decision argued, and national security took precedence. Justice Harry Blackmun, the sole dissenter, found it extraordinary that "the Executive, in disregard of the law, would take to the seas to intercept fleeing refugees and force them back to their persecutors—and that the Court would strain to sanction that conduct."

Between 1993 and 1996, the Office of Legal Counsel of the Department of Justice issued a series of legal opinions that were binding on all federal agencies. These provided that migrants interdicted at sea are not entitled to removal (deportation) proceedings. Even if interdicted in U.S. territorial waters, migrants “are not considered to have landed ashore, and thus U.S. law permits direct repatriation without further process.”

As worded in the October 13, 1993, opinion, “Undocumented aliens interdicted within the twelve-mile zone that comprises the United States’ territorial sea are not entitled to a hearing under the exclusion provisions of the Immigration and Nationality Act.” These stipulations are critical to interdiction of Dominican migrants in the Mona Passage, because these migrants may be repatriated without legal formalities.

Cubans were welcomed into the United States as refugees after the 1959 Cuban Revolution, and the Cuban Adjustment Act of 1966 provided for parole into the United States and adjustment to permanent-resident status after one year. “Parole” in immigration law means that the alien has been granted temporary permission to enter and be present in the United States. In 1994, an exodus of Cuban migrants on improvised rafts—almost 40,000 were rescued and brought to the United States by the Coast Guard—resulted in the Cuban Migration Agreement of 1995. President Bill Clinton announced that Cuban migrants found at sea would no longer be brought to the United States (unless they expressed credible fears of persecution) but rather would be returned to Cuba (where, if they wished, they could apply for entry into the United States at the U.S. Interests Section in Havana). This was the beginning of the policy known as
"wet foot/dry foot": Cubans who are found at sea (wet foot) are returned to Cuba, and Cubans who reach U.S. territory (dry foot) are permitted to stay. In June 1995 Clinton issued Presidential Decision Directive 9, which (in response to an increase in organized smuggling of Chinese nationals) established a policy "to preempt, interdict and deter alien smuggling" into the United States.

The combination of the 9/11 attacks and the George W. Bush administration ideology was decidedly detrimental to undocumented migrants, in part because it conflated migrants with terrorists. Homeland security became the lens—in this case a distorting lens—through which migration was perceived, and a politically expedient tough-on-crime posture solidified the prototype of "illegal alien" and the attending perceptions. In November 2002 the now-defunct Immigration and Naturalization Service (INS) issued a notice that required expedited removal and mandatory detention of undocumented aliens arriving by sea. This was in response to the arrival to Biscayne Bay, Florida, on October 29, 2002, of a migrant vessel carrying 216 undocumented Haitians and Dominicans. The purpose of the INS notice, as stated in the text, was to deter illegal migration, especially mass migrations like those in the 1980s and 1990s from Cuba and Haiti. It also sounded a note that has echoed for a decade: "A surge in illegal migration by sea threatens national security by diverting valuable United States Coast Guard and other resources from counter-terrorism and homeland security responsibilities."6

A few days later, on November 15, 2002, President Bush issued Executive Order 13276. This order delegated responsibilities and gave the attorney general the right to "maintain custody, at any location he deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region." Consistent with the INS notice and a statement made by the attorney general, the order defines "mass migration" in national security terms: "the term 'mass migration' means a migration of undocumented aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President."7

These presidential mandates over the course of some twenty years were issued in response to the Mariel boatlift, the mass departures from Haiti and Cuba in the mid-1990s, Chinese smuggling, and the 9/11 attacks, and this crisis management has endured as U.S. policy. Rather than well-reasoned, proactive policies developed through consideration of the complexities—such as U.S. labor demand and the global effects of neoliberalism—the United States has taken a simplified approach: to repel maritime migrants as far from U.S. shores as possible and, that failing, to expedite their removal from the country.8

The reactive mandates and the failure to revise them into coherent policy have resulted in inconsistencies and even absurdities. Dominicans who enter the United States illegally are detained and deported, for example, but Cubans who do the same are paroled and eventually granted lawful permanent residency. When Cubans are smuggled to Puerto Rico's Mona and Monito Islands, they are shuttled by Coast Guard cutters or Customs and Border Protection helicopters to the main island and then freed. The United States prosecutes the smugglers who transport Cubans, but the migrants themselves—unlike all others who arrive illegally—are unpunishable. An illegal migration thereby becomes legal if it is successful.9

In addition, deterrence is a principal goal of border enforcement, but the Cuban Adjustment Act and the subsequent wet foot/dry foot policy provide incentive for continuity and growth of undocumented migration. The Cuban government has rightly protested for decades that the U.S. exceptional policy for Cubans encourages illegal migration. In 2007, Mexico's attorney general made the same argument in response to increasing "dry foot" (sometimes called "dusty foot") Cuban migration through Mexico.10

And finally, Cuba is one of the four countries designated by the U.S. Department of State as a state sponsor of terrorism. The United States justifies its rigorous border enforcement largely on grounds of homeland security, but at the same time it offers special privileges—parole and residency—to migrants who arrive illegally from one of the few countries classified as a terrorist threat.11

A less sensational but more important inconsistency concerns the allocation of resources. Over the past decades U.S. policy has intended to deflect migrants—forward deployment, direct repatriation after interdiction at sea, expedited removal—and to keep them out of immigration court. Today, however, policy has evolved to punish rather than deflect migrants and to do so in criminal as much as immigration court. Border enforcement strategy now includes the routine prosecution and incarceration of migrants (in addition to smugglers) because this is believed to be a deterrent. The great majority of these prosecutions are for the misdemeanor of illegal entry (8 U.S.C. § 1325). In "zero-tolerance zones" on
the U.S.-Mexican border, all apprehended migrants are detained, prosecuted, and formally deported. The first zone was established on December 6, 2005, as Operation Streamline in the Del Rio Sector. Prior to the operation, the misdemeanor docket of Del Rio’s federal courts had approximately 2,700 cases per year; after the inception of the operation, the docket had in excess of 11,000 cases.\textsuperscript{12}

In Puerto Rico beginning in 2006, the United States Attorney’s Office prosecuted undocumented Dominican migrants on their third entry attempt. In April 2008 the threshold was lowered to prosecution on the second attempt. This initiative, together with a new enforcement regiment at sea and on land, resulted in a 500 percent increase in prosecutions between 2006 and 2009. The purpose of Section 1325 prosecutions, as explained by an Assistant United States Attorney (AUSA), is to break the cycle of recidivism—in the past migrants were caught at sea, repatriated by the Coast Guard, and simply boarded another yola, with nothing to deter multiple attempts.\textsuperscript{13}

The new enforcement initiatives are effective to the degree that they replace chaotic and ineffective antecedents, but in addition to the human rights implications they allocate resources in ways that seem inconsistent with the stated homeland and national security concerns. To what degree should the assets of the Border Patrol, the Coast Guard, the U.S. Attorneys, the federal courts, detention institutions, and limited fiscal resources be applied to the apprehension, detention, and prosecution of economic migrants for a class B misdemeanor? If the diversion of border-enforcement resources away from other operations is detrimental to the national and homeland security of the United States, as is argued during mass migrations, then why is the United States so heavily invested in the interdiction and prosecution of noncriminal migrants at a time when migration is relatively low and resources could be applied to more critical missions? A better approach, as lawmakers argue on occasion, might be to establish “a realistic immigration system that recognizes that we need these workers, that allows them to come to the United States legally, and that ensures that the Government knows who is entering the country. If we permit these workers to enter the country legally, border agents can then focus their efforts on terrorists and others who pose a genuine threat to the Nation.”\textsuperscript{14}

Insofar as Dominican maritime migration is concerned, it is hardly convincing that yolas crossing the Mona Passage present a “threat to our national security” or, similarly, that “alien smuggling presents a persisting threat to the security of our Nation.” Such perceptions are the consequence of a paradigm shift after the 9/11 attacks, when the Coast Guard was integrated into the Department of Homeland Security (DHS), but they have little relevance in the reality of operations. This disparity between perceptions and rhetoric on the one hand and everyday operations on the other is apparent in a Coast Guard congressional testimony. First, in dutiful message discipline, the testifying rear admiral complied with the dominant discourse: Illegal migrants, like illegal drugs, are a “threat to our national security.” Having said that, however, he then described the actual events at sea, which have nothing to do with national security: Migrants travel on “dangerously overloaded, unseaworthy, or otherwise unsafe craft,” and consequently, “Coast Guard migrant interdiction operations are as much humanitarian efforts as they are law enforcement actions.”\textsuperscript{15}

The same is true of Customs and Border Protection (CBP) discourse. The CBP website describes the agency’s “priority mission” as “keeping terrorists and their weapons out of the U.S.” while it at once meets other obligations, and the boilerplate prose that concludes press releases similarly states that “CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.” If one considers CBP’s everyday activities, however, the priorities in discourse and in practice are inverted. The great majority of CBP’s operations concern not terrorism but rather international trade, customs and immigration, undocumented migration, and drug trafficking. Some of these encompass the possibility of terrorist activity, but that is hardly the priority.

When the proponents of a homeland- or national-security approach package undocumented migrants together with drug traffickers and terrorists, they tend to perceive smuggling routes rather than individual agents and events. In testimony during a congressional hearing on border security, for example, a deputy assistant director from ICE made this argument: “Terrorists and extremist organizations seeking to gain entry into the United States in order to carry out their own destructive schemes could just as easily exploit these pipelines.” A Coast Guard attaché at the U.S. Embassy in Santo Domingo similarly sought to close down the routes established by migrants in the Mona Passage because, he argued, drugs, guns, or other contraband could be trafficked along these same corridors.\textsuperscript{16}

This strategy gives the impression of diligence and rigor, but ultimately its premises are flawed. Established migrant routes are closely surveilled and heavily patrolled—why would terrorists or contraband smugglers...
“exploit these pipelines”? If there are better options, then terrorists and smugglers will take advantage of them, and if there are not, then the issue is locked in a tautology. In addition, what is a route where maritime smuggling is concerned? The domain is an ocean, not a jungle with a path opened by a machete. Even yola migrants divert as widely as possible from established routes to avoid patrols. Why would a more sophisticated terrorist or smuggler robotically pursue the most established and perilous course?

The same packaging of migrants, terrorists, and drug smugglers sometimes has them all in the same boat: the challenge is “detecting and intercepting the small vessels used for migrant and drug smuggling, such vessels can easily be used by terrorists seeking to do us harm.” The statement might have some validity in reference to sophisticated migrant or drug smuggling in go-fast boats, but the idea of a terrorist on a yola seems ludicrous. Yolas are used by migrants who have no resources and no options, and international terrorists have resources and options that render slow, frequently interdicted boats a low priority. The 9/11 hijackers are often used to justify the link between terrorism and undocumented migration, but in fact all of those terrorists entered the United States with valid passports and visas (although some were fraudulently acquired), and none crossed or tried to cross a border between ports of entry. No terrorists have ever been detained on migrant vessels (or otherwise) in the Mona Passage.17

Criminality

Lawmakers and border-enforcement agencies generally regard migrant smuggling as a highly organized criminal enterprise, and this perception affects policy, strategy, deterrence, prosecution, and dissemination of information to the media and public. The “criminal gangs” that smuggle migrants are hyperbolically qualified as ruthless, violent, profiteering, and indifferent to the loss of human life. In some cases, such as the migrant smuggling done by Los Zetas in Mexico, these depictions are accurate.18

In the Dominican Republic, the large-scale yola operations prevalent until 2006 involved a hierarchical organization in which organizers coordinated multiple teams of captains, crews, and recruiters and operated in complicity with Dominican navy officers and with accomplices in Puerto Rico who harbored and transported migrants. These cases clearly qualify as organized crime, as does any current continuity of this activity, although the allegations of ruthlessness and disregard for human life tend to use exceptions as the rule. Such extrapolation from exceptions occurs, in part, due to reliance on a biased sample. Migrants rarely denounce yola captains, and “smugglers who are especially abusive, incompetent, greedy, and/or have weak bonds of trust with their clients are those most likely to be identified and apprehended.”19

As described earlier, organized smuggling in the Dominican Republic is one of the three principal types of maritime migration (the other two are local-captain voyages and migrant-organized voyages). Some of my informants in the Coast Guard and Border Patrol argue that the recent prevalence of smaller vessels and fewer migrants is not indicative of voyages organized by migrants or local captains, but rather of organized smugglers’ adaptation to enhanced enforcement. The smaller vessels are used to compensate for the loss of yolas (because the Dominican navy is more actively locating and burning them) and to more easily evade detection during the crossing. “I think it’s the same people,” said an intelligence agent at Border Patrol. “When you’re a smuggler, you’re a smuggler; it’s just that you’re going to get better at what you do. So instead of having a big boat I’m going to have a smaller boat, instead of building a boat, I can steal a boat, or I can rent it from you.”

This position is not entirely inaccurate. Morena, for example, was on a small (and stolen) vessel during a voyage organized by a large-scale smuggler. But by denying the prominence and even the existence of trips organized by migrants and freelance captains, border-enforcement officials reduce all migrant activity to the same degree of criminality. The lack of distinction is particularly troublesome in regard to migrant-organized voyages, which have no smuggler, because it equates flight from poverty with the felonious enterprises of organized crime.

The hierarchical nature of Dominican migrant smuggling—with large-scale organizations at the top and one-man freelancers at the bottom—is consistent with smuggling in other world regions. Despite the frequent counter-claims, “the smuggling business is not always a highly organized criminal activity.” I stress the point with a catalog of quotations from scholars in the United States and abroad: “The assumption of centralized organized crime organizations does not fit with the available evidence”, and “smuggling organizations are often little more than loose networks linking largely independent clusters of practical competencies.” “Our research indicates that the market for human smuggling services is in most cases not dominated by overarching mafia-like criminal structures.”
"Many smuggling rings are more like small enterprises run by a group of relatives or acquainances"; and "the criminal organizations which engage in the business of migrant trafficking cover a spectrum that ranges from individual operators to large enterprises." And finally, "Most U.S. law enforcement activities are built on the outdated model that formal criminal syndicates are behind smuggling operations; thus they are ill-suited to fighting the masses of entrepreneurs who form temporary alliances and engage in sporadic criminal activities." Even a law-enforcement training manual for combating migrant smuggling recognizes that in addition to organized smuggling there are "also many smaller, flexible criminal groups or individual criminals that conduct smuggling operations on the basis of demand."  

The United States and the Dominican Republic are signatories to the 2000 United Nations conventions known as the Palermo Protocols, which include the Protocol against the Smuggling of Migrants by Land, Sea, and Air. The smuggling protocol Articles 3a and 6a define smugglers as those who obtain "a financial or other material benefit" through payment, but this is not the case when migrants organize voyages themselves. Migrant-organized voyages do not constitute smuggling as defined by the UN protocol.

Furthermore, smuggling as described in Article 4 requires the involvement of "an organized criminal group," which is defined elsewhere in the protocols [in the Convention against Transnational Organized Crime, Article 2d] as "a structured group of three or more persons." Many small-scale, captain-organized voyages are simple one- or two-man operations, and consequently these do not conform to the UN definition of smuggling either.  

By U.S. law, all migrants who enter the United States illegally are guilty of improper entry [8 U.S.C. § 1325] and sometimes of reentry after deportation [8 U.S.C. § 1326], but smuggling allegations [8 U.S.C. § 1324] are improperly applied to migrant-organized ventures and awkwardly to the smaller-scale voyages of local captains. Clinton's Presidential Decision Directive 9, which established a basis for smuggling interdiction and prosecution, clearly limits the directive to "criminal syndicate alien smuggling." It also specifies "disrupting and dismantling the criminal networks which traffic in illegal aliens" rather than targeting individual migrants and voyages.  

If one keeps a tight focus exclusively on enforcement, then it makes perfect sense to prosecute all migrants for Sections 1325 and 1326 offenses, because all of the migrants have broken the law. If one pulls back for a wider angle and greater depth of field, however, a different picture emerges. In the foreground is a yola loaded with migrants, and in the background is a global humanitarian crisis—epitomized by the boat migration of sub-Saharan Africans through Libya to Lampedusa, Italy—that is largely the result of economic policies disadvantageous to less developed countries. There is something distorted and perverse about removing migration from its context, limiting the perspective to crime, and prosecuting migrants who risk and lose their lives to flee poverty.  

U.S. media and public discourse tend to represent undocumented immigrants as criminals, but unauthorized presence in the United States is a civil, not a criminal, offense, and simple unauthorized entry [8 U.S.C. § 1325, as discussed earlier] is a misdemeanor. [Unauthorized reentry after formal deportation is a felony under Section 1326.] The nature of immigration offenses is also different from that of violent or acquisitive crime. Americans who condemn the misdemeanor of entry without inspection spend 65 billion a year on illegal drugs, drive drunk, cheat on their taxes, use false IDs for underage drinking, defraud insurance companies, sleep with prostitutes, and pirate music and film, and these are the upstanding citizens. They also make an exception in usage of "illegal" when they apply it to immigrants. The adjective "illegal" is generally not applied to people who commit crimes. The act is illegal, not the person. The equivalent of "illegal immigrant" would be to call an executive who embezzles an "illegal executive," a teenager who smokes pot an "illegal teenager," and a housewife who cheats on her taxes an "illegal housewife." The nuance is important because the "illegal" of "illegal immigrants" tends to be extended to social conduct, as though the misdemeanor of unauthorized entry were in itself sufficient to implicate a propensity to criminality. I understand that "illegal immigrant" is shorthand for "an immigrant who entered illegally," but nevertheless it pairs the words in a way that fosters the generalization that all immigrants are criminals.  

The same impression is created by headlines and selective representations. As stated in a Human Rights Watch report, "For reasons that are unclear, regular press updates by Immigration and Customs Enforcement [ICE] always tout the deportations of violent criminals, but keep vague the other categories of immigrants deported." One ICE operation, for example, deported 758 criminals, and the press release focuses on two of them who had violent and sexual offenses. CBP press releases often make the same impression in headlines—"Illegal Alien with Serious Criminal History";
Illegal Aliens with Dangerous Criminal Histories"; "Agents Arrest Sex Offender"—by focusing on the few migrants who are detained for felony prosecutions.23

I regard this not as malice or intentional deception but rather as an effort to showcase the exceptional accomplishments that occur among thousands of routine incidents. The implicit discourse is something like: "Look, we're catching bad guys, we're doing our job." The story is told, like any other, with the stresses and omissions corresponding to the narrator's perspective, and in this case with the added belief that law-enforcement news serves as a deterrent. The press releases also conform to the American idea of "newsworthy." News media generally focus on the dark side of sensationalism, with air time and column inches less available to law abiders than to criminals, and in proportion to the magnitude and horror of the offenses.24

An unfortunate consequence is that the stress on criminality in border-enforcement news reinforces the public equation of immigrants and criminals. The power of that invisible effect is more apparent if one inverts the emphasis to highlight noncriminals.

Maria, Luz, and Juana, all mothers of multiple children, migrated in search of work because their consensual partners abandoned their families. Javier, Jorge, Pedro, and Amílcar lost their jobs at hotels when tourism declined after the economic crisis of 2008. Juanito and Manuel were left in the care of their grandmother when their mother migrated to Puerto Rico to support them, but the grandmother died and the children went in search of their mother. Edgar hoped for years to get a visa to join his parents in Washington Heights but, frustrated by the long delay, traveled by yola with his parents' support. And Ronaldo, Yasmin, and Ariel, all twenty years old, imagined that life must be better somewhere else, so they took their chances. In addition, two migrants were detained for prosecution, one for attempted reentry and one on drug charges.

If this type of press release were to circulate day after day, decade after decade, and to set the agenda for news media, then the public perspective on migrants would align more with reality and less with the inflation of criminality. From the inception of the Coast Guard's biometrics-at-sea program in November 2006 until May 2010, there were 87 migrant-vessel events, 2,643 migrants interdicted, 671 [23 percent] database hits for immigration and criminal violations, and 331 [13 percent] migrants brought ashore for prosecution. The great majority of the hits and prosecutions were immigration-related [284 of 331 cases, 86 percent], primarily for improper entry [8 U.S.C. § 1325] and then entry after deportation [8 U.S.C. § 1326]. If one considers the total number of migrants who were interdicted (2,643) in relation to the prosecutions that were not immigration-related (47), fewer than 2 percent of the migrants were criminals.25

The negative representation of migrants is sometimes "a strategic portrayal for persuasion's sake, and ultimately for policy's sake." This is clearest during the prosecution of smugglers, when migrants are needed as witnesses. Rather than the criminal stigma that migrants carry when they themselves are being prosecuted en masse for illegal entry, during smuggler trials they are represented as victims. Their illegal-entry offenses are pardoned, and federal prosecutors describe them as abused, exploited, coerced, and endangered. The manipulation of identity is apparent: at one moment migrants are criminals and at another victims of crime, all in the context of the same federal courts and in reference to the same events. This inconsistency underscores the degree to which the perception of migrants is affected by vested interests.26

Migrant Interdiction in the Mona Passage

In July 2006, Department of Homeland Security agencies in Puerto Rico formalized a collaboration known as the Caribbean Border Interagency Group (CBIG). Its purpose was to more effectively impede undocumented migration across the Mona Passage and, more broadly, to secure the borders of Puerto Rico and the U.S. Virgin Islands. The initial participants in CBIG were the Coast Guard, CBP's Border Patrol and Caribbean Air and Marine Operations, and ICE. Added later were CBP's Office of Field Operations, the United States Attorney's Office for the District of Puerto Rico, and the Puerto Rico Police Joint Forces of Rapid Action (FURA, its Spanish acronym). The addition of the U.S. Attorney's Office was particularly significant, because it integrated prosecution as a routine component of migrant interdiction operations. In October 2010, the CBIG model and CBIG operating procedures were extended to the U.S. Virgin Islands.

The Coast Guard uses forward deployment of its assets "to interdict and process illegal and undocumented migrants as far from U.S. shores as possible." This is consonant with the more comprehensive strategy of the 2005 National Plan to Achieve Maritime Domain Awareness: "to detect, deter, and defeat threats as early and distant from U.S. interests as pos-
him how to do it, how the compass has to be, and he [the fisherman] goes the first time, learns it, and the second time goes alone. That is to say, he becomes one captain more.\textsuperscript{44}

\textbf{United States v. Hilario-Hilario et al.}

On the night of December 1, 2004, a yola prepared for departure from Cabeza de Toro on the eastern coast of the Dominican Republic. The voyage was well organized and—at about $1,200 per passenger—relatively expensive. Migrants had been transported to the beach by minibus from various locations, an organizer or his representative was on site coordinating departure, parcels were prohibited and passengers were body-checked, modest food and water supplies were provided, passengers were transported by a small boat to the offshore yola, the crew navigated by GPS, transportation to San Juan upon arrival had been arranged, and during the journey the captain was in contact by cell phone with an organizer and with Puerto Rican collaborators. A total of ninety-two people including captain and crew were on board the forty-foot yola. The boat had two engines and several gas tanks; there were no benches for passenger seating. The voyage departed about 1 a.m. (on the morning of December 2) and arrived off the northern coast of Puerto Rico at around 11 o'clock that night.

The passage was uneventful despite rough seas, but problems began upon the yola's approach to the coast. Leonardo, the captain, attempted to coordinate the landing with his contacts on shore but had difficulty communicating with them. For hours the yola trolled along the coast to locate the transports. At one point Leonardo asked the contacts on shore to signal with their headlights, but the signal was never seen. The captain and crew waited, they searched, and, as one witness put it, "they never took us ashore because they were waiting for a call that never arrived."\textsuperscript{45}

Dawn was approaching and desperation was mounting; it was only a matter of time before the yola would be spotted by enforcement aircraft. The crew was reluctant to land the yola for fear of capsizing, "because we were hitting such bad weather—they were trying to get us on land by many ways, but it was not possible. It was not possible." Anxious passengers pressured the captain and crew to land the yola, but they resisted because "the sea was very rough and there were rocks," drowning was probable, and "it was better for everyone there to be taken to jail because they didn't want anything bad to happen to anyone." The captain and crew were indecisive and many passengers "were revolting because they wanted to be taken ashore." Some asked to be taken closer to a beach so they could swim.\textsuperscript{46}

The fruitless search continued all night and then, at 6:45 a.m., the pressure was intensified when a Coast Guard aircraft located the yola. At 1,000 to 1,500 feet in clear skies, the plane was visible. One passenger testified that the captain and crew knew they were captured and wanted to stop, but the passengers protested. In response the captain and crew "said we were going to stay there anyway," but a majority of passengers were demanding a run for the shore.\textsuperscript{47}

At about that time or shortly before, Leonardo received a call from—presumably—the trip organizer. Leonardo told the caller that the passengers were desperate and wanted to jump off and swim, and he did not know what to do. "We are lost," he said. "What are we going to do with these people?" Leonardo passed the phone to Fernando (who was a neighbor of the organizer and had worked for him as a fisherman), and Fernando apparently got the order to take the yola ashore. The captain and the crew were nevertheless reluctant. Leonardo said that if they entered the breaking surf, "what no one wants to happen is going to happen," meaning capsizing and drowning. Fernando and another crew member, Santiago, were of the same opinion. Under pressure from the passengers, under the stress of imminent interdiction, and apparently under orders from the organizer on the phone, the captain and crew took a chance and made a run for shore.\textsuperscript{48}

The yola was a mile off the coast of Cerro Gordo Beach near Vega Alta, about fifteen miles west of San Juan. The Coast Guard plane tracked it for about fifteen minutes going west, and then the yola turned to make landfall at a small beach surrounded by jagged rocks. About a thousand yards off the coast, in five- to six-foot breaking surf, the yola was caught broadside to a wave and rolled over.\textsuperscript{49}

The Coast Guard mission switched instantly from interdiction to rescue. The airplane dropped an inflated raft and helicopters arrived shortly thereafter, dropping life vests. Coast Guard helicopters with rescue swimmers hoisted passengers one by one from the water, left them on shore, and then returned to rescue other passengers. A total of twenty-nine (or thirty-five; sources vary) passengers were rescued by the helicopters. Coast Guard cutters and small boats, a CBP helicopter, Border Patrol agents, CBP agents, and FURA rescuers were also on the scene. By the end of the ordeal, there were seven known deaths and a probable eighth.\textsuperscript{50}
One of the passengers, Yadira, was saved from drowning by Fernando; they were neighbors in a Nagua village and had known one another since Yadira was a child. Yadira was holding onto a gas tank for flotation when a frantic man approached, said he could not swim, and grabbed the tank from her. She was wearing a life vest but was weak and unable to reach the shore. Fernando swam with Yadira to help her to shore, but eventually she told him to leave and save himself because she was too exhausted to continue. “And he told me if I was going to drown he was going to drown with me because he was going to take me out of there.” Yadira was saved by Fernando and later, when Fernando was prosecuted, she testified against him as a government witness.42

Five men were charged with migrant smuggling under Section 1324. After refusal of plea offers with twenty- to twenty-five-year sentences, they were tried before a jury. When deaths result from migrant smuggling, as in this case, the law provides that the defendants may “be punished by death or imprisoned for any term of years or for life.” The prosecutor originally overreached dramatically by seeking the death penalty, but the Department of Justice disapproved. (This case was under federal jurisdiction but tried in Puerto Rico, where the death penalty was abolished in 1929. The last execution was in 1927, and the 1952 Puerto Rican constitution specifically prohibits capital punishment.) The defendants were found guilty and their original sentences ranged between ten and seventeen years. On appeal all of the convictions were affirmed, but three of the sentences were amended (one by a 50 percent reduction).43

The resentencing of Fernando illustrates how the sentences were determined. The court began with a base offense level of twelve, which with no criminal history brings a sentence of 10 to 16 months. Adjustments (or sentence enhancements) were then made due to aggravating circumstances: because many migrants (eighty-seven) were smuggled, a six-level increase; because a knife or machete was used to keep order, a four-level increase; because the offense created a substantial risk of death or bodily injury, a two-level increase; and because the voyage resulted in seven deaths, an eight-level increase. These adjustments brought the total offense level to thirty-two, which carries a sentence of 121 to 151 months. Fernando was resentenced to 127 months (approximately ten and a half years).43

The sentence of the captain, Leonardo, was not changed on appeal and remained at 204 months (seventeen years). In October 2008 Leonardo filed an appeal (known as a petition for writ of certiorari) asking the U.S.
Supreme Court to review the lower court’s decision, but the request was denied.

The spectacular rescue, the deaths, and the extensive media coverage made this high-profile case an attractive venue for the U.S. Attorney’s Office to “make an example” or “send a message.” In a statement to the press the prosecutor emphasized deterrence: “We hope that the verdict in this case serves as a deterrent for those who organize this type of voyage.” Together with the United States Attorney for the District of Puerto Rico, she also echoed an unsubstantiated threat to homeland security: in migrant vessels “the unscrupulous smugglers may help terrorists enter national territory.”

The judge who presided at the trial and the sentence hearings shared the prosecutor’s belief that aggressive sentencing serves as a deterrent. The court, he said, “must send a powerful message” through long sentences so others considering this offense will understand the gravity of the consequences. Elsewhere, after confusing human trafficking with migrant smuggling, the judge reiterated that “this is a very serious offense. And therefore the Court has a responsibility to send a message that this will not be tolerated in the future.”

During the trial the prosecutor understated the culpability of the trip organizer, who holds primary responsibility for the smuggling, and to a certain degree loaded this culpability onto the defendants. She did this, for example, by calculating the total sum of smuggling fees and implying incorrectly that this was profit to the defendants rather than to the organizer. More immediately prejudicial to the defendants, however, was the confabulation of captain and crew: all the defendants, regardless of their hierarchical stations, were regarded and prosecuted as captains.

As discussed earlier, many migrants who are unable to raise the smuggling fees, or who have personal relations with organizers or captains, work on voyages in lieu of full or partial payment. In March 2004, for example, Fernando migrated without charge by working as a crew member on a yola; this group was caught upon arrival and repatriated. A few months later, Fernando was made an offer by a neighbor who was the organizer of the trip that capsized in December. “I didn’t think twice,” Fernando said, because the offer included free passage plus 10,000 pesos (about $1,500) to be paid to Fernando’s family. (The money, in fact, was never paid.) In a legal perspective Fernando is guilty, he accepted payment to participate in an illegal enterprise. In context, however, Fernando was a migrant, not a willful smuggler of migrants. His motive was migration,
not profit from smuggling other migrants, and the money promised to his family was, in his view, a kind of advance on the remittances he planned to send once he was working in Puerto Rico.\textsuperscript{52}

Even when crew members are more decidedly complicit, their levels of responsibility, culpability, and compensation are well beneath those of the captain. The prosecutor recognized the hierarchical relation between Leonardo and the other defendants when he distinguished Leonardo as the “head captain” or “lead captain,” but this designation maintained the limitation of crew members’ roles to a single “captain” category. Once the distinction between captain and crew is dismissed, all of the defendants—from the one who gave the orders to the one who cut the salami—are represented as equally guilty. The appeals court recognized the impropriety of this hierarchical collapse and restored the distinction between captain and crew: “Although generally referred to by the government as ‘captains,’ [Leonardo] Hilario turned out to be the man in charge and the others, although sometimes involved in piloting, were crew.”\textsuperscript{58}

The conflation of captain and crew in smuggling prosecutions has been occurring for decades. In 1991 an appeals court took issue with this tendency:

> We pause momentarily to express our concern over a practice which has become increasingly common in cases involving illegal alien smuggling from the Dominican Republic to Puerto Rico and which must decisively come to an end. Recent cases have seen the government label as “captains” [and consequently push for upward departures at sentencing based on the defendant’s leading role in the offense] individuals whose sole participation in the illegal alien smuggling venture has been occasionally to steer the vessel in which the illegal aliens were brought... We instruct sentencing courts that, henceforth, whenever the government attempts to ascribe principal status to a defendant in an illegal alien smuggling case, special care must be taken to ensure that the defendant’s role was in fact as the government has alleged.\textsuperscript{59}

These admonitions are often unknown or ignored, however, and prosecutors continue to presume that a person at the tiller is a captain. The presumption is particularly interesting in the Hilario case because the captain (Leonardo) never piloted the boat during the thirty-hour voyage. He delegated that laborious task to his subordinates. [Hours at the tiller are exhausting and stress the arm, shoulder, and back. Captains also mention the effects of constant vibration.] Piloting the boat was used as evidence to elevate crew members to the status of captains, when in fact it demonstrates their subordination to the captain whose orders they followed.\textsuperscript{60}

Piloting was one of the aggravating circumstances that resulted in sentence adjustments. During the original sentence hearing, the court accepted piloting as a “special skill” that significantly facilitated the commission of the offense. An exasperated defense attorney tried to convince the court that operating an outboard engine did not conform to the spirit of the law: “That’s no special skill, and it’s a common skill, if you want to call it ‘skill,’ but it’s not a special skill. It’s something I can do.” The argument was unsuccessful before the presiding judge, but later the appeals court adopted it: “Steering a simple sailing vessel along a course, as directed by another, does not appear to us to be a special skill.” The special skill in migrant smuggling is not the operation of an outboard engine but rather the seafaring skills needed to captain a boat across open seas, which was Leonardo’s domain. “By refocusing the skill from piloting to outboard motor operation, the prosecution made the enhancement broadly applicable to other defendants.” This maneuver was consistent with the prosecutor’s tendency to homogenize culpability and to generalize sentence adjustments.\textsuperscript{61}

Another adjustment resulted from the use of a knife. Santiago cut salami with a long kitchen knife and at least once had it in his hand when he yelled to the passengers to keep order. “He would cut the salami in half to give it to the people using that knife and there was one time he was speaking to the people telling them to relax with that knife in his hands, but it wasn’t like he was doing anything with it.” The knife graduated to “machete” in the prosecutor’s discourse (by virtue of ambiguity in witness testimony), but the appeals court restored “knife.” All of the defendants, not just Santiago, were given a four-point sentence enhancement because it was “reasonably foreseeable” that the captain and other crew members could have used the knife/machete as well. The prosecutor alleged that “a machete was used to threaten passengers and keep them seated to avoid detection,” and the appeals court upheld that view while at once acknowledging that “the knife was brought on board innocently and the smuggling of illegal aliens does not normally involve coercion or violence.” At the resentencing hearing, a baffled Fernando said, “We are being accused of threatening with a machete, and I never saw that threat. I never saw it. I could not say that that threat ever occurred.”\textsuperscript{62}

The prosecutor’s most adventurous elaboration of the facts resulted
in the theory that the passengers were kidnapped. The theory was based largely on a misunderstanding and literal translation of what migrants call a secuestro. The prosecutor restricted this term to its literal meaning, "kidnapping," and represented the passengers as hostages held by force [in part by the knife] in order to extort additional payment. As discussed earlier, however, secuestro is used by migrants to describe a service they need and choose voluntarily. Puerto Ricans at landing areas shelter and transport migrants in exchange for payment, and the migrants are held—"kidnapped"—until their relatives in San Juan [to whom they are often delivered] pay the fee.65

The voyage in question, which offered land transportation at both ends, intended to link with the buses of "kidnappers" upon arrival. Most of the yola passengers understood that they would be charged additionally for this service. When the prosecutor asked a witness, "What do you mean by kidnappers?" the witness replied: "The people that were going to rescue us" and "who we were going to pay a certain amount of money . . . so that they would take us to our relatives." Other witnesses testified similarly: "We were supposed to be picked up at a beach" and "they were going to take us to the place where we were going to go"; and "they demand ransom money and whoever is going to pick us up gets charged some money." Some passengers planned to hit the beach and run on their own, without using the secuestro service. These passengers certainly did not consider themselves hostages or obligated to pay additional fees.64

The prosecutor maintained that the passengers were held hostage on the yola and not taken ashore because the buses could not be located and consequently they had to be charged. After arrival and before the attempted landing, the migrants "are held captive" and thus "they are no longer voluntary participants," because what they wanted was for that yola to be brought ashore and for them to be cut loose. The responsible (if indifferent) actions of the captain—who was attempting to connect with the land transportation and who avoided landing through the surf for fear of capsizing—was thus represented as profiteering. This resulted from "the oldest motive in history," money, again incorrectly implying that such money would benefit the captain and crew rather than the trip organizer or bus-service providers.63

Profiteering was the motive for holding the passengers hostage on the yola but then also for taking them ashore. The latter argument was based on an unsubstantiated claim made by a single witness: "They had told us that if they caught us in the water, half of the money would be lost, and

that if they caught us on land, everything, all of it would be lost." The prosecutor maintained that the yola was rushed to shore to avoid half-reimbursement to the passengers, and that this reckless, profit-motivated act resulted in seven deaths. The claim is inconsistent with other witness testimony and with the events as they apparently transpired, but in any case reimbursement is highly unlikely, if not ludicrous, given the pattern of yola payment established over decades.66

The motivations of yola migrants as material witnesses are also cause for concern. In the overwhelming majority of smuggler prosecutions there are no migrants who are willing to testify, even when there are deaths. In this case, conversely, of the seventy-nine survivors either forty-nine or fifty-one (the accounts vary) waived their rights and were available as material witnesses. Thirty were ultimately selected, and after defense objections the number was reduced to ten. An Associated Press article reported that the other twenty filed after they were granted bail, but the docket shows about seven arrest warrants for pretrial absconders. There were also revocations of pretrial release, which likewise suggest flight. For these potential witnesses, the pretext of testifying served as a means to complete the migration that failed on the yola.67

Material witnesses are generally given bail and work permits if they can provide approved third-party custodians in the jurisdiction, usually family members with whom they will live. This is a temporary arrangement; the witnesses are subsequently repatriated. In the present case, all of the witnesses and some others who were not witnesses were given work permits and allowed to remain in the country legally for an indefinite period following the trial. After he testified, one witness was permitted to leave Puerto Rico and live and work in Boston. When asked by a defense attorney if he had been promised anything in exchange for his testimony, the witness responded that he had. "What have they promised you?" the lawyer asked, and the witness replied, "To keep me in the United States." The prosecutor clarified that the witnesses were never promised permanent residency, but were told they would be kept in the United States "for sometime [sic] after the trial until things cool down," meaning to avoid reprisals in the Dominican Republic for their testimony.68

Nevertheless, according to an AUSA, a federal public defender, a defense attorney in this case, and one of the incarcerated defendants, some or all of the witnesses were granted permanent lawful residency in the United States. The residency was perhaps granted under the S visa program, which is "for aliens who provide critical, reliable information nec-
Deterrence

If they were to put a giant wall right in the middle of the passage, people would still go. Boats would take them out to the wall. They'd climb over by ropes, down the other side, and other boats would take them on.

A former yola captain

The dual strategy of interdiction and deterrence has been used in border enforcement at least since the Mariel boatlift, and “prevention through deterrence” has been policy since the early 1990s. Deterrence is built into CBP procedures by a “publicize and deter” component that follows interdictions. Even a glance at migration statistics over the past twenty years indicates that the results have been mixed, however, not necessarily because of inherent flaws in the manner of deterrence (or interdiction) but rather because deterrents are only effective when the will to migrate is weak. Otherwise the inhibition caused by the deterrent is insufficient to the need (or compulsion) to migrate. The best one can say is that some prospective migrants who are aware of and can understand a deterrent may be sufficiently discouraged to defer migration.  

Prosecution and harsh sentencing are intended to send a “powerful message” to smugglers, but the message is rarely received. Organizers are more or less indifferent to these consequences because they remain protected in the Dominican Republic and shielded behind degrees of anonymity and corruption in law enforcement.

In order for the ostensibly powerful message to be an effective deterrent to prospective captains, they would need to be aware of harsh sentences. The captains and crew members I interviewed are aware of border enforcement but hardly to the degree of monitoring sentences. Their sense of consequences is less carefully quantified, and an extra measure of years added for deterrent effect goes unnoticed. Before and after the U.S. Attorney and courts send a message, prospective captains and crews know that “te dan muchos años”—they give you a lot of years—with little concern for details and with broad leeway for interpretation.

The message is processed in manners favorable to the recipient, not the sender. With the same positive mindset and sense of invulnerability that emboldens migrants facing risks on yolas, prospective captains dismiss the failure of others to incompetence and bad luck. The threat—of three years or thirty—is deflected because that sentence happens to someone else. Captains regard themselves as smarter and more capable, and they “overestimate their own ability to avoid the mistakes that have led to others like them being caught.” Fernando, who himself received a send-a-message sentence, similarly said that his incarceration does not deter yola captains because they think, “I can do it better; I won’t get caught.” Even when the consequences are known in all of their ominous specificity, “potential offenders commonly cannot or will not bring such knowledge to bear to guide their conduct.”

It is unlikely that prospective captains would be scared straight. Conformity to the law is conditioned by the probability of punishment, not the severity, and for this reason the deterrent effect of high-profile, make-an-example cases rarely outlasts a news cycle. “There is no way that any sentence would deter the illegal immigration,” a Dominican consul in Puerto Rico said after the Hilarion trial. Many captains in the Dominican Republic are deferring yola voyages due to a fear of being caught, but that fear is earned over years of enforcement in the Mona Passage, not by courtroom sensationalism. The sensationalism has more of an impact on the prosecutor’s career than it does on the deterrence of migrant smuggling. The same is true among elected officials: immigrants are “generally a political liability as a cause,” and “the public perception of anarchy
predictably leads risk averse politicians to endorse populist exclusionary sentiments and to call for draconian law enforcement responses.\textsuperscript{74}

The prosecution of migrants on a second attempt at improper entry is also considered a deterrent. The deputy chief patrol agent at Border Patrol in Puerto Rico maintains that the decrease in yola migration is due to this deterrent effect, because people know that after the first try they will be prosecuted.\textsuperscript{75}

But which people know? All of my federal informants were aware of prosecution, but none of them knew if interdicted migrants were informed. That seemed important—prosecution cannot deter them if migrants are unaware—so I continued to pursue the point during interviews at federal agencies. The answer came finally from a cutter captain, in two parts: “We have our standard piece of paper, it’s written in Spanish, and we give that to them, basically, and it identifies the whole process. It identifies what biometrics is, how this data is going to be used, and the ramifications for legal actions.” When I asked if a copy of the paper was given to each migrant, he responded: “What we normally do is read it to them as a whole.”

“Nobody is going to understand that” was the reaction of an AUSA to whom I told the story. The difficulties of hearing a public-address message at sea, the unfamiliarity with key concepts (“biometrics”), the burial of the critical message (prosecution of recidivists) in bureaucratic-process prose, and a general indifference to broadcast messages all make understanding unlikely. When I asked another AUSA if migrants know they will be prosecuted on a second entry attempt, she said, “No, they don’t know. I don’t think they do know.” Later, after conviction for improper-entry offenses, magistrates do explain that subsequent return will result in felony charges, but even this face-to-face explanation has no deterrent effect on many migrants.

Migrants who have been biometrically registered at sea and have seen recidivist passengers taken ashore for prosecution do not fully understand that they, too, will be arrested if they attempt reentry. The illegality remains abstract, beside the point, or someone else’s problem. Morena, who has been registered biometrically on a Coast Guard cutter (more than once), thought that only criminals and captains were arrested. Marta, who also was in the audience during an announcement on a Coast Guard cutter, learned nothing from the experience but heard from friends that one gets arrested on the second or third attempt. Marta was not sure if the sentence was served in Puerto Rico or the Dominican Republic. Del-gadino thought captains were in danger but not migrants, and Amado had the same view: detention is “only for the captains, that’s all. The passengers are not guilty of any of this.” All of these perceptions illustrate that “potential offenders commonly do not know the legal rules, either directly or indirectly, even those rules that have been explicitly formulated to produce a behavioral effect.”\textsuperscript{76}

Alberto was better informed: he had learned on television that they take your fingerprints, register you in a computer, and give you prison time if they catch you again. Chicho was well informed too, based on the experience of a friend who had been interdicted at sea. (“Those are our messengers,” as an AUSA put it.) “If they catch you, they deport [repatriate] you. But if you return again and they catch you again, you have a problem.” How do they know if you went back? “If you go the first time, they put you in the computer. They take your fingerprints, they take everything, everything, everything. When you go again and they catch you, they’re going to look for you in the computer.”

Chicho’s source of the information, Mario, was prosecuted for a second entry attempt and was deported. Mario subsequently tried to enter by air with fraudulent documents and was again caught and prosecuted. He exemplifies a model of recidivism: even when the law is understood and the consequences are known, the perceived benefits of migration and the force of compulsion overpower the deterrence of legal sanctions. When one means seems perilous (yola), another is attempted (fraudulent documents).\textsuperscript{77}

Prosecution and harsh sentencing have little deterrent effect on captains and relatively none on migrants, but there is no doubt that enhanced border enforcement has deterred—or deferred—yola migration. It is the probability of failure rather than the risk of incarceration that deters migrants. Their primary concern is loss of the smuggling fee, and enforcement deters indirectly through that concern. The consequences of enforcement—failed voyages, loss of invested capital and possessions, and the inability to send remittances to dependent families—all deter and defer migration, or displace it to other channels.\textsuperscript{78}

When I asked migrants why yola voyages had significantly decreased, a common response was “Hay más vigilancia,” which translates roughly to “There is more border enforcement.” “People don’t want to lose their money,” Claudia said, and Christian, along the same lines, explained: “Why am I going to risk thirty thousand pesos [about \$575], mortgage or sell my house, if they are probably going to catch me?” Santiago focused
Undocumented Dominican Migration

on technology: "There aren't a lot of trips because they look for you with radar; they find you quickly." Saul similarly explained that "there's too much technology now" and that "there's no opportunity for anything" because air surveillance sees you before you know it. When I asked Julio why there were fewer voyages, he responded, "More enforcement, on both sides" because the Dominican navy is active and not accepting payoffs.

It is difficult to measure the effectiveness of enhanced security in itself because the inceptions of CBP and biometrics at sea in July and December 2006, respectively, were followed by the U.S. recession that began in December 2007. There were precipitous drops in migration flows from fiscal years 2006 to 2007 (from 7,101 to 4,055) and again in 2008 (to 1,874).

Migrants often mention border enforcement and economic conditions together as a compound reason for staying home. Their will to migrate diminishes in relation to the accumulation of factors that increase the probability of failure.

Many migrants nevertheless specify the U.S. economic recession as the primary reason for the decrease in departures. They expressed this with such statements as "It's not like it used to be," "There's not work anymore," and "It's not worth it—use to be but not any more." Santiago, who traveled by yola to Puerto Rico in 2004 and returned in 2006, said migration has decreased because people "know that things are bad here and there too, in both places." Some refer to the economic situation as global: why leave if it is bad everywhere? The general sentiment is that the goal of migration—economic advancement—would probably be impeded, so the expense and dangers of the journey are not risked. Olivario, a captain who stopped organizing yola trips when the demand fell after 2004, joked that "pretty soon the Puerto Ricans will be coming here."

The dramatic decline in Dominican migrant flow is largely attributable to these two factors, border enforcement and a lack of employment abroad, within the context of the supporting factors—global, cultural, psychological—described in previous chapters. Border enforcement continues to be a deterrent insofar as the situation of prospective migrants is not desperate. A major economic or political crisis in the Dominican Republic would trigger massive migration with little regard for enforcement. Such an exodus would overwhelm current federal assets in Puerto Rico and test the viability of biometrics at sea and routine prosecution. Coast Guard cutters would be taken out of service to process one or two yolas—transferring the passengers, taking biometrics, awaiting instructions, and ferrying passengers to shore for prosecution and/or to La Romana for re-

Maritime Migrant Flow from the Dominican Republic

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of migrants</th>
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<td></td>
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[through April 30]

Source: U.S. Coast Guard, Alien Migrant Interdiction Operations. Coast Guard migration statistics are based on interdictions by the Coast Guard and other agencies (such as the Border Patrol and the Dominican navy), intelligence estimates of successful landings, detected turnaround (aborted) voyages, and known migrant deaths. The numbers correlate to federal fiscal years, which begin on October 1, end on September 30, and are designated by the ending years.

Patriation—while other yolas landed successfully. Border Patrol would be stressed, federal courts and prosecutors would be backlogged, immigration detention and jails would be filled, and the migrant flow would continue as long as the will to migrate overpowered the impediments.

The effectiveness of enforcement as a deterrent is also contingent on how much the government is willing to invest, and for how long. After major crises, such as the January 2010 earthquake in Haiti, surge enforcements prevent mass exodus. Shoreline flights and forward deployment of cutters off the coast make it clear to migrants that they would likely be caught soon after departure. The surge ends when the threat of mass migration seems alleviated, and the limited assets are redeployed to other operations. The same was true when the Carter administration attempted to end the Mariel boatlift by prohibiting southbound departures to transport more Cubans. The effort was successful as long as the route was blocked. "I am sure a lot of Cuban exiles in Miami are just waiting for the Coast Guard to get out of their way," a Coast Guard spokesman explained.

Unlike these events, Dominican migration is an ongoing phenomenon, so a high enforcement presence as a deterrent must be maintained indefinitely. Presuming limited resources allocated judiciously and strate-
gically, to what degree is that maintenance feasible or desirable? Some of my informants among captains and migrants described their current inaction as a "pause" or "rest"; they are waiting until the situation changes. If it never changes and their will to migrate increases, they will likely adapt to the new threshold of risk.

When I asked a Coast Guard intelligence analyst why migrants would be deterred by interdiction if they are not by death at sea, his answer was remarkably on target: "I look at the threat to their life because of the dangers of the sea as a constant—that never changes. The Coast Guard interdiction part of it changes; it fluctuates. So what they would do in times when the presence is high and there is more danger to them, they would choose not to pick that time to make their move; they would try to pick a time when the Coast Guard was focused somewhere else." Border enforcement "is a variable that they can track and pick the best time when the Coast Guard is least a threat to them."

Deterrence by enforcement was well illustrated by Operation Monkey Wrench, which effectively stopped the smuggling of Cubans from the Dominican Republic to Mona Island. A 2006 Coast Guard after-action report states that "it is evident that high profile enforcement operation has a deterring effect" but also that "during the duration of the operation, smugglers were denied the use of Mona Island as an incursion site." The smugglers were deterred because the island was constantly guarded, with cutters stationed around the clock and a Border Patrol contingent on the island, at times with land-based radar.

But that is not deterrence. The smugglers were deprived access, not deterred. The border-enforcement resources would have to be committed permanently in order to prevent the resurgence of smuggling to Mona Island, which indeed occurred after Monkey Wrench ended.

The Mona example illustrates how intense border enforcement is an overcompensation for misguided policy. Even in the absence of any enforcement whatsoever, no smuggler would again transport any Cuban to Mona Island if the wet foot/dry foot privileges were terminated by Congress. There would be no purpose; the migrants, stranded on the island, would be repatriated upon rescue rather than paroled into the United States. Extrapolating from this specific example to the broader context, the strategy, intensity, objectives, and targets of border enforcement would change dramatically if the United States had sensible and coherent immigration policies. Chasing yolas, in the last analysis, is a compensatory measure with an unfavorable cost/benefit ratio. It is not a structural solution.

In some respects Dominican migration is an anomaly, particularly when compared to migration across the U.S.-Mexico border. In the latter case, "as more restrictive policies increase the obstacles to crossing borders, migrants turn to smugglers rather than pay the increased costs of unaided attempts that prove unsuccessful." Dominican yola migrants, conversely, have responded to border enforcement (together with captain scams) by depending less on smugglers. The open seas between the Dominican Republic and Puerto Rico were initially favorable to the emergence of professional smugglers because vessels and navigational expertise were required to make the crossing, but Dominicans later began to combine their resources for independent, migrant-organized voyages.81

At the U.S.-Mexico border, in addition, "there is little evidence that tighter border controls have been successful in stopping the smuggling of people across borders," and "the expensive post-IRCA [Immigration Reform and Control Act of 1986] enforcement regime has had no detectable effect either in deterring undocumented migrants or in raising the probability of their apprehension." Dominican migration to Puerto Rico again contrasts with these assertions because border enforcement, together with a lack of employment in the United States, has dramatically reduced migrant flow.82

 Ironically, despite the U.S. arsenal of enforcement and deterrence, the migrants I interviewed were most immediately deterred by a myth that was circulating among them. This myth, which conjectures that yolas are being attacked by submarines, is an effective deterrent because it addresses the specific concerns of migrants (death at sea and being victimized by unscrupulous captains) rather than the concerns [such as prosecution] that law enforcement officials assume are deterrent. As one scholar put it, "Knowing how rational people think [rationally], rather than imagining how they ought to think, should help analysts better understand persuasion."83 The myth is an expression of the fear and vulnerability caused by inexplicable deaths at sea, and, unlike abstract prosecution and incarceration, it has an immediacy and emotive power that effectively deter. It is also exempt from the general dismissive idea that "it can't happen to me."84
64. For another example of spontaneous regret, see Iturronde, 52. Still in Rincón a week after arrival and without money or options, a yola migrant said, “I was desperate... There were only two days until Christmas and I thought about how much fun it is in Samaná.” Together with two other migrants on the same voyage, he said, “we made plans and walked along the main highway, resigned to being caught and sent to our country.”

Raúl

1. Martínez Rosario, 152–156. The quoted passages are on 153, 153, 155, and 156, respectively.
2. A fictionalized version of this incident is described in Martínez Rosario, 152–150.

Border Enforcement


3. The quoted passage is in Rosenberg, 214–215; see 211. See also Mitchell, “U.S. Policy toward Haitian Boat People,” 76.

7. The quoted passages are from George W. Bush, in U.S. President, Executive Order 13,276, Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region, November 15, 2002. See the website text supplement, “Operation Plan Vigilant Sentry.”
8. See van Selms and Cooper, 78. For a summary of executive orders and proclamations concerning maritime migration in the Caribbean, see Mallia, 190–199.
9. For a recent review of U.S. immigration law, see Riessman.


16. The quoted passage is from the testimony of John P. Torres in U.S. House of Representatives, Committee on the Judiciary, Pushing the Border, 17.


19. The quoted passage is from Spener, “Mexican Migrant–Smuggling,” 315. For an example of a yola captain with a criminal history, see U.S. Court of Appeals, First Circuit, United States v. Amado de la Rosa-Ramos [February 17, 2010].


In the Dominican Republic, smuggling requires “coordination and organization, but contrary to popular perception is most often not controlled by large transnational crime syndicates.” Salicrup, 21.


23. The quoted passage is from Allison Parker, Human Rights Watch, in U.S.
House of Representatives, Committee on Foreign Affairs, *Deportees in Latin America and the Caribbean*, 54.


25. The biometrics data are from an untitled briefing to Rear Admiral Baumgartner, Commander, Seventh Coast Guard District, on January 14, 2010. Acquired through Freedom of Information Act request number SSJ FOIA 0320, submitted on June 29, 2010; documents provided on July 19, 2010.

26. The quoted passage is from Herman, 193.


FURA vessels have jurisdiction within three miles of the coast. This is extended when a Border Patrol agent rides with FURA and when FURA agents train and are deputized with Code of Federal Regulations Title 19 customs authority.

28. The quoted passage is from U.S. House of Representatives, Atkins testimony.


30. Regarding the interdiction percentage, see U.S. House of Representatives, Justice testimony, 6; and U.S. House of Representatives, Atkins testimony. The Coast Guard interdicts about 40 percent of Cubans.

Prior to fiscal year 2008, Coast Guard statistics calculated migrants who were “interdicted or deterred,” which included “intelligence estimates of the number of migrants who would attempt entrance, via maritime routes, into the United States if there were no enforcement.” The percentages were consequently much higher (around 85 percent). The current measure includes only the migrants who are actually interdicted. See U.S. Department of Homeland Security, Office of the Inspector General, *Annual Review of Mission Performance: United States Coast Guard (FY 2006)* [Washington, DC, February 2008], 25.


33. Regarding the general challenges of international cooperation, see United Nations Office on Drugs and Crime, *Basic Training Manual*, module 8. Some Dominican navy officers are trained by the Coast Guard in the Advanced Maritime Law Enforcement Boarding Officer Course. See the website text supplement, “Dominican Navy Corruption.”

34. Regarding the planes, see U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, 240. Regarding the naval stations, see Dominican Republic, Marina de Guerra, *La Marina de Guerra del nuevo milenio. Memoria 2009* [Santo Domingo, 2010].


36. In its 2010 budget, the Coast Guard requested funding for marine patrol aircraft with capabilities similar to those of the Dash 8. See U.S. Department of Homeland Security, United States Coast Guard, *Fiscal Year 2010, Congressional Budget Submission* [Washington, DC, 2009], AC&J-30. The new national security cutters, offshore patrol cutters, and fast-response cutters are also well equipped technologically, AC&J-57, 64, and 69.

37. U.S. Court of Appeals, First Circuit, United States v. Alberto De León [November 2, 2001].

38. Regarding the cutters, see U.S. Senate, Allen testimony, 2009, 9. A “biometric” is a unique, measurable physical attribute, such as a fingerprint; “biometrics” is used more broadly as the identification of a person based on such attributes. Other examples of biometrics include retina scans and voice recognition. The legal basis for collecting fingerprints was studied by the Coast Guard Operations Law Group, which determined that biometrics at sea constituted a routine border search. Regarding US-VISIT, see U.S. House of Representatives, Appropriations Committee, *Biometric Identification: Hearing Before the Subcommittee on Homeland Security*, testimony of Deputy Assistant Secretary for
Policy Kathleen Kraninger, Screening Coordination, and Director Robert A. Mocny, US-VISIT, National Protection and Programs Directorate, March 19, 2009. Regarding biometrics and routine interview on the U.S.-Mexico border, see Roberts et al., 20.

39. The statistics were provided by the U.S. Coast Guard, Office of Law Enforcement. A breakdown between immigration-related and other criminal offenses was not available.

40. Coast Guard Sector San Juan patrol summary from the cutter Chincooteague, September 1, 2008. Acquired through Freedom of Information Act request no. 08-051 [USCG reference no. 5720], submitted on July 24, 2008; documents provided on November 4, 2008.


42. Regarding unwillingness to cooperate, see Iturrrondo, 63 [“an implicit commitment of all passengers to not denounce the captain”]; and Georges, 86. A Mexican coyote (migrant smuggler) said, “No one has any reason to finger a coyote who deals honestly with his customers.” Quoted in Judith Adler Hellman, Mexican Lives [New York, New Press, 1995], 177. See also Spener, “Mexican Migrant Smuggling,” 317.

43. Sympathies with defendants also occurred during prosecutions after the Mariel boatlift. See Cuban-Haitian Task Force, Department of Justice memorandum, August 19, 1980, reel 4, p. 1; and Department of Justice memorandum, September 9, 1980, reel 9, n.p.

44. The first quoted passage is from David Spener, “The Logic and Contradictions of Intensified Border Enforcement in Texas,” in The Wall around the West: State Borders and Immigration Controls in North America and Europe, ed. Peter Andreas and Timothy Snyder [Lanham, MD: Rowman and Littlefield, 2000], 137. The Coast Guard proposed a Maritime Alien Smuggling Law Enforcement Act 2007 recommending a minimum three-year sentence. The text of the proposed law is appended to B. Robinson, 42-44. See 32. See the website photograph sequence “Migrant Interdiction in the Mona Passage.”

45. The quoted passage is from Hilario, trial day 7, p. 71. See trial day 32, pp. 7-8.

46. The first quoted passage is from Hilario, trial day 5, pp. 37-38; see 47. The second and third quoted passages are from Hilario, trial day 7, pp. 39-40. The fourth quoted passage is from trial day 6, p. 85. See trial day 12, p. 9, and trial day 9, p. 14A.

47. The quoted passage is from Hilario, trial day 7, p. 47. See trial day 3, pp. 93 and 96. On trial day 7, p. 50, “most of the people wanted to do this [run for shore], and as they say, the majority wins.” A defense attorney also argued that passengers wanted to be taken to the beach and captains complied, Hilario, sentencing hearing [November 21, 2005], 45. For the minority view [the passengers wanted to get caught, and crew insisted on going ashore], see Hilario, trial day 6, p. 87.

48. The first two quoted phrases are from Hilario, trial day 5, p. 44. See trial day 6, pp. 79-80. The third quoted phrase is from Hilario, sentencing hearing [November 21, 2005], 59; see the variation on 56. See also trial day 7, p. 45; trial day 9, p. 149; sentencing hearing, 40; and U.S. Immigration and Customs Enforcement memorandum, “Interviews Yadira NOLBERTO, December 9, 2004 [January 21, 2005], 1. See sentencing hearing, 40, where the prosecutor uses these seven statements to other purposes.

49. U.S. Coast Guard, Sector San Juan, situation report to Coast Guard District 7 [December 4, 2004]. Acquired through Freedom of Information Act request no. 0211-0172, submitted on October 12, 2010; documents provided on April 7, 2011. According to a Coast Guard public affairs article, waves first broke over the stern, “washing migrants overboard and swamping the boat.” Anastasia M. Burns, “Let’s Get as Many as We Can!” [U.S. Coast Guard], Coastline, October-December 2004. At the resentencing hearing, the judge erroneously blamed the case on “pilot error.” Hilario, resentencing hearing [February 13, 2009], 33.

50. See Hilario, trial day 6, pp. 25-43.

51. The quoted passage is from Hilario, trial day 7, pp. 51-52.

52. Regarding the sentence range, see 8 U.S.C. § 1324, Bringing in and Harboring Certain Aliens, [a]–[c][iv]. See also GAO, “Combating Alien Smuggling,” 6. Regarding the plea offers, see Hilario, docket entry 196.


55. The quoted passages are from Hilario, resentencing hearing [November 21, 2005], 119 and 76, respectively. The prosecutor also confused human trafficking with migrant smuggling; Hilario, trial day 3, p. 3.

56. For an example of the prosecutor recognizing the distinction between organizers and captains, see Hilario, trial day 15, p. 5.

57. During interrogação without counsel present, Fernando broke down in tears and confessed to the payment. His lawyer argued that his Miranda waivers were not knowing and intelligent because of his limited education (he was illiterate), his experience with Dominican police, and his mental state—sleep-deprived and traumatized—at the time of the interrogations. See Hilario, trial day 3, p. 43; trial day 2, p. 18; and trial day 9, p. 34, and U.S. Court of Appeals, 1st Circuit (Puerto Rico), United States of America v. Leonardo Hilario-Hilario, et al. [June 20, 2009], Nos. 06-1007 to 06-1013 [hereinafter cited as Hilario appeal], 14-15.

58. The quoted passage is from Hilario appeal, 4. The injustice was partially remedied during sentencing: Leonardo received seventeen years, Santiago (who cut
the salami five, and the others around ten. Regarding "head captain," see Hila-rio, trial day 15, p. 12: "Leonardo Hilario Hilario not only was the captain," she says, with the definite article — the captain — seemingly implying exclusivity, but then adds that most witnesses "also identified him as the head captain, the person giving instructions on board the boat." A witness takes the same approach: "four captains and a commander." Hilario, trial day 15, p. 19.

59. U.S. Court of Appeals, First Circuit, United States v. José Enrique Reyes, March 7, 1991. For another example of the confession and then sorting of captain and crew see U.S. Court of Appeals, First Circuit, United States v. Bartolo Trinidad de la Rosa, October 5, 1990.

60. Regarding piloting the vessel, see, for example, Hilario, trial day 6, p. 61.

61. The first quoted passage is from Hilario, sentencing hearing [November 23, 2005], 96; see 77. The second quoted passage is from Hilario appeal, 27.

62. The first quoted passage is from Hilario, trial day 7, p. 62. The "machete" passage is from the Hilario sentencing hearing, 77; see 28. The appeals court view is from Hilario appeal, 24. The last quoted passage is from the Hilario resen-
tencing hearing, 36.

63. The defense also offered adventurist theories; see, for example, Hilario, trial day 15, pp. 30–35.

64. The first quoted dialogue is from Hilario, trial day 5, pp. 32–33. The second and third quoted passages are from trial day 7, p. 30, and the fourth is from trial day 7, p. 33. See trial day 6, pp. 75 and 81. Regarding secuestro, see Hilario, trial day 6, pp. 79–80; trial day 5, pp. 7–8; trial day 3, p. 170; and trial day 9, p. 147 (witness interprets secuestro literally). Regarding passengers who would run, see Hilario, trial day 6, p. 69; and Hilario, sentencing hearing, 93–94.

65. The first quoted passage is from Hilario, sentencing hearing, 28 and 37–38; sec trial day 15, p. 5. The last quoted phrase is from trial day 15, p. 4.

66. The quoted passage is from Hilario, trial day 9, p. 152. See trial day 15, p. 7.

67. According to U.S. District Court, District of Puerto Rico, "Affidavit in Support of the Criminal Complaint Against Kennedi Martinez" [December 4, 2004], Miranda rights were read by ICE to all passengers; forty-nine of the ninety-two waived their rights and provided statements. According to U.S. Coast Guard, Sector San Juan situation report to Coast Guard District 7 [December 4, 2004], 2–3, ICE surrendered custody of fifty-one aliens — those detained as material witnesses — to U.S. marshals; the remaining thirty-seven passengers were repatriated or deported. Regarding thirty witnesses, see Hilario, docket entries 91 and 167. For absconders see docket entries 380, 381, 393, and 394, for example. The news article is Frank Griffiths, "Five in Puerto Rico Charged with Causing Deaths of Seven Dominican Migrants to Face Trial," Associated Press, May 3, 2005.

68. The first quoted dialogue is from Hilario, trial day 12, p. 30, sec 33–34 and 40; and the prosecutor's response is in trial day 12, pp. 71–74. See also the "security concerns," trial day 12, p. 81. Bail for the material witnesses was set at $5,000 [12,000 cash, $3,000 unsecured], see Hilario, docket entries 80, 81, and 102–114, for example. Regarding work permits, see Hilario, trial day 8, pp. 11–12. Regarding the witness to Boston, see trial day 12, pp. 2–3 and 56. Dominicans often use "New York" in reference to the mainland United States as a whole.


70. The quoted passage is from Hilario, trial day 13, p. 60. For a proper use of "negli-
gence," see Hilario, sentencing hearing, 7.


For statements regarding the effectiveness of detention as a deterrent, see, for example, INS Notice, Fleissner and Shapiro, 168, U.S. Coast Guard, Maritime Law Enforcement Manual, 6–8; and U.S. House of Representatives, Committee on the Judiciary, Pushing the Border, testimony of Robert L. Harris, deputy chief, Border Patrol, CBP, in 36.


73. The quoted passages, except the one from Fernando, are from Robinson and Darley, 183 [on the same page: "most criminals do not think they will be caught and punished"] and 174, respectively.

74. The first quoted passage is from Hilario, sentencing hearing, 114, as proffered by defense counsel. Probability rather than severity is from Tyler, 233. The other quoted passages are from Šnabba, 19 and 4, respectively. See Kansroom, 228, where "the post-entry social control deportation system was a perfect vehicle for politicians to demonstrate toughness on crime at virtually no political cost."


76. The quoted passage is from Robinson and Darley, 174.

77. See Robinson and Darley, 175.

78. See the website text supplement, "Alternatives to Yola Travel."
81. The quoted passage is from Koslowski, 349.
83. The quoted passage is from Mercer, 20.
84. The myth is discussed in the chapter “The Psychology of Migrant Motivation.”
85. The evasion tactics described in this section do not put captains and migrants at greater risk of interception. Border-enforcement authorities in Puerto Rico are aware of all of these tactics.
86. Canvas coverings are used on migrant boat voyages from Albania to Italy. See United Nations Office on Drugs and Crime, Toolkit, tool 2, p. 10.

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1. Regarding these details and the congressional report, see statement of Rear Admiral Gary Blore, Assistant Commandant for Acquisition, in U.S. House of Representatives, Committee on Transportation and Infrastructure, Overview of Coast Guard Acquisition Policies and Programs: Hearing before the Subcommittee on Coast Guard and Maritime Transportation [March 24, 2009], 12; and U.S. Coast Guard, “Acquisition Update: New Selex HC-130H Radar Continues to Prove Value in Lifesaving,” press release, September 23, 2008. The Seaspark 7500E costs about $2.0 million per airplane. The Coast Guard also uses self-locating data markers. These are buoys that are placed in the water at the last-known positions of capsizes; satellite signals sent from the buoys are used for tracking.