

# Center for Constitutional Rights

## Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/blog/2019/05/08/necessary-security-free-state>

### Public Facing Advocacy Writing

The CCR blog

On April 16, 2019, a video surfaced depicting a group of armed white males detaining at gunpoint a large group of purported migrants. Operating in the pitch black of night somewhere in New Mexico, these individuals kidnapped and held captive dozens of Latinx individuals, many of whom were children. These armed men belong to the United Constitutional Patriots (UCP), one of many assault-weapon wielding, camouflage-laden vigilante groups that has set its sights on enacting racial terror along the U.S.-Mexico border. In so doing, these functional militias claim to be a surrogate arm of the United States Border Patrol, the federal agency whose mission is to detect and prevent illegal aliens from entering the United States.

That the UCP like so many other border militias, nativist vigilantes, and wayward white supremacists espouse a deep distrust of the federal government is not so much awkward irony as bald hypocrisy. Far from fighting a tyrannical federal sovereign, these militiamen have express permission from the United States government to intimidate and terrorize Black, Indigenous, and Latinx communities. In fact, they always have. Since its days as a precarious congregation of colonies, the United States has called upon willing white men to band together and arm themselves to execute its white-supremacist settler-colonial vision, a mission to subjugate and eventually eliminate racial minorities. Its as American as apple pie.

Purported patriots and avowed white nationalists alike often invoke the Second Amendment to justify their vigilantism, by emphasizing the right to bear arms. Though this is a useful way to frame this discussion, the Second Amendment provision that most benefits vigilantes like the UCP is actually the right to maintain a militia, a right that the government deemed necessary. Historically, we didn't just fete militia rights, we enshrined them in our federal Constitution. As the Second Amendment provides, [a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. In his notorious 2008 opinion in the Supreme Court case *District of Columbia v. Heller*, Justice Scalia struck down a District of Columbia handgun ban as violative of the Second Amendment. In the process, Justice Scalia famously divided the Amendment in two:

[Panned](#) for his ahistorical analysis and cheap division, Scalia focused on appeasing the neo-conservative desire for an individual right to own firearms slides over an important, almost unmissable point in the prefatory clause. In passing the Second Amendment, the federal government explicitly conceded that White Americans needed militias, and that militias were necessary to the security of a free State. Scalia was simply using the judicial branch to reassert a rationale adopted by the legislative. After all, the American government has long authorized vigilantism, border-based and elsewhere.

Federal and state laws have, at times very explicitly, encouraged white men to defend this country's nationalist visions because the government needed them to. From explicit federal laws such as the Militia Acts of 1792 (and 1795), to direct state sanction such as what occurred during [Tennessee's Creek War of 1813-1814](#), American institutions have used militias to forcibly depopulate land. Militias were essential to effectuate the country's goal of seizing the American continent and establishing a white-led, capitalist state. The government couldn't violently expropriate that territory all on its own, so it authorized its citizens do it for them. As scholar Roxane Dunbar Ortiz perfectly hammers home in her book, [Loaded: A Disarming History of the Second Amendment](#), the government appointed white nationalist militias as an essential part of the existing political-economic order and protected them however it could. It paved the way for genocide. Meanwhile, seeing little conflict with other constitutional guarantees, the Supreme Court then [upheld these laws](#) under the guise that the purpose of the Second Amendment was to assure the continuation and render possible the effectiveness of militia forces.

America's obsession with militias dates back to colonial times. As early as 1705, slave patrols tasked with capturing and returning escaped slaves were mandatory in colonies like Virginia. These militias were necessarily armed. White men were required by law to carry guns to school, work, and church. Virginia and Massachusetts even once required every household to possess a firearm and a certain amount of ammunition. As the institution of slavery proliferated and the number of slaves expanded, so too did armed white vigilantism. This antebellum institution culminated in the passage of the Fugitive Slave Act of 1850, which forcibly compelled citizens to assist, by force if necessary, in capturing runaway slaves.

At the close of the Civil War, in 1867, Congress suddenly outlawed Southern militias. But by then, militia culture, and its violent, hetero-patriarchal brand of viperine hatred formed an integral part of white Southern culture. In fact, the federal law proved so controversial that Congress revoked it barely a year later. Militia culture lived on, mounting on full display in the anti-reconstructionist movements and the rise of white vigilante groups like the infamous Ku Klux Klan and the lesser-known White League, which terrorized black communities and executed black militiamen who sought to exercise the same rights. In his vigorous dissent to Scalia's opinion in *Heller*, Justice Stevens recounted the macabre tale of Jim Williams. Williams, a Freedman and captain of a Black-led South Carolina militia company, met a grisly fate in March of 1871 when six KKK members lynched and shot him for exercising his Second Amendment rights. The right to a militia has always meant the right to a white militia.

Not satisfied with subjugating merely Blacks in its quest for total racial dominance, the United States actively encouraged militias to forcibly remove and, if necessary, exterminate entire Native American tribes. The chief architects of this plan included Andrew Jackson. Before his ascent to the Presidency in 1829, Jackson had led a militia comprised of more than 2,500 West Tennesseans. During the Creek War, the Tennessee legislature charged him and his militia to exterminate the Creek Nation, a task for which Jackson was handsomely rewarded. Over his two terms as President, Jackson ordered federal troops to systematically steal upwards of 20 million acres of land from Native Americans, killing thousands in the process. Meanwhile, Congress legalized these genocidal and expropriatory missions by ratifying the Indian Removal Act of 1830 and supporting massacres like the Trail of Tears, which remains perhaps this nation's most crystalline depiction of ethnic cleansing. Once again, the government found allies in settler militias, armed vigilantes, and bellicose opportunists who seized the chance to enrich themselves at the expense of the destruction and control of Native communities.

No signs of abatement showed as the country marched westward. As historian Greg Grandin brilliantly articulates in his new book [The End of the Myth](#), the United States needed willing violent zealots and foot soldiers to wage successful frontier warfare. Settlers pursued ethnic cleansing with the explicit goal of depopulating land that they could then claim for themselves and off of which they could profit. Forcible seizure of land was, and always will be, a fully capitalist undertaking. The founding of Texas is a perfect example. Stephen F. Austin, founder of the famously homicidal Texas Rangers, once noted that Texas must be a slave country. Unwilling to pay for its labor, Texas was at odds with Mexico, which had abolished slavery the decade prior. This became a central focus and immediate cause for the Mexican-American War, which opened the door for mass settler-colonialism. Bands of larcenous, rapacious militias played an integral part in setting a new border-based status quo, as depicted in Cormac McCarthy's *Blood Meridian: Wegoin to Mexico*. Spoils of war. Every man in the company would come out a big land owner. After signing the Treaty of Hidalgo, which ended the war, Congress found itself in charge of practically another new continent rich in resources. Congress passed a number of laws encouraging white settler colonialism in these new lands, including the 1862 Homestead Act, the 1873 Timber Culture Act, the 1877 Desert Land Act, and the 1887 Dawes Act. Much of the available land, necessarily, much of the ensuing violence was on or near the newly-demarcated U.S.-Mexico border.

Federal permission to expropriate land from former Mexican citizens and Native Americans on the border led to an influx of capitalist investment, building on decades of investment under Mexico's imperial President Porfirio Diaz. Railways were constructed, arable land was converted into plow fields, and land values skyrocketed. The settlers came in the thousands; the turn-of-the-century population in South Texas nearly doubled every decade. So too came the militias, the local private citizen vigilante groups, and the KKK. In [The Injustice Never Leaves You](#), historian Monica Muñoz Martinez meticulously chronicles the unyielding violence imposed on Mexican residents. According to her research, between 1848 and 1928, vigilante groups of three or more people in other words, small militias lynched 232 ethnic Mexicans. Under Juan Crow laws, settlers lynched or forcibly disappeared scores more ethnic Mexicans, who were often found hidden in the groves of mesquite trees that line South Texas or floating down the Rio Grande. When law enforcement wasn't actively participating, it looked the other way. The case of the Texas Rangers illustrates just how blurred the line between militias and law enforcement could be. Though they were originally comprised of only two handfuls of men under the control of private citizen Stephen F. Austin, the Rangers became an official branch of state law enforcement at the turn of the century. As the volunteer regiments grew unchecked between 1910 and 1920, the Rangers' membership swelled to approximately 1,350 men. The violence swelled, too. According to Muñoz Martinez, the Rangers were a fighting force created by Anglo settlers to fight in the ongoing war for racial supremacy . . . by targeting Indian warriors and Mexican vaqueros. Muñoz Martinez adds that historians now view the Texas Rangers as the first prominent Western vigilantes to be endowed with legal authority. They would hardly be the last.

It is hard to capture accurately just how terrorized Latinx communities on our southern border have been over the last century. Long before the United Constitutional Patriots were formed, border-based Latinx people between 1910 and 1920, during the Mexican Revolution, lived through a decade so violent it's known as *la matanza*, Spanish for the massacre. Much like today, thousands of individuals fleeing violence, persecution, and state-imposed terror arrived at the United States border only to be harassed, assaulted, or even executed. The border was manned by U.S. officials who were not yet technically Border Patrol officers (the Border Patrol was not founded until 1924). Again, the line between militias and law enforcement was often obscured. Just as the Texas Rangers pulled into their ranks former and current militiamen and vigilantes, so too were those militiamen and vigilantes commissioned as the first order of Border Patrolters. Then, as now, these refugees of war and violence were met not with humanitarian aid but with men who murdered, disappeared, or imprisoned newcomers while the American government either participated in or turned a blind eye towards militia violence. Those who survived fared little better. Government officials charged with processing immigrants ordered them deloused, meaning individuals were forced to strip naked and undergo a chemical treatment to rid them of supposed pests. In 1917 alone, the U.S. deloused over 100,000 Mexicans. The chemical was Zyklon B, a cyanide-based pesticide that the Nazi regime would eventually use in the gas chambers.

Border vigilantism continued (and continues) to the present day. In 1977, David Duke directed the KKK to set up a Border Watch at California's San Ysidro Port of Entry. Border agents have also reported discovering Vietnam War-era boobytraps around Tijuana, an area border militia referred to as Little Nam. Between 1988 and 1990, 100 migrants were murdered in San Diego County alone. It wasn't just low-level Border Patrol agents who sanctioned this conduct. In the 1980s, President Reagan enlisted the help of a quasi-militia outfit known as Civilian Material Assistance (CMA), a group of modern-day brigands. Under Reagan, CMA not only participated in anti-immigration border activities, they helped run guns to Nicaragua to fight for the Contras. It's not just a conspiracy canard; [this really happened](#).

In 2016, journalist Shane Bauer [went undercover to expose](#) the activities of one particular border militia, the Three Percent United Patriots (3UP), a group of near-uniformly adult white men who had decided to spend Operation Spring Break committing acts of racial terror. The article is truly stunning: It catalogs earnest racial epithets of the most noxious order and open braggadocio about assaults, stabbings, and murder. One high-up militiaman even claimed that he had perfected an ersatz version of waterboarding. Operating with the tacit or even express permission of the Border Patrol, militias conduct this terror with unchecked impunity. One now-defected member of the UCP militia even called the police on his own group, citing his concern about its [terroristic threats](#). A [police report](#) filed days after the now-viral UCP video indicates that one member was dissatisfied with merely detaining the alleged migrants, asking, [w]hy are we just apprehending them and not lining them up and shooting them . . . We have to go back to Hitler days and put them all in a gas chamber.

Grandin and other historians and journalists have independently confirmed militia violence, carefully accounting camouflaged vigilantes roaming the desert, shooting and killing migrants, and leaving behind evidence of lynchings. It is important not to dismiss these groups

as fringe, but rather integral, effective, and intentional proxies of the Border Patrol. Bauers article documents how the Border Patrol doesnt just permit border militias to operate, but the extent to which it relies on them. After the April 16 UCP incident, U.S. Customs and Border Protection stated on record that while they welcome assistance from the community, they do not endorse private groups or organizations taking enforcement matters into their own hands. All of the evidence historical and current points to the contrary. As the New York Times [reported](#), one militia member observed that though the guys in Washington say one thing about not wanting us on the ground . . . no one from the Border Patrol here has ever told me they dont want our help. According to one militia member recorded by Bauer, Border Patrol contacts the militia pretty much weekly, providing them with very useful information to help make our [operations] better, including recommendations for times and areas to patrol. Mutual militia-Border Patrol embraces were shared, including an offer for an unauthorized tour of remote areas, unauthorized briefings, and an almost too-good-to-be-true exchange in which a U.S. federal agent showed up with two boxes of doughnuts for the militia. The trope that these individuals are arming themselves to protect against a tyrannical federal government, then, rings pretty hollow. According to the UCP [own estimates](#), they have helped Border Patrol detain over 5,600 migrants in just two months in 2019. Though this suggests that the militia is incredibly effective it raises many questions: How many children, women, and men did they maim or kill? How many bodies are still floating down the Rio Grande, how many were left hanging in the mesquite trees?

It seems to be getting worse. Under Trump, the anti-migrant rhetoric, constant platitudes forewarning a migrant invasion, and fanatical obsession with a border wall never seems to stop. With the White Houses blessing (curse?), militias and vigilantism have been allowed to continue unabated. Fascist militia groups such as the Alliance for Border Control, Arizona Border Recon, the sundry remaining Minutemen groups, Operation Secure Our Border, and the 3UP have all flourished under the Trump Administration and operate with either the implied permission or express direction of the Border Patrol the same agency famous for [tear-gassing migrant children](#) and [slashing thousands of gallons of water](#) left for dehydrated migrants. With signs this glaring, it would be naive to detach todays environment on the border from the racial terror of eras past. Indeed, the United States is again letting violent militias operate with significant impunity. Although it is true federal authorities arrested UCP leader Larry Hopkins, they only charged him with being a felon in possession of a weapon, a relatively lenient charge for what appears to have been armed kidnapping. If the federal government were serious about curtailing white supremacist border violence, it would have charged Hopkins with domestic terrorism for intimidating or coercing a civilian population, and impersonating the government by kidnapping. But of course, as the repeal of the 1867 Militia Ban could have told us, militia vigilantism is neither domestic terrorism nor ever too far removed from the governments enforcement arm. After all, in these United States, militias are necessary to securing a free white supremacist nation.

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