

The Tohono O'odham

Background

In North America, international borders were created at the time of European settlement. These borders divided tribal lands (lands that had known no boundary) of the indigenous populations. The Gadsden Purchase and the Treaty of Guadalupe Hidalgo created the current U.S.-Mexico border in the mid-1800s. The tribal lands of the Tohono O'odham, indigenous peoples to North America, were divided in the creation of that international border.

The Tohono O'odham peoples have lived in the desert for thousands of years. Today, the Tohono O'odham Nation is the second largest reservation in the United States. It is made up of four non-contiguous segments (Tohono O'odham, Gila Bend, San Xavier, and Florence Village) encompassing an area of 2.8 million acres, roughly the size of Connecticut. The Nation, with a population of 25,000, lies within the Sonoran Desert in south central Arizona and continues into Mexico. Sells is the largest city of the Nation and is its capital.

The Tohono O'odham have kept their original language alive. There are seven different dialects that are centuries old. Most of the tribe is Catholic, since many of their ancestors were converted during the missionary activities in the late 17th century, but have also maintained traditional beliefs. The language and traditional beliefs are mainly kept alive through tribal elders.

Under the Indian Reorganization Act of 1934 (IRA), the Tohono O'odham Nation formed a tribal government. Federal recognition included the adoption of a Constitution that defines tribal membership based on blood, and not country of citizenship (U.S. or

Mexico). Due to the fact that tribal lands extend into Mexico, the Tohono O'odham is the sole U.S. recognized tribe that enrolls Mexican members, although those members are not U.S. citizens.

Issue

The Tohono O'odham Nation's tribal lands were divided in the mid-1800s by the Gadsden Purchase and Treaty of Guadalupe Hidalgo, which settled the location of the border between the U.S. and Mexico. These treaties bisected pre-existing tribal lands.

Initially, and for over one hundred years, the Tohono O'odham were able to pass freely over the border. However, in the mid-1980s the border was tightened in an effort by the Immigration and Naturalization Service (INS) to stop illegal immigration and drug trafficking. Consequently, a barbed wire fence dividing the reservation in half and increased border patrol has made passing across the border difficult for tribal members. Entry anywhere but official check points is illegal and the entry points nearest to the reservation are 90 to 150 miles away.

The barbed wire fence marking the border inhibits travel of the Tohono O'odham throughout their tribal lands, however, crossing the border at legal check points also creates problems. These problems arise from lack of documentation, border patrol harassment, and an inconsistent policy of the INS toward the Tohono O'odham.

The Tohono O'odham people seek the ability to cross borders uninhibited. An open border for the tribe is important for several reasons. First, kinship and traditional ceremonies are vital to preserve and maintain culture. The border policies constrain the ability to travel to sacred sites, hindering the practice of religion. They also constrain ongoing cultural practices of travel and language, and the ability to pass these cultural

practices on to the Tohono O’odham’s children. Second, the border splits families. Some family members are in Mexico and unable to cross the border to visit family on the U.S. side. Third, the border prevents members from getting adequate health care. All members of the Tohono O’odham tribe, including Mexican nationals, are entitled to the basic services provided at the reservation clinic overseen by the U.S. government, but the border policies prevent this.

Issues of legal documentation are a significant factor in the difficulty of crossing the border. Up until the 1980s, most tribal members were born at home without birth certificates. In the O’odham tradition, births were not recorded in writing, but were remembered by elders who passed them on orally. Individuals who do not have a birth certificate find it very difficult to obtain a passport. Additionally, many Mexican Tohono O’odham live isolated farming existences that produce none of the documents, like pay stubs, bank statements, and rent receipts, that are required by U.S. officials to ensure that a visitor has no intention of staying in the country. Harassment from border officials is another significant problem. Elders of the tribe are often prevented from crossing the border. What’s more, religious artifacts are often confiscated.

The Gadsden Purchase and the Treaty of Guadalupe Hidalgo recognized the rights of Indigenous Peoples to maintain land, culture, and religion, regardless of political borders. Thus, current U.S. immigration policies violate treaty obligations.

Law

The Nation argues that the U.S. must fulfill its obligations under the Gadsden Purchase (1853) and the Treaty of Guadalupe Hidalgo (1948). Those treaties form a basis for uninhibited travel across the border. The Treaty of Guadalupe Hidalgo stated

that those peoples living in Mexico at the time of the treaty were considered Mexican nationals. As such, the indigenous populations were included in the provisions of the treaty. Article IX of the treaty states that those peoples' rights shall be maintained and protected in the free enjoyment of liberty and property and the people shall be secure in their religion without restriction. The Gadsden Purchase reaffirmed that Article of the treaty. Both treaties remain in effect; therefore, U.S. immigration law is in violation of those treaties.

The U.S. also has an international legal obligation to provide free travel across the border to the indigenous peoples who live along it. The U.S. has signed international documents that recognize the rights of Indigenous Peoples to self-determination and preservation of culture. In addition, documents not signed by the U.S. indicate customary international norms recognizing the rights of Indigenous Peoples along international borders.

The UN Charter and the Universal Declaration of Human Rights recognize the fundamental rights of all people. The International Labor Organization Convention No. 169 recognizes that Indigenous Peoples have the right to maintain and develop their identities, languages, and religions. The Convention contains provisions that advance indigenous cultural integrity, land, and resource rights. It also requires that signatories take affirmative steps to assist Indigenous Peoples in preserving their culture and uphold their right to travel freely within tribal lands.

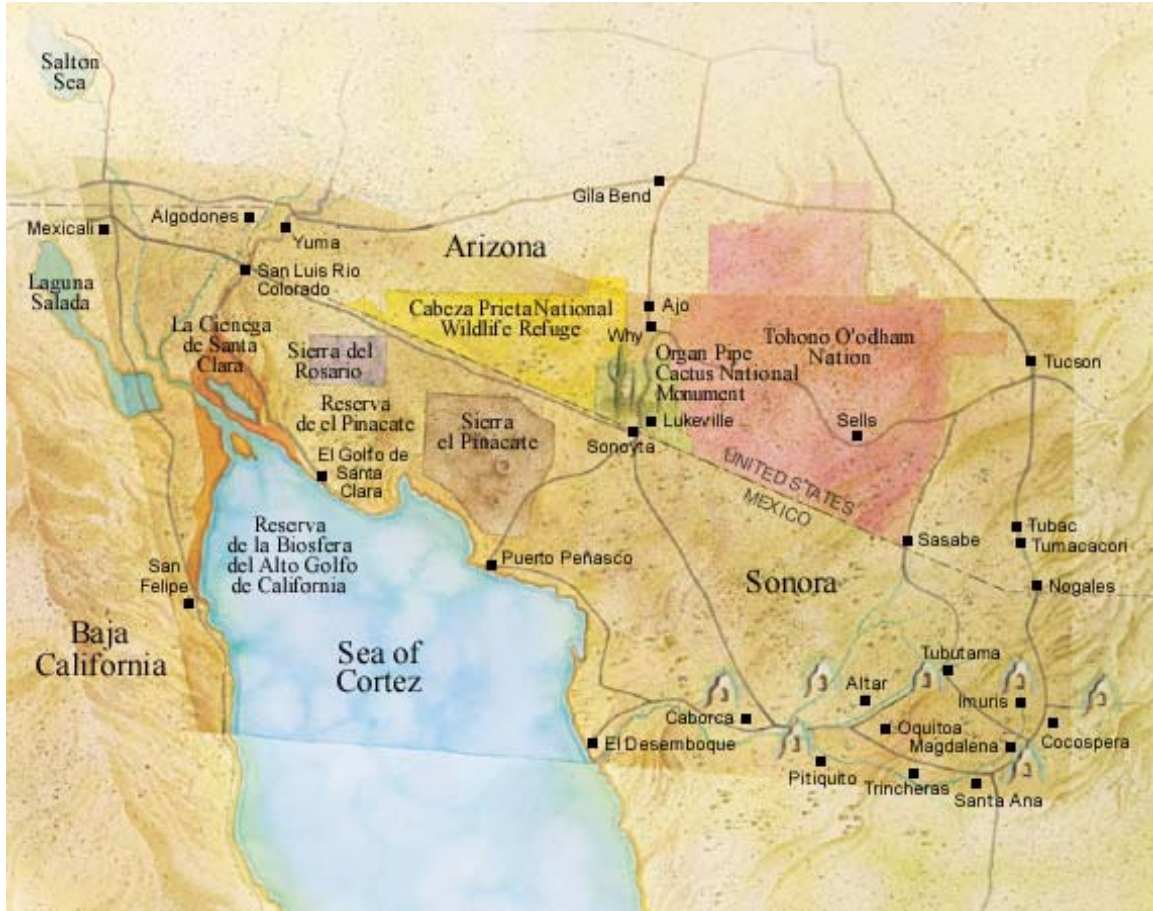
Customary international norms are reflected in several documents. The UN Draft Declaration on the Rights of Indigenous Peoples defines the rights to occupy traditional territories, to cross borders, and to protect indigenous cultures. The Genocide

Convention guarantees the right of cultural survival. Other documents include the UNESCO Declaration of Principles of Cultural Cooperation, the Helsinki Document, and the Vienna Declaration and Program of Action.

Conclusion

On February 13, 2003, U.S. Representative Raul Grijalva introduced the Tohono O'odham Citizenship Act in the House of Representatives. The Act would grant citizenship to about 8,400 tribal members not currently recognized as U.S. citizens. This would include those tribal members who were arrested and deported in the mid-1990s under new immigration laws. Those who were deported at that time are barred from re-entry because they lack documents proving citizenship or permitting travel in the U.S. Advocates for the Tohono O'odham Nation that were instrumental in getting the citizenship act introduced in Congress include community activists and the Indigenous Alliance Without Borders (http://www.derechoshumanosaz.net/english_main.htm).

MAP OF THE US-MEXICO BORDER



Source: La Ruta de Sonora Ecotourism Association: <http://www.laruta.org/borderlands.htm>

There is no designated Tohono O'odham reserve on the Mexico side of the Tohono O'odham Nation. However there are many Tohono O'odham communities in Sonora, up to some 90 miles south of Arizona into Mexico, as well as in the area of Sierra el Pinacate.