

MIGRATION AND BORDERS IN NORTH AMERICA
VIEWS FROM THE TWENTY-FIRST CENTURY

UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO
CENTRO DE INVESTIGACIONES SOBRE AMÉRICA DEL NORTE
COORDINACIÓN DE HUMANIDADES

**MIGRATION AND BORDERS
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VIEWS FROM THE TWENTY-FIRST CENTURY**

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UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO
Centro de Investigaciones sobre América del Norte

México, 2021



Primera edición, 27 de octubre de 2021

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La traducción de este libro se realizó con financiamiento
de la Universidad de Toronto.



ISBN 978-607-30-5206-1

Diseño de la portada / Cover Design: Patricia Pérez Ramírez
Foto de portada / Cover art: *Wayfarers*, Gabriela González Leal
Traducción y corrección de estilo / Translation and copyediting: Heather Dasher Monk
Lectura de pruebas / Proofreading: Contexto Académico

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Impreso en México / Printed in Mexico

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INTRODUCTION

In 2017, the University of Toronto Munk School of Global Affairs and Public Policy invited the Centro de Investigaciones sobre América del Norte (CISAN) of the Universidad Nacional Autónoma de México (UNAM) and the University of Michigan Gerald R. Ford School of Public Policy to join in a great tri-annual and tri-national initiative to study current relevant topics about the North American region in the North American Colloquium.

This project seemed fundamental to the CISAN because its mission is to study the United States and Canada and their relations with Mexico. Therefore, the North American Colloquium represents the opportunity to establish a long-term dialogue with colleagues working with similar or parallel subjects in their day-to-day research. Hence, it serves as host to a genuine spirit of open dialogue for all to understand the regional perspective from each of our national realities, based on the notion that a region is not made up solely of the institutions that decided we would become a commercial and economic region, but also by the communities inhabiting those regions and the dialogues that they decide to undertake.

The North American Colloquium has developed in turbulent times for the region. In 2018, the first part of this reflection was carried out by academics, agents of industry, and makers of public policies around the bargaining over the USMCA (previously known as NAFTA), which at that time did not have a name, for the bargaining had not yet concluded. Immediately thereafter, a decisive moment arose when Mexico became the country where numerous groups of Central American immigrants (known as the “caravans”) headed north, making the Mexico-United States border the focus of media and public attention. Precisely, the topic of the 2019 colloquium was borders and migration from our tri-national perspective. Regardless of the confinement experienced worldwide today, the third edition of the North American Colloquium

is being organized from Michigan with the environment as the most relevant line of inquiry.

In addition, this has all happened in the framework of the CISAN's thirtieth anniversary, parallel to the *2501 Migrantes* art exhibition, the most important and ambitious sculptural work of the twenty-first century in the whole Western Hemisphere. This is a different way of approaching migration, as an emotional force with the social commitment of the artist.

This book represents a journey that, from the second decade of the twenty-first century, presents innovative interpretations of migration and the conception of borders in North America. It is the result of the spirit that conceived the colloquium and the open dialogues that developed at San Ildefonso College.

The book has twelve chapters, which look at different aspects of U.S., Canadian, and Mexican migratory policies, as well as some that deal with Mexico-U.S. border management. We also include chapters on social and cultural issues in order to achieve a pluri- and interdisciplinary vision from academics from the three countries. Despite having made a broad, ambitious call, we recognize that it was not possible to bring together academics specialized in certain topics important for understanding these migratory policies and border issues, which are not included. However, we believe that this book includes important issues among the themes proposed in the colloquium meeting and that it will enrich knowledge about the North American region. Using the essays that were presented and duly peer reviewed, we have divided the book into four sections: "Canada"; "United States/Mexico Migration Trends, Policies, and Border Management"; "Cultural Representations through Cinema and Narratives"; and "History as an Epilogue." In the "Canada" section, we include three chapters that analyze Trump's immigration policy and its consequences for undocumented migration to Canada, trends in Mexican migration to Canada, and skilled migration in North America.

The first chapter, "Weathering the (Northern) Storm: Trump Administration Immigration Policies, Irregular Migration to Canada, and Consequences for Solidarity and Responsibility-Sharing with Latin America," by Craig Damian Smith, deals with harsh and militarized immigration, asylum, and border policies, all cornerstones of Trump's presidential campaign and, indeed, his presidency. Once in office, a series of domestic executive orders and foreign policy initiatives effectively gutted the U.S. asylum system, abandoned the international

refugee regime, and coerced neighboring states into containing migrants and asylum seekers. Latin America bore the brunt of these policies. However, domestic immigration enforcement and changes to the U.S. asylum system also had major effects on Canada, the United States' northern neighbor. Beginning in 2016, Canada began to experience its first sustained flow of irregular migrants claiming asylum at the Canada/U.S. land border. Almost 60,000 people claimed asylum at the border between January 2017 and April 2020. While the flow combined those who had resided in the United States and those who used it as a transit state, the opening of the route can be attributed to Trump administration policies, which created a climate of fear for U.S. residents with precarious immigration status and acted as a catalyst for their mobility. On the other hand, the Roxham Road route, on the New York-Quebec border, was possible given a "loophole" in the bilateral Canada-U.S. Safe Third Country Agreement (STCA), which allows people to claim asylum if they cross between regular ports of entry. In contrast to Mexico and Central American countries, Canada was able to avoid retributive policy responses by charting a middle path between abandoning the STCA, given the blatant lack of protection in the U.S. and securitizing the border to keep asylum seekers out. Maintaining the status quo meant that Roxham Road became a *de facto* humanitarian corridor for U.S. residents with precarious immigration status. While this was a positive outcome for asylum seekers, Canada all but abandoned solidarity with Latin America. Canada's middle path is thus ethically ambiguous at best and has significant consequences for solidarity and responsibility-sharing with fragile states hosting large numbers of migrants and asylum seekers in Latin America.

Jeffrey G. Reitz and Melissa H. Jasso contribute the essay "Mexican Migration to Canada: Trends and Prospects," acknowledging that Mexican migration to Canada, tiny relative to the flow to the U.S., has been growing over the past several decades. It is highly skilled migration, unlike its counterpart in the U.S. Still, highly skilled Mexicans also migrate to the U.S., and we can ask whether those who seek employment abroad prefer the U.S. or Canada, and why. Of course, the U.S. is a destination of choice for immigrants from many countries, and economic considerations suggest that this may be even more at the high-skill level than at low-skill levels. In addition, in the case of Mexico, the long-standing migration between the two countries has accelerated over recent decades, so powerful networks of chain migration exist

that also favor the U.S. The authors also consider that if skilled migration has been increasing, why is it happening? Answering this question may tell us whether it will continue or accelerate in the future. It also may help indicate possible policy interventions, to facilitate this migration stream. This history of Canadian immigration shows many efforts to control the origins/mix of immigration, and the policy question is whether Mexico represents a contemporary migration opportunity for Canada. Preliminary results of interviews with university-educated Mexicans indicate opportunities to increase skilled Mexican migration to Canada. While U.S. cities, especially in California and Texas, dominate most Mexicans' thinking about migration, Canada is viewed very positively for its social climate and is competitive with northern U.S. cities, particularly Chicago and New York.

Camelia Tigau's essay "Brain Gain in North America: Changes in a Long-Term Paradigm" advances on the hypothesis of a possible change of paradigm in the history of skilled migration, given that foreign human capital has been questioned recently by populist leaders in main destination countries like the U.S., but approved because of its economic advantages in alternative destinations like Canada. Considering that the U.S. has been the leading country in attracting talent since the World War II, a change in its skilled migration policy has regional and global outcomes in the policies of competing destination countries. Tigau's research is based on a mixed methodology that includes historical evidence from migration legislation in North America as well as qualitative data analysis around the brain gain vs. brain drain dichotomy in organizational and media reports. Findings confirm the relevance of discussing meritocracy as a selection strategy in migration policy, as well as the need for further research on domestic brain drain and brain waste as a cause for regional underdevelopment.

The second section, "United States/Mexico Migration Trends, Policies, and Border Management," includes several chapters, described as follows:

In her essay, "Trump's Asylum Ban and the López Obrador Response," Mónica Vereá examines the different measures imposed by the Trump administration during his four years in power to limit the admission of asylum seekers. The asylum ban was consistent with Trump's anti-immigrant agenda and has made it almost impossible to gain asylum in the United States. Vereá argues that the imposition of the Migrant Protections Protocols (MPP, also known as "Remain in Mexico") and López Obrador's response with a

bilateral agreement have made Mexico into a buffer zone for its northern neighbor, a virtual wall, where inexperienced Mexican national guards function as border patrols, stopping and detaining migrants coming mainly from Central America, at a very high cost in economic, political, social, and humanitarian terms.

In Ariadna Estévez's essay "Pockets of Disposability: Border Cities as Open-Air Jails for Asylum-Seekers," she explains how—without jobs, money, or any kind of certainty—deported migrants or those waiting for the resolution of their asylum applications find temporary shelter on the banks of rivers, under bridges, or inside drainage pipes in border cities like Tijuana. These spaces constitute a specially contained legal and social limbo, giving rise to precarious conditions that, at the same time, can lead to death or illness. This chapter describes and conceptualizes these outdoors jails for asylum seekers and other displaced people as "disposable holdalls." They are the consequence of policies and laws for migration and asylum in the United States. Other cities in Europe and South America are described as well to generalize this conceptualization.

The chapter about "Detained Migrant Children: Illegal, Discriminatory, and Racialized Norms in Mexico and the United States," by Elisa Ortega Velázquez, states that the political imperative of controlling irregular migration prevails over unaccompanied migrant children's right not to be detained and to be treated with dignity, regardless of the country and its formal respect for international human rights law. Firstly, the author studies the principle of unaccompanied migrant children's non-detention under international law. However, while she asserts that principle, she also recognizes that, in practice, migrant children are detained. In this regard, she states that, if they are detained, it should be as a last possible resort and certain guarantees should be established. Secondly, the article analyzes the detention system for migrant children in Mexico, where immigration law and policy legalize it, but where on numerous levels (international, constitutional, and federal) the laws protecting children's rights forbid it and assert the principle of non-detention of migrant children. Thirdly, the author examines the U.S. detention system, which openly puts the priority on control of the border regarding children's rights, given that the right for children not to be detained is not even mentioned in the Constitution. In the United States, the detention system for unaccompanied migrant children is completely legal, but it is "shielded" by a series of

legal guarantees that require the detention to be the least onerous possible for the children. Fourthly, she concludes that neither Mexico nor the United States grants effective protection to unaccompanied migrant children, but rather criminalizes them and deals with them under illegal, discriminatory, and racist standards, which are inconsistent with the human rights put forward by the international system.

The starting point of David Tobasura Morales, Soleil Gómez Velásquez, and Berta Guevara in their chapter “Migration Management and Control in Mexico: Mechanisms for Dominating Persons in Resistance” is the assumption that the state’s response to increased forced human mobility follows clear patterns globally. In this essay, the authors aim to position the debate about the influence that systems of domination have on the progress of a militarized approach as a form of handling migration that relegates human rights. Using the Foucauldian notion of apparatus (*dispositif*), they highlight the territorialization of military containment measures in Mexico, the weakening of asylum systems, and the criminalization of human rights advocacy as part of a regional approach under the global North-South logic. It is important to remember that the implementation of the apparatus generates both individual and organized resistance by people crossing borders in pursuit of survival and well-being.

The article “Managing the Border in the Twenty-First Century and COVID-19, 2017-2020,” by José María Ramos García, analyzes the role and impact of binational border policy in the twenty-first century from its beginnings. It questions the fact that its lessons were not considered in handling COVID-19 with a policy that would have reinforced the sanitary protocols on the binational border instead of closing the U.S.-Mexico border for Mexican border residents with a U.S. visa. Likewise, it analyzes U.S. border security policies, the main strategies and impacts on the border and binational relationship with Mexico, and others associated with the border in the twenty-first century, emphasizing the administration of President Donald Trump. Ramos adds the COVID-19 context to his analysis, considering its impact globally, as well as on the border relationship and under the US-Mexico Joint Initiative to Combat the COVID-19 Pandemic. This initiative reinforces a notion of border security from the U.S. perspective and neglects efficient border cooperation in terms of health prevention according to the pertinent protocols.

We have called the third section “Cultural Representations through Cinema and Narratives,” and it includes three chapters:

“Mexican Migrants in Three Canadian Films: A Minimum Filmography,” by Graciela Martínez-Zalce, examines three National Film Board motion pictures about Mexican migrants living in Canada for different reasons: *Mexico Dead or Alive* (1996), *El contrato* (The Contract) (2003), and *Taxi libre* (2011). The films are the starting point for critically observing both countries’ political and migratory contexts, as well as the role of the institutional mandates of a public production company and filmmakers’ personal commitments to the representation of those who arrive in Canada either as skilled migrants, temporary workers, or political exiles.

The second chapter, “Civilization Ends Where Grilled Steak Begins: Cultural Representations of the Sonora-Arizona Border in Film,” by Luis E. Coronado Guel, uses as its starting point the analysis of the first volume of the José Vasconcelos’s memoirs, *Ulises criollo* (Criollo Ulysses), which describes the first years of his childhood when the Mexican government sent his father to the border between Arizona and Sonora as a customs agent. Those boyhood memories of a man who later would become one of the twentieth century’s most prominent intellectuals depict how remote the U.S-Mexico border has been perceived in heart of the country, as a place of clashes and conflict ruled by Apaches. This cultural representation of the border captures the period’s ideas about a region whose dynamic has been described negatively as marginalized, isolated, and in constant conflict. Coronado Guel explores some of the examples of how the frontier between Sonora and Arizona has been represented in the national imaginary from the outside, from a centralist perspective and distant from its harmonious local dynamics. This is the story of how this neighboring region, as well as the desert that surrounds it, has been constructed through cinema to become the cultural representation of a place where Mexican nationality is lost, diluted, and corrupted.

Finally, the last chapter in this section, “From Narrative to Practice: Contradictions of an Ambiguous Migration Policy in Contemporary Mexico,” by Juan Carlos Narváez Gutiérrez, Alethia Fernández de la Reguera, and Luciana Gandini, analyzes how, as a result of the waves of migrant caravans toward the end of 2018 and in 2019, the Mexican government has implemented numerous strategies to respond to the visible arrival of thousands of migrants in need of humanitarian protection. The authors consider that the

Mexican government's performance in this regard is characterized by a contradiction between, on the one hand, emphasizing the focus on human rights in its official discourse, and, on the other hand, criminalizing the migrants through migratory management prioritizing detention and deportation over mechanisms for humanitarian protection. This chapter raises the issue of the construction of the narratives and the normative and institutional responses implemented. Thus, throughout the text, the authors aim to answer the following questions: Are caravan waves a new, unprecedented public issue? Does the composition of the caravan waves address a change in the migrant flow? Are current migratory policies appropriate for the social complexity of the phenomenon begun with caravans?

We decided to open a last section that we have called "History as an Epilogue," which includes S. Deborah Kang's essay "The Legal Innovations of the Immigration and Naturalization Service in the U.S.-Mexico Borderlands, 1917-1946." She traces how the Immigration and Naturalization Service (INS) on the U.S.-Mexico border functioned not only as a law enforcement agency but also as a lawmaking body. While the U.S. Congress and courts provided the outlines of a federal immigration policy, local immigration officials articulated that policy in more detail through the regular exercise of their administrative discretion and the preparation of legislative amendments to immigration statutes. As a result of these lawmaking activities, in the Southwest the INS generated a distinct and complex immigration policy that simultaneously closed the border to the entry of immigrants, opened it for the benefit of the border economy, and remapped the border as a jurisdiction for the policing of undocumented immigrants. For much of the twentieth century, the INS sustained all three approaches to immigration regulation along the U.S.-Mexico border despite their contradictory aims. In so doing, it transformed the international boundary into a borderland.

To analyze the urgency of the complex issues involved in the administration of borders in North America and migratory flows in the region, it is essential to comprehend the development of policies that impact the three neighboring countries and influence the decisions that would impact them. The chapters in this book aim to do this. Its main contribution is to do so from a tri-national and interdisciplinary perspective.

SPECIAL THANKS

To Peter Loewen and Jeffrey G. Reitz from the University of Toronto and Ann C. Lin and John D. Ciorciari from the University of Michigan, all coordinators of the colloquium topic of borders and migration, as well as to the Colegio de San Ildefonso team.

Graciela Martínez-Zalce

Mónica Vereá

Canada

WEATHERING THE (NORTHERN) STORM: TRUMP ADMINISTRATION IMMIGRATION POLICIES, IRREGULAR MIGRATION TO CANADA, AND CONSEQUENCES FOR SOLIDARITY AND RESPONSIBILITY-SHARING WITH LATIN AMERICA

*Craig Damian Smith**

Introduction

In winter 2016, Canada began to experience its first large-scale cross-border influx of asylum-seekers since the mid-1990s. Almost 55,000 people walked across the border between small towns in New York state and the province of Quebec until the border was closed in response to the COVID-19 pandemic. It is no coincidence that this flow emerged on the heels of the election of Donald Trump—in fact, research I carried out with asylum-seekers who used the route at Roxham Road in upstate New York provides strong evidence that the flow was initially comprised of people with precarious immigration status in the U.S., for example those with pending asylum cases, people with Temporary Protected Status, or undocumented immigrants. Thereafter, routes to Canada became far more transnational as people used the U.S. as a transit state. Many reported that they avoided claiming asylum in the U.S. after taking long, overland journeys from or through Latin America.

The Roxham Road case provides evidence for the ways in which Trump administration immigration, asylum, and border policies reverberated throughout the Western Hemisphere and beyond. And while the scale of asylum cases is paltry compared to the number of displaced people in Latin America and the effects on state policies and communities there, it is remarkable in that Canada had signed a bilateral Safe Third Country Agreement (STCA) with the U.S. with the express goal of preventing such an influx. As the Trump administration all but ended access to asylum and refugee resettlement, and thus defected from the international refugee regime, resulting policy

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differentials with neighboring states altered asylum-seekers' decision-making and shifted the burden to neighboring states.

In the remainder of this chapter, I begin by outlining the emergence of the Roxham Road route and how it was facilitated by the STCA and point out some general trends about the people arriving in Canada. In the next section, I provide evidence from original interviews with over 300 asylum-seekers who used Roxham Road to show that Trump administration policies caused that route to emerge. I then argue that Canada has, in turn, shirked its commitments to responsibility-sharing in the region by curtailing official development assistance and failing to take advantage of new avenues for resettling displaced people from Latin America. I conclude that, despite wanting to keep its head in the sand, Canada is implicated in hemispheric migration dynamics and has an interest in helping address growing displacement crises in Latin America.

Roxham Road and the Canada-U.S. Safe Third Country Agreement

Similarly to the European Union's Dublin Regulations, the 2004 Canada-U.S. Safe Third Country Agreement (STCA) stipulates that people must claim asylum in the first safe country of arrival. It mutually recognizes both states as safe countries for international protection and stipulates that asylum-seekers can be turned back at the border if they try to enter from an adjoining state, with exceptions for unaccompanied minors, people with immediate family in either country, or those facing the death penalty (UNHCR, 2006; Macklin, 2003). While often overlooked in academic and advocacy literature, the STCA is predicated on the norm of responsibility-sharing for international protection. The preamble recognizes "both countries' traditions of assistance to refugees and displaced persons abroad, consistent with the principles of international solidarity that underpin the international refugee protection system, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced."¹ Importantly, the STCA only

¹ See full text of "Canada-U.S. Safe Third Country Agreement" (December 5, 2002) at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/final-text.html>.

applies to official ports of entry on the land border. People who arrive at airports or cross the border between ports of entry are eligible to claim asylum.

Canada's institutions and practices around the border, immigration enforcement, and asylum were significantly influenced by asylum-seekers entering from the U.S. in the late 1990s. Presaging Roxham Road, a "border rush" of Central and South Americans in the mid-1990s led to asylum backlogs, anti-refugee sentiment, and criticism of government policy (Garcia, 2006). From 1995 to 2001, between 8,000 and 13,000, or roughly one-third of all asylum-seekers, arrived via the U.S. given Canada's more permissive asylum system (Crépeau and Nakache, 2006). Only 200 per year entered the U.S. from Canada (Cowger, 2017). Despite Canadian efforts, the U.S. had no interest in signing an agreement to limit the northward flow. After September 11, 2001, Canada seized the opportunity to include the STCA in a bilateral Smart Border Accord. It came into force at the end of 2004. While framed in terms of mutual responsibility, its fundamental purpose was to prevent asylum-seekers from entering Canada.

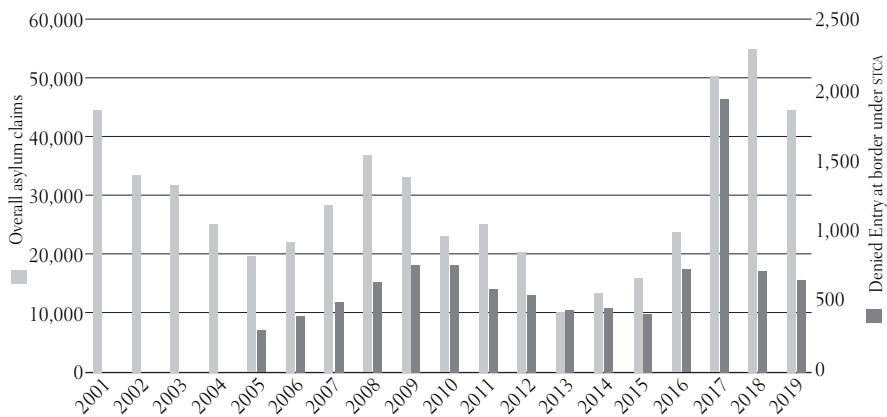
As illustrated in Figure 1 below, overall asylum claims dropped dramatically after 2004, largely due to the STCA. Canadian asylum rates fluctuated in the intervening years given exogenous factors like wars in the Middle East; the European Union's enlargement into Central and Eastern Europe in 2004 and 2007; and visa restrictions for countries with high numbers of asylum-seekers like Mexico and the Czech Republic in 2009 (Yeates, 2018: 12).

From 2005 to 2019, 9,836 people were denied entry at the Canadian border and returned to the U.S. While this was a very small number in terms of overall asylum claims in Canada, various federal governments have claimed that the STCA is effective in controlling asylum venue shopping. It remains an open question as to how many people would have made the decision to claim asylum in Canada in the absence of the agreement. What is clear from the data is that ineligible claims under the STCA were low in global terms (an average of 730 per year from 2005 to 2015) and fluctuated more or less in tandem with overall asylum claims.

Overall asylum claims and people turned back at the border rose dramatically after the Trump's election in 2016. Beginning that winter, a small number of asylum-seekers began to cross the U.S. / Canadian border between Mid-Western states and Manitoba. Several people lost fingers and toes to frostbite before the flows shifted to the more accessible Roxham Road route, on

the New York / Quebec border. Once that route became popularized, the number of people turned back at the border dropped precipitously from an all-time high of almost 1,800 in 2017, to 700 in 2019. Roughly 53,000 people claimed asylum at Roxham Road from the spring of 2017 to March 2020, when the route was effectively closed as a result of the border closure and domestic U.S. travel restrictions in response to the COVID-19 pandemic.

FIGURE 1
TOTAL ASYLUM CLAIMS AND STCA INELIGIBLE ASYLUM CLAIMS (2001-2019)



SOURCES: Annual STCA data transmitted to author from Immigration, Refugees, and Citizenship Canada. Annual asylum statistics from Immigration and Refugee Board.

While Canada felt relatively significant domestic impacts from the flow, particularly refugee status determination backlogs, major governmental expenditures, stress on municipal reception capacities, and intergovernmental burden-shifting, it is more salient to address the fact that the flow was caused by policy changes in the U.S. The first major cohort of people arriving at Roxham Road were U.S.-resident Haitians, who feared losing Temporary Protected Status under the Trump administration and were spurred to move by misleading social media posts about Canada’s asylum policies (Noël, 2017; Stevenson, 2017). They were soon joined by co-nationals arriving from Brazil, Chile, Mexico, and Venezuela, as well as from Haiti itself. This latter cohort were spurred to claim asylum in Canada as a way to permanently regularize their status.

TABLE I
TOP 25 COUNTRIES OF ORIGIN AND YEARLY TOTALS AT ROXHAM ROAD

	2017			2018			2019			2020		
1	Haiti	5,845	Nigeria	7,645	Nigeria	2,915	Haiti	395				
2	Nigeria	3,730	Colombia	1,075	Colombia	1,470	Nigeria	320				
3	U.S.	1,305	U.S.	1,040	DR Congo	995	Colombia	320				
4	Turkey	540	DR Congo	690	Pakistan	980	Pakistan	255				
5	Eritrea	450	Pakistan	635	Haiti	865	Angola	150				
6	Syria	435	Haiti	595	U.S.	855	DR Congo	140				
7	Yemen	415	Turkey	580	Sudan	715	Sudan	135				
8	Brazil	280	Sudan	440	Angola	700	U.S.	125				
9	Sudan	245	Angola	420	Turkey	425	Sri Lanka	75				
10	Djibouti	225	Bangladesh	285	Venezuela	405	Venezuela	65				
11	Burundi	220	Eritrea	270	Yemen	320	Afghanistan	60				
12	Pakistan	215	Burundi	270	Burundi	280	Turkey	55				
13	Colombia	205	Venezuela	245	Egypt	280	Yemen	55				
14	Chad	190	Sri Lanka	245	Rwanda	280	Ethiopia	50				
15	Angola	180	Syria	240	Sri Lanka	275	Rwanda	45				
16	Azerbaijan	165	Yemen	235	Stateless	235	Brazil	45				
17	DR Congo	165	Chad	225	Libya	230	Zimbabwe	45				
18	Palestine	150	Stateless	215	Bangladesh	220	Burundi	40				

TABLE 1
TOP 25 COUNTRIES OF ORIGIN AND YEARLY TOTALS AT ROXHAM ROAD
(continued)

	2017		2018		2019		2020	
19	Egypt	100	Egypt	200	Chad	205	Nicaragua	35
20	El Salvador	90	Palestine	195	Brazil	190	Liberia	35
21	Venezuela	90	Ethiopia	160	Zimbabwe	185	Stateless	30
22	Libya	45	Zimbabwe	150	Nicaragua	175	Palestine	30
23	Bangladesh	40	El Salvador	145	Palestine	155	South Africa	30
24	Ethiopia	40	Rwanda	130	Ethiopia	150	Eritrea	25
25	Iraq	40	Libya	125	El Salvador	140	Cameroon	25
Totals	(Apr.-Dec.)	16,040	(Jan.-Dec.)	18,310	(Jan.-Dec.)	15,985	(Jan.-Mar.)	2,935

SOURCE: Data transmitted to author by Immigration, Refugees, and Citizenship Canada

Mainstream media attention quickly popularized Roxham Road, and routes to Canada became more transnational with a wider array of source countries. Internal government estimates suggest that roughly 40 percent of those who arrived at Roxham Road were U.S. residents, and the remaining 60 percent had transited through the U.S. with the intention of claiming asylum in Canada. While those who already had or were able to obtain visas flew directly to the U.S., by late 2018 a significant number, predominantly from sub-Saharan Africa, were flying to South America to join other migrants on the long overland route to Mexico, the U.S., and eventually to Canada. Asylum-seekers from Latin America were well-represented in claims at Roxham Road, as evidenced by the top twenty-five source countries per year (see Table 1). Canada thus endured the impacts of U.S. policy changes and was brought in to long-standing mixed migration routes

The *STCA* has twice been challenged in Canadian courts. In 2005, the first challenge, brought by advocacy organizations, centered on an anonymous Colombian national who had not sought asylum in Canada, given the understanding that he or she would be turned away at the border. The appellants argued the *STCA* breached Canada's constitutional obligations under the Charter of Rights and Freedoms and its international legal responsibilities under the 1951 Refugee Convention and Convention Against Prohibition Torture because the would-be asylum-seeker would face persecution in Colombia if removed from the U.S. While the trial judge upheld the challenge, a Federal Appeals Court judge struck down the decision on the grounds that the appellant did not have standing to bring the case, that the trial judge ruled on a hypothetical scenario given that the asylum-seeker never attempted to enter Canada, and that the case was moot because he/she had received protection in the U.S. in the interim. The Supreme Court of Canada declined to hear the case in 2008, thus ending the appeals process.

A second Federal Court case, heard in late 2019, centered on asylum-seekers who faced removal to the U.S. after entering Canada at a port of entry. Importantly, it argued that Trump administration asylum and immigration policies had fundamentally changed the nature of access to protection in the U.S. to the extent that the safe country designation could no longer stand and that rejected asylum-seekers would face punitive detention in the U.S. In July 2020, the court declared the *STCA* invalid, arguing that Canada was responsible for returning asylum-seekers to conditions of inhumane,

arbitrary, and punitive detention and possible refolement.² The decision focused narrowly on detention and did not address broader changes to the U.S. asylum system or growing divergence with Canadian procedures. Though it was considered a victory for refugee rights, Canada's minister of public safety announced the government would appeal the decision on the grounds that the STCA was effective and the U.S. remained a safe country. In effect, the STCA now ties Canada's commitment to international protection to the policies of a neighbor with a clear policy agenda of dismantling its domestic asylum system, defecting from the international refugee regime, and containing migrants in Mexico and Central American transit states where protection standards are low and from which large numbers flee.

Trump Administration Policies as Drivers of Asylum in Canada

Immigration was a central plank of the Trump election campaign. Once in office, President Trump enacted a series of sweeping executive orders (EOs) and presidential proclamations. Seven of seventeen EOs in the first two months focused on immigration, several of which were drafted during the transition period before Trump's inauguration with an eye to immediately fulfilling his platform (Davis and Shear, 2019). In contrast to immigration-related EOs of previous presidents, these were "substantive policy-making documents" focused on curtailing immigration and refugee resettlement, militarizing the southern border, increasing inland enforcement, incarcerating asylum-seekers, and defunding sanctuary cities (Waslin, 2020: 55). My findings suggest that four major policy changes in those first months caused the emergence of the route.

On January 27, one week after his inauguration, President Trump signed the so-called "travel ban" barring travel and resettlement from seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Though the announcement had a delayed effect on Canada, several respondents relayed how their mobility decisions were spurred by the fact they could not leave the U.S. to renew visas.

² For the full Federal Court decision, see <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/482757/index.do>.

The second major policy change came one day after the travel ban, when the Department of Homeland Security (DHS) announced a “last in, first out” system, suspending pending asylum cases indefinitely. The stated goals were to reallocate resources to the southern border, avoid contributing to a national backlog of over 320,000 cases, and “deter those who might try to use the existing backlog as a means to obtain employment authorization” (DHS, 2018). It also spurred people to look for options. Respondents relayed how loss of employment authorization meant they were unable to pay for legal representation. Thirty-five percent of respondents reported barriers to asylum influenced their decisions, which often included a clear process of weighing information about Canada. Eight respondents avoided filing claims altogether given the cost and duration of the process.

Third, beginning in late April 2017, the Trump administration made public pronouncements about terminating Temporary Protected Status (TPS) for roughly 2,500 Nicaraguans and 58,600 Haitians.³ In late May, the DHS announced an extension until January, but stipulated it was only to allow Haitians to get their affairs in order before deportation (Blitzer, 2018b). Haitians accounted for 5,785 out of 15,915 asylum claims (36.3 percent) from April to December 2017. Roughly one-third resided in the U.S. and were spurred by TPS announcements.

While the travel ban, asylum policies, and TPS termination created enabling conditions, immigration enforcement had the most widespread impacts on asylum in Canada. Fifty-eight percent cited inland enforcement as central to their decision. Interviews conveyed a palpable sense of anxiety among unauthorized communities (Lind, 2017). Respondents were driven by the substance of policies, but also by the pace of policy change and perceived climate of discrimination, which many framed as a result of Trump administration rhetoric (Czaika and de Haas, 2015).

In the first week of his presidency, President Trump signed a sweeping EO, “Enhancing Public Safety in the Interior of the United States,” to increase the number of Immigration and Customs Enforcement (ICE) agents, defund and target sanctuary jurisdictions, and increase workplace raids to

³ The DHS originally deferred termination for 250,000 Salvadorans and 57,000 Hondurans, but later announced it would allow TPS to expire in late 2019. Other nationalities would lose status throughout 2019 and 2020. A court injunction in *Ramos v. Nielson* meant TPS was extended to January 2020 for recipients from El Salvador, Haiti, Nicaragua, and Sudan.

apprehend “all removable aliens” (Pierce, 2019). While arrests varied across jurisdictions, the overall number escalated dramatically given new policies to detain and deport regardless of criminal record or compelling reasons to remain (Capps et al., 2018). In June 2017, the head of ICE testified before Congress, stating, “If you’re in this country illegally and you committed a crime by being in this country, you should be uncomfortable, you should look over your shoulder. You need to be worried” (Blitzer, 2018a). The quote and aggressive exchanges with House Democrats were widely circulated in U.S. media.

Respondents often considered immigration enforcement and Trump administration discourse as a precursor to harsher policies and decided to get ahead of the curve. They took pains to illustrate how precarious status was made increasingly untenable by enforcement measures. Eighteen percent reported limited access to services, and thirty-one percent reported lack of employment opportunities informing their decisions, but that they ultimately made the decision to leave because of immigration enforcement.

The most prevalent narrative was anxiety about arrest and deportation, regardless of immigration status. Respondents reported that anxiety about arrests permeated immigrant communities around the U.S., with detailed stories of how these anxieties around rumors of impending ICE raids drove people from New Jersey, New York, Texas, and throughout the U.S. South. Non-immigration-related experiences with authorities also led to fear of deportation, for example, simple traffic stops or the need to interact with authorities for other matters. Anxiety was often tied to experiences of racism, which long-term residents in particular felt was emboldened by Trump’s election.

For most, precarious status, anxiety, and awareness of Roxham Road were necessary, though not sufficient, conditions for mobility. The majority (58 percent) were prompted by personal catalysts around immigration enforcement, most of which centered around friends, family, and community members being swept up in ICE raids. Several reported that until 2016 they had felt prosperous and protected by sanctuary policies, but that stories of immigration enforcement and pervasive media accounts that sanctuary jurisdictions would be targeted made them feel as if they would no longer be protected. Indeed, sixteen respondents recounted how friends or family members had been arrested and deported from within sanctuary jurisdictions. Catalysts also included lack of access to healthcare for chronic and acute

medical conditions, being asked for ID at hospitals or schools, and threats from employers.

While policy changes created an enabling environment, awareness of Roxham Road was a necessary condition for the rapid expansion of asylum claims. Seventy-one percent reported that new knowledge about the route contributed to their decisions. Media attention meant detailed information was readily accessible online and shared via social media and did not require smugglers or other facilitators. The majority of respondents relayed how Roxham Road was a consistent topic of conversation among undocumented communities or people with pending asylum claims. Videos and articles were shared widely on social media and messaging apps. Several echoed a chain of events progressing from anxiety, to searching for mobility options, to considering Roxham Road.

One of the more sensitive findings is the role of Canadian policy in people's mobility decisions, particularly given global trends of curtailing asylum and social support to deter arrivals. Respectively, 48 percent and 44 percent of respondents said perceptions of Canada's asylum system and society affected their choices. Most were aware they would be eligible for employment, social assistance, and healthcare, and that children would immediately be enrolled in school. But Canadian and U.S. policies did not weigh equally in mobility decisions. While Canadian asylum policy remained largely consistent and the government refused to deem the U.S. unsafe for refugees, in the early days of the Trump administration, Canadian political pronouncements responded quite directly to U.S. policy. Most significantly, on January 28, 2017, one day after the travel ban, Prime Minister Trudeau published a tweet reading, "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada." Conservative opposition politicians and media claimed the tweet was responsible for Roxham Road.⁴

My research suggests there is little reason to think this type of elite signaling affected peoples' decisions.⁵ Only 3 percent of respondents reported

⁴ This argument was made by the Conservative immigration critic, the Honourable Michelle Rempel (2017), and Diane Francis (2018).

⁵ The most relevant comparison is Chancellor Angela Merkel's 2015 suspension of EU Dublin Regulations. While suspending Dublin did not cause irregular migration to Europe, migrants already *en route* chose Germany over other states (Spijkerboer, 2016; Pries, 2019).

knowledge of Trudeau's tweet, while more than half reported being spurred by U.S. policies. Asylum claims at Roxham Road remained constant at roughly 500 per month until May 2017, four months after the tweet, when they increased dramatically. Volume peaked during Canadian government attempts to deter potential migrants in the U.S.⁶ In general, irregular mobility decisions are often made quickly, under duress, from narrow options. Research in Europe shows asylum-seekers' preferences determined by existing social and family networks, immediate physical security, access to legal protection, and expectations for employment opportunities (Crawley and Hagen-Zanker, 2018; Kuschminder, 2018). Our interviews confirmed similar dynamics, though significantly simpler given the two viable options of staying *in situ* or claiming asylum in Canada.

In contrast, rumors of more restrictive Canadian policies directly influenced mobility decisions. Our final round of interviews took place over two months in Montréal. These were unique in that they were conducted at frontline shelters in the first weeks after respondents' arrival, immediately preceding the November 2019 Canadian federal election. The Conservative Party of Canada, the only viable opposition party, had spent two years employing rhetoric around "illegal" and "crisis" migration; their election platform included extending the STCA to the entire border, and potentially incarcerating asylum-seekers (Hill, 2019). Nine respondents accelerated plans because of rumors of what they referred to as a "Canadian Trump" and "anti-refugee" party vowing to "close the border." Respondents from throughout Latin America, particularly Colombia, urged friends to make the journey lest Canada harmonize policies with the U.S.

Canada's Non-Response to Burden-Sharing in Latin America

The Canadian government has done remarkably little to address Latin America's significant displacement crises, particularly the exodus of almost five million refugees and migrants escaping economic collapse, food insecurity,

⁶ Members of Parliament conducted nine missions to U.S. cities with large undocumented populations in 2017 and 2018 and placed ads in minority-language media (*Global News*, 2017; *The Toronto Star*, 2017).

and political repression in Venezuela, and the regional displacement of more than 400,000 people from the countries of the Northern Triangle of Central America (NTCA) (El Salvador, Honduras, and Guatemala). This means that roughly 10 percent of the world's displaced people reside in the Western Hemisphere. To date, Canada's efforts at responsibility-sharing in the region have predominantly taken the form of modest financial support and political activism, in stark contrast to its engagement with other crises.

Canada takes part in the Regional Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela Regional Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela (rv4), and a Regional Interagency Platform. Canada contributed Can\$2.2 million in emergency humanitarian relief for Latin America from 2017 to 2019. In 2019, it pledged Can\$52.9 million in longer-term support to regional responses, including humanitarian and development aid, with an additional Can\$27 million promised in May 2020 to assist host states during the COVID-19 pandemic, for a total contribution of Can\$80 million. The regional response framework has a current funding gap of over US\$1.1 billion.⁷ From a more political standpoint, Canada has taken a lead role in the Lima Group, a group of fourteen states allied in their calls for regime change in Venezuela, which recognizes the opposition politician Juan Guaidó's claim as the country's leader. The Lima Group is predominantly made up right-wing governments with poor records on human rights, good governance, and rule of law, in addition to often brutal persecution of indigenous peoples, opposition politicians, civil society groups, and protestors. These dynamics have led to democratic backsliding in countries with which Canada is allied (Amnesty International, 2019; Kimber and Kirk, 2019; Freedom House, 2020).

The international community has recognized that traditional, short-term humanitarian "care and maintenance" approaches are failing displaced and host populations alike and that return to countries of origin and international resettlement for most refugees is exceedingly unlikely. In September 2016, all UN member states signed the New York Declaration for Refugees and Migrants. The declaration initiated the process of drafting two global compacts on migrants and refugees. The content of the compacts, signed in 2018, are geared toward inclusive and sustainable development for refugees

⁷ For up-to-date statistics see the rv4 website, <https://r4v.info/es/situations/platform>.

and host communities, and safe, orderly, and productive migration management. The Global Compact on Refugees is framed around “predictable and equitable burden and responsibility-sharing” and “collective outcomes and progress” toward easing pressure on host states, enhancing refugee self-reliance, expanding access to third country solutions (that is, resettlement), and supporting conditions for return to countries of origin.

Tools for effective responsibility-sharing are encapsulated in the Compact’s Comprehensive Refugee Response Framework (CRRF), which calls for collaboration between humanitarian and development actors. It proposes novel international finance and development mechanisms to support host-state development, plus livelihoods, educational programs, and inclusion in social systems to foster refugee self-reliance rather than short-term humanitarian assistance. Linking humanitarian and development assistance is necessary given that the majority of the world’s refugees will spend decades displaced close to their countries of origin. It is also particularly important given that most refugees live alongside host populations, rather than in camps.

Latin America has the world’s most urbanized displaced population, with roughly 95 percent living in urban areas, making traditional humanitarian assistance challenging (Devictor, 2017). The UN, member states, the World Bank, international financial institutions, civil society organizations, and some private sector actors have begun to engage in partnerships in pilot states. Importantly, the CRRF calls for the creation of *new, and additional* funding mechanisms “over and above regular development assistance.” While calls to link humanitarian and development are not new, the CRRF offers a novel avenue for responsibility-sharing at a unique historical moment (Crisp, 2001).

Six countries in Central America have signed on to a regional implementation of the CRRF. The Brazil Declaration and Plan of Action, signed in December 2014 by twenty-eight countries and three territories, included “Solidarity with the NTCA in Seeking and Implementing Durable Solutions.” In July 2016, Costa Rica hosted a high-level round table with the UNHCR and the OAS, resulting in the San José Action Statement on regional displacement. Through the San Pedro Sula Declaration, six states (Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama) signed the Comprehensive Regional Protection and Solutions Framework, known by its Spanish acronym MIRPS (*Marco Integral Regional para la Protección y Soluciones*).

Canada has yet to meaningfully contribute, or promise to contribute to any unique funding or responsibility-sharing through MIRPS. Canadian development projects included in official MIRPS documents are merely existing programming repackaged as “root-causes” interventions rather than new or additional support (UNHCR, 2018b). Canada’s responsibility-sharing through financial support is complicated by rather paltry official development assistance (ODA) to Latin America and the Caribbean. This is partly due to the fact that most countries in the region are considered middle-income states, and thus not considered a high priority for Canadian assistance (Macdonald, 2019). The NTCA sub-region accounts for a total of 7 percent of Canadian ODA. Canada’s global development assistance will remain stagnant at 0.26 percent of GNI (a significant decrease from 0.31 percent from the 2012 assessment), and thus is set to decrease in real dollar terms against inflation and economic growth (CCIC, 2018; OECD, 2018).

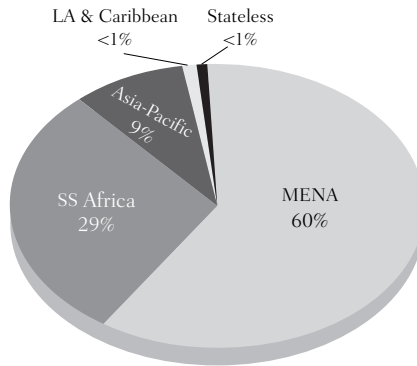
Canada’s only genuine engagement with MIRPS was through Immigration and Refugee Board (the IRB, Canada’s independent, quasi-judicial tribunal that conducts refugee status determination) projects to increase protection and refugee status determination capacity in Mexico, by sending senior decision-makers to advise COMAR (Mexico’s asylum agency). The IRB’s 2019 budget listed Can\$60,000 for the project. In addition, Canada is cooperating with the UNHCR’s Asylum Capacity Support Group, which is geared toward U.S. and Canadian support for COMAR (UNHCR, n.d.). The idea is to support COMAR through country-of-origin information, translating IRB country-of-origin profiles to Spanish and developing institutional plans to increase COMAR capacity.

Marginally increasing Mexican asylum capacity pales in comparison to the scale of the problem. More to the point, Mexico is far from a safe country for migrants, and it systematically deports vulnerable people. Deportation of gangs from the U.S. and Mexico demonstrably destabilized the region and significantly contributed to displacement. More than 800,000 people were deported from the U.S. to NTCA countries between 2007 and 2016, when gang violence and displacement spiked. During this period deportations were offset by Deferred Action on Childhood Arrivals and Temporary Protected Status in the U.S., both of which were at risk of being cancelled by the Trump administration.

Given the scale of displacement in Latin America and Canada’s well-established practices in global refugee resettlement, it might be assumed that Canada would play a lead role in facilitating resettlement from the region

in the absence of meaningful financial commitments. From January 2015 to June 2020, Canada resettled a total of 154,820 people from around the world. Of those resettled during this period, 93,270 were from the Middle East and North Africa, 45,725 from sub-Saharan Africa, and 13,420 from the Asia-Pacific region. Only 1,215 were resettled from the Western Hemisphere, amounting to just under 1 percent of resettlement over the five-year period. Of those, 945 were from Colombia. Canada, therefore, all but ignores the prospect of resettling refugees from Latin America.

FIGURE 2
REFUGEE RESETTLEMENT TO CANADA BY REGION OF ORIGIN
(JANUARY 2016 - JUNE 2020)



SOURCE: Government of Canada (n.d.).

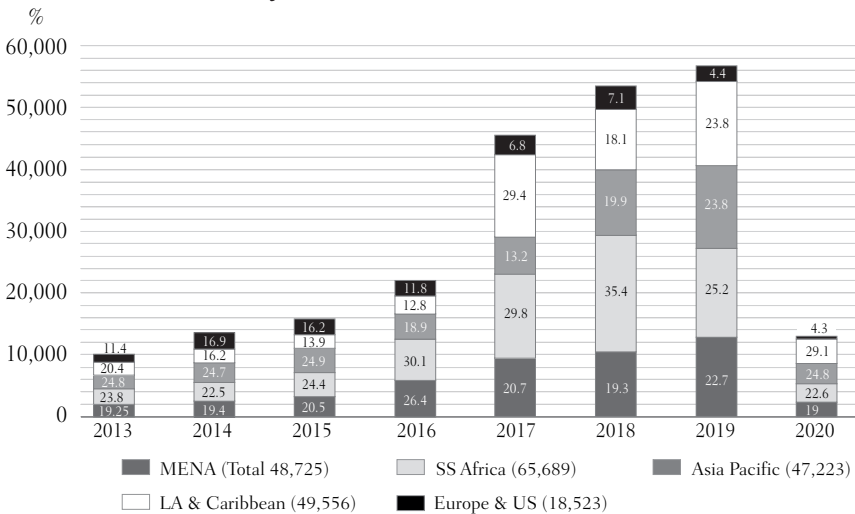
While resettlement from Latin America and the Caribbean is hampered by limited capacity to identify and register refugees with the UNHCR or host states, by the end of 2020, the UNHCR projects a total of just over 377,000 registered refugees and 1.4 million asylum-seekers in Latin America, in addition to the 4.1 million displaced from Venezuela, and over 6 million other people of concern or in refugee-like situations (UNHCR, 2020). The region's displaced population are therefore not out of reach.

Canada, however, has largely ignored new resettlement programs under the MIRPS process. The Protection Transfer Arrangement (PTA), an agreement for increased responsibility-sharing between UNHCR, IOM, and host state governments, was designed to resettle people identified as particularly vulnerable (UNHCR, 2018). The UNHCR recommended 785 people for resettlement

in 2016, the first year of the program, 150 of whom were resettled to the United States. Since then, 3,100 people have been identified as requiring immediate resettlement. Canada accepted eleven people in 2017, zero in 2018, and zero in 2019. In 2020, it quietly ended its engagement with the PTA. The Canadian government also largely ignored appeals from the UNHCR in Mexico to resettle vulnerable people trapped there, particularly LGBTQ asylum-seekers (Blanchfield, 2019).

It is worth noting that while the numbers are small relative to displacement in the region, asylum-seekers from Latin America continue to arrive in Canada and are well-represented in overall refugee claims. Just over 230,000 people claimed asylum in Canada from 2013 to 2020. Disaggregated by region of origin, asylum-seekers from Latin America and the Caribbean comprised the second largest regional group overall, slightly more than from the Middle East and North Africa, but fewer than from sub-Saharan Africa. Their proportion of overall asylum claims has grown consistently in recent years, representing almost 30 percent of asylum claims in both 2017 and 2020. Yearly totals have increased dramatically since 2016, driven by both the scale of displacement in the region and likely Trump administration immigration and asylum policies.

FIGURE 3
ASYLUM CLAIMS IN CANADA BY REGION OF ORIGIN
(JANUARY 2013 - MARCH 2020)



SOURCE: Immigration, Refugees, and Citizenship.

While some evidence exists to show that the increase in asylum claims from Latin America and the Caribbean are an indicator of growing need, the situation is complicated by the strong correlation between Canadian visa policies and the number of asylum-seekers. The removal of the visa requirement for Mexico in 2016 as part of bilateral trade and tourism flows was followed by an almost immediate spike in asylum claims from that country. In 2020, Mexicans lodged the highest number of asylum claims and were among the top three countries since 2016. This closely follows previous trends. The visa was imposed by the Harper government in 2009 after Mexico became the single largest country of asylum-seekers in Canada, with acceptance rates far below the average for other states (Yeates, 2019). While recognition rates for Mexican asylum-seekers have increased modestly since 2016 to 36.5 percent in 2019, so have the number of claimants abandoning or withdrawing claims.

TABLE 2
MEXICAN ASYLUM STATISTICS IN CANADA
(JANUARY 2013-MARCH 2020)

<i>Year</i>	<i>Referred</i>	<i>Accepted</i>	<i>Rejected</i>	<i>Rate (%)</i>	<i>Abandoned / Withdrawn</i>	<i>Backlog</i>
2013	128	16	39	29	24	53
2014	86	28	43	39.50	9	58
2015	111	40	39	50	12	78
2016	250	29	53	35	46	200
2017	1,459	111	221	33.50	99	1,221
2018	3,157	190	363	34	295	3,525
2019	5,634	602	1,045	36.50	672	6,829
2020 (March)	1,518	291	448	39	191	7,427

SOURCE: Immigration and Refugee Board of Canada (n.d.).

While Mexican claims skew statistics from Latin America and the Caribbean, so do similar trends in recognition rates and abandoned claims from some states for sub-Saharan Africa, particularly Nigeria. The major lesson is that with the exception of European countries, Canada resettles far more

refugees from other regions of origin with large numbers of asylum-seekers arriving in Canada, particularly sub-Saharan Africa and the Middle East and North Africa. Latin America and the Caribbean are the major outliers, even when we account for the significant increase in resettled Syrians in 2015 and 2016. Asylum-seekers arriving in Canada from most regions are a symptom of the global need for international protection.

Conclusions: The Moral Hazard of Deference to U.S. Policies

That the Canadian government wants to avoid change is understandable given the Trump administration's record of cross-issue retributive responses toward neighboring states, for example threatening crippling tariffs against Mexico or withdrawing development aid to Central American states if they did not contain or take back asylum-seekers. These policies have had significant effects on migration enforcement, asylum dynamics, and protection standards throughout the region (Ruiz Soto, 2020). But perhaps more importantly from a domestic perspective, the Canadian government sees the STCA as a tool to insulate Canada from the types of large-scale asylum flows that severely undermined protection norms and emboldened anti-immigrant populism in other liberal democracies (Stockemer, 2016; Donnelly, 2017).

Canada's response to irregular migration and the changing situation in the U.S. is politically and ethically complicated. While the government has refused to overtly call out U.S. policy changes, it also has resisted domestic calls (and international precedent) to close Roxham Road or extend STCA rules to the whole border (cf., Mercier and Rehaag, 2020). While the non-response to U.S. policies drew fierce criticism from refugee rights groups, it also helped preclude the types of coercive and retributive immigration policies that the Trump administration had levelled against Mexico, Guatemala, and Honduras, as well as at jurisdictions and civil society groups within the U.S. Though not by design, Roxham Road became a *de facto* port of entry and humanitarian corridor for people with precarious status. The absence of hard border controls meant Canadian authorities did not engender a cat-and-mouse game by pushing routes to multiple points of entry (Koser, 2010; van Hear, Bakewell, and Long, 2018). The route was predictable and safe and thus

characterized by remarkably little corruption or smuggling operations compared to other irregular routes (Carling, Paasche, and Siegel, 2015; Reitano and Tinti 2015). In turn, conservative critics and the Canadian security establishment had no recourse for blaming irregular migration on criminal actors as is the case in Europe, the U.S., and Australia.

However, it also means that Canada is benefiting from the downstream effects of U.S. immigration enforcement, creating a moral hazard by which the Canadian government is incentivized to ignore the effects of U.S. border and asylum policies in Latin America. Large numbers of people who might consider asylum in Canada are effectively trapped as a result of U.S. policy interventions. Canada's stance thus represents an acquiescence to U.S. policy priorities to close the door to asylum-seekers and effectively ignore the need for international protection, in stark contrast to its robust responsibility-sharing in other regions.

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MEXICAN MIGRATION TO CANADA: TRENDS AND PROSPECTS

Jeffrey G. Reitz and Melissa H. Jasso***

Introduction

Historically, Mexican migration to the north has mainly featured those with low skill levels, and most of the discussion has focused on them. Highly skilled Mexican migration remains relatively unexplored, but current trends suggest it is ripe for investigation (Tigau, 2013, 2020; Clemens, 2014; Peña Muñoz, 2016; Ruiz Soto and Selee, 2019). As educational levels in Mexico rise, as North American economic integration is promoted at all levels, and as globalization advances, highly skilled Mexican migration to both countries, while still only a trickle, has been increasing. What are the trends? Can we guess at future trends? And how do highly skilled Mexicans who seek employment abroad perceive the U.S. and Canada as potential destinations?

The U.S. has long been a destination of choice for immigrants from many countries. It is bigger than Canada, with a dynamic economy, a long immigration history, and an attractive climate. For prospective Mexican migrants, not only is it much closer, but powerful networks of chain migration favor it due to the long-standing history of migration between both countries. Mexican migration northward started right after the end of the Mexican-American War in 1848 and continued throughout the twentieth century with the Bracero Program and, most recently, with the acceleration of flows over recent decades (Gutierrez, 2019).

These factors favoring the U.S. over Canada may apply at high skill levels for economic reasons spelled out by George Borjas (1993; Aydemir and

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Borjas, 2006). One of Borjas's hypotheses is that highly skilled migrants favor destinations with more inequality because they will have more opportunities there. Data across many nations support this hypothesis, including studies of migration comparing Canada and the U.S. In fact, Canada more often loses top talent to the U.S. than the opposite, except where the Canadian government steps in with counteracting incentives. So, we might expect highly skilled Mexicans to choose the U.S. over Canada as a destination.

Still, Canadian immigration policy is expansionist, so opportunity for permanent residency for skilled migrants is greater in Canada relative to population size. Canadian public discourse around skilled migration is also the most favorable compared to Mexico and the U.S., as shown by Camelia Tigau's 2015 analysis of the media in these three countries around skilled migration.

In this article, we proceed as follows. First, we describe trends in highly skilled Mexican migration and suggest some possible demographic and economic factors. We discuss changes in destinations for Mexicans within the U.S. to illustrate the variability of migration over time. Finally, we present a preliminary picture of some perspectives skilled Mexicans bring to the decision to migrate to Canada or the U.S., based on recent interviews we conducted in Mexico City.

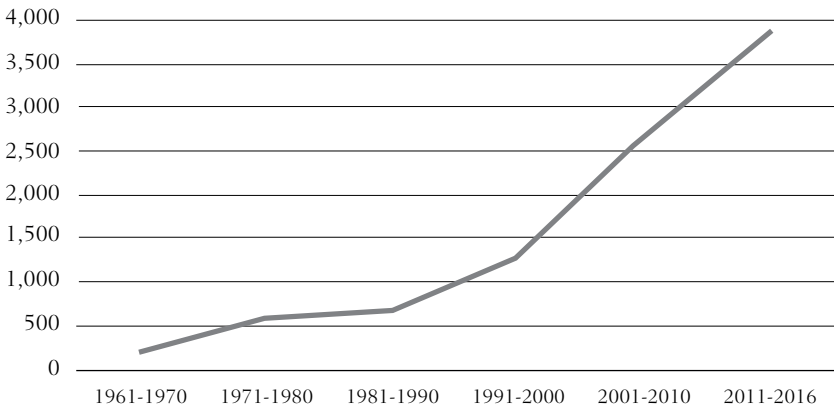
Mexico-Canada Migration Trends

The number of immigrants from Mexico to Canada has increased steadily since 1961, from 210 per year on average in the 1960s, to roughly 3,800 per year since 2011 (Reitz, 2014; IRRC, 2016) (see Figure 1). Mexicans represented 0.1 percent of total Canadian immigration in the 1960s, but now represent about 1.5 percent. That's a ten-fold increase, and the rate of increase seems to have accelerated since 2000. The Mexican-born population of Canada was about 95,410 in 2016, and the Mexican-*origin* population was 128,485, still only about 0.4 percent of the total, but up from 96,055 in 2011 (Statistics Canada, 2011, 2016; Armory, 2018). Most live in Toronto, Montreal, and Vancouver; in 2001, these three cities accounted for 32 percent of all Mexican immigrants (Mueller, 2005: 41).

The Mexican footprint in Canada is tiny compared to the 35 million or so in the U.S. (11.1 percent of the population). A few reasons have been

suggested to explain why migration levels have remained generally low despite economic opportunity in Canada: mainly, that the Mexican flow to the U.S. has inhibited the establishment of a steady stream to Canada, as well as the lack of social networks and information about the country, and a general dread of the Canadian winter (Samuel, Gutiérrez, and Vázquez, 1995).

FIGURE 1
MEXICAN MIGRATION TO CANADA, ANNUAL AVERAGE



SOURCE: Reitz (2014); IRCC (2016).

Like immigrants to Canada in general, those from Mexico are highly skilled. For 2003-2013, 51 percent of permanent residents of Mexican origin had a bachelor’s degree, and 74 percent had at least some post-secondary education (Van Haren and Masferrer, 2019) (see Table 1).

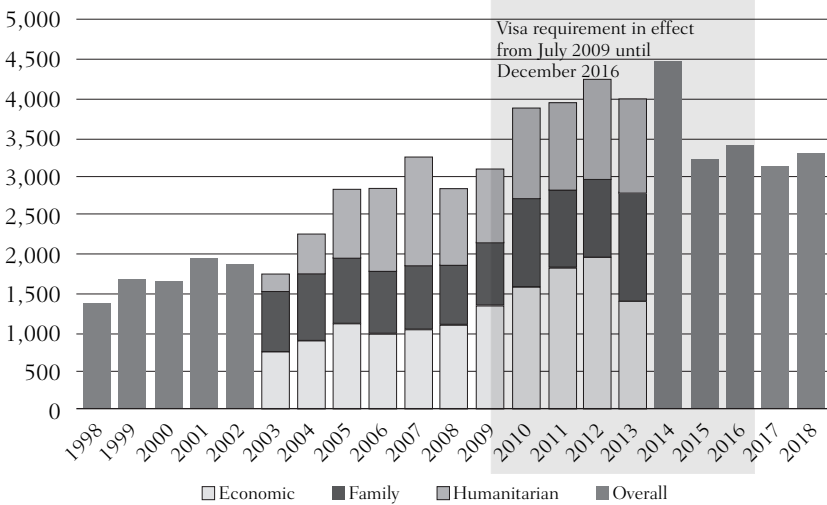
TABLE 1
EDUCATIONAL BACKGROUND OF MEXICAN NEW PERMANENT RESIDENTS
(2003-2013)

	<i>Immigrants from Mexico</i>	<i>Overall Immigrant Population</i>
Total number of those who received permanent residence	24 080	1 650 440
Educational Attainment (%)		
Secondary or less	26.2	26.8
Some post-secondary	22.5	21
Bachelor’s degree or more	51.2	52.2

SOURCE: Van Haren and Masferrer (2019); based on IRCC (2019).

When we look at the breakdown by category of admission, we find some of the recent rise is attributable to increased economic migration (Van Haren and Masferrer, 2019) (see Figure 2). The visa requirement for Mexican travelers brought in by the Harper government from July 2009 to December 2016 seemed to have the effect of reducing this. Although the numbers of permanent residents arriving dropped, the proportion of Mexican arrivals who were economic immigrants remained substantial. Van Haren and Masferrer show for the same period that 40.1 percent of all immigrants from Mexico were economic immigrants, compared to 59.5 percent for immigrants overall. The bottom line is that the educational profile of Mexican migrants has been similar to the general immigrant population in Canada.

FIGURE 2
NEW MEXICAN PERMANENT RESIDENTS IN CANADA
(1998-2018)



SOURCE: Van Haren and Masferrer, (2019), with information from IIRC (2017 and 2019). Van Haren and Masferrer also note that entry status (economic class, family class, or humanitarian), obtained through Permanent Resident Landing File (PRLF) data, is available only for the period 2003-2013.

Demographic Trends and Skilled Migration Flow from Mexico

One reason for higher Mexican migration to Canada may simply be the size of the skilled population of Mexico, which has risen substantially because

of higher educational levels accompanied by overall population growth. The proportion of the Mexican population with post-secondary schooling was less than 2 percent in 1970, but 13 percent in 2010 (World Bank, 2020a, 2020b) (see Table 2, right hand column). The trend toward internationalization of education (Altbach and Knight, 2007) and emphasis on international languages means the transferability of educational qualifications is increasing, as shown by the foreign credential assessment processes in Canada, as these are applied to Mexico. The broader economic integration represented by NAFTA—now USMCA—also facilitates migration, not only through the visas available under the treaty, but also by the formation of cross-national academic and professional social networks.

The Mexican population base has more than doubled (see Table 2), from 51 million in 1970 to 114 million in 2010. So, the growth of Mexican-Canadian migration actually may be less than what we might expect from the underlying education and population trends. In addition, while business cycles affect migration flows, relative incomes across countries have not changed greatly. Relative Mexican incomes have remained just under half those in the U.S. and Canada.¹ Consequently, economic incentives for mobility are more or less constant.

The number of skilled Mexicans in the U.S. may be approximately the same on a per capita basis as in Canada, though the data are not very good. Ruiz Soto and Selee (2019) showed that in the U.S., the number of Mexican immigrant adults with college degrees rose from 269,000 in 2000 to 678,000 in 2017. Of the 2017 cohort, two-thirds (roughly 450,000) were either naturalized citizens or permanent residents.² Compared to Canada, based on a Mexican immigrant population of 80,500 in 2016, with about half, or 40,000, having a bachelor's degree, the U.S. figure would be similar on a per capita basis.³

¹ In 1971, per capita GDP in the U.S. was US\$23,668, Canada was about 89 percent of that, and Mexico, about 38 percent (OECD Statistics, 2019), with 2010 purchasing power parity. In 2018, the U.S. number jumped to US\$54,400; Canada did not keep pace. Relative incomes in Canada dropped to 79 percent those of the U.S., and in Mexico, to 32 percent of those of the U.S. Mexican incomes dropped relative to Canadian incomes from 43 percent to 40 percent.

² As many as 30 percent were unauthorized, and a small group had temporary visas.

³ The U.S. receives far more Mexican professionals with NAFTA visas than Canada, even on a per capita basis (see Meyers and O'Neill, 2004: 7). The small numbers overall mean NAFTA has had little impact on skilled migration from Mexico to either Canada or the U.S.

TABLE 2
MEXICAN POPULATION AND PERCENT OF POPULATION
WITH TERTIARY SCHOOLING

<i>Year</i>	<i>Total Population (millions)</i>	<i>Percentage Population Age 25 or More with Tertiary Schooling</i>
1970	51.493	1.80
1980	67.761	3.93
1990	83.943	5.59
2000	98.899	9.14
2010	114.092	13.08

SOURCES: World Bank (2020a and 2020b).

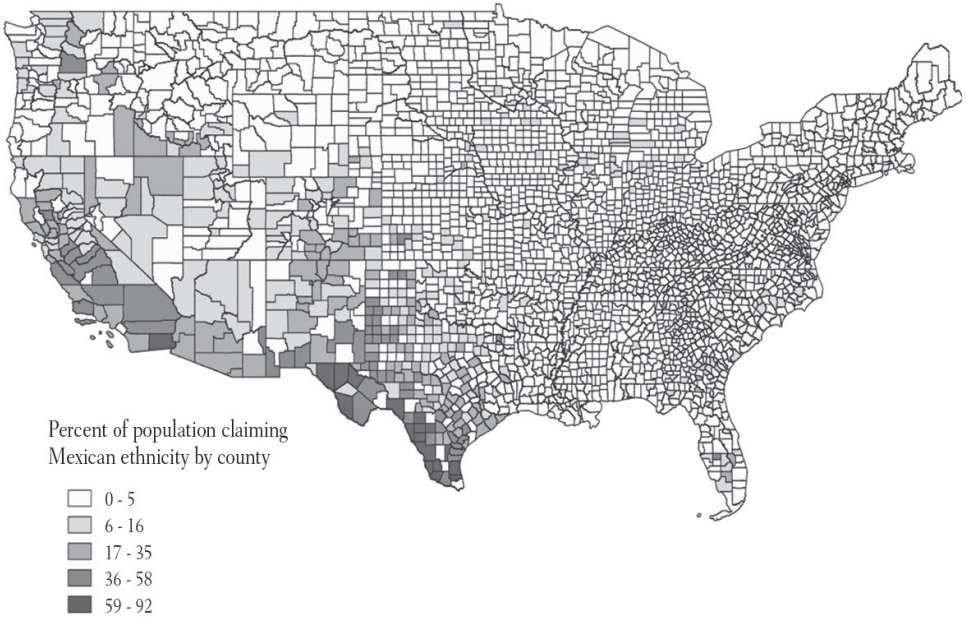
Do Mexican Migration Streams to the U.S. Determine the Future?

What does the history of low-skilled migration from Mexico to the U.S., much of it to border areas in the U.S. Southwest, tell us about the prospects for patterns of highly skilled migration? Less than we might think, for three reasons. First, highly skilled migrants tend to move where they can find a job, and, while family connections matter, the location of co-ethnic communities plays a less salient role. Co-ethnic communities matter more for the less skilled, providing a social support network for the precariously employed. Second, the patterns of Mexican settlement in the U.S. have changed considerably over time, and today large settlements of Mexicans exist throughout the country, including the chilly North. These trends have accelerated in recent years. Third, Mexicans' perceptions of Canada and Canadian cities as destinations for migration are positive in many respects, and these views are more influential in the current wave of anti-immigrant sentiment in the U.S.

The impact of migration from Mexico to the U.S. has been heavily to the U.S. Southwest, with prominent Mexican-American communities now found in this region (see Figure 3). This distribution is the result of flows that began in the 1960s and 1970s as circular migration, as Douglas Massey and colleagues (1990) showed in *Return to Aztlan*.⁴

⁴ *Aztlan* is the mythical homeland of the Aztecs (or Mexica) peoples; some say it was in the north, but not necessarily a real place. In "Old Mexico Lives On," the *Economist* suggested this area

FIGURE 3
PERCENT OF POPULATION CLAIMING MEXICAN ETHNICITY BY COUNTY

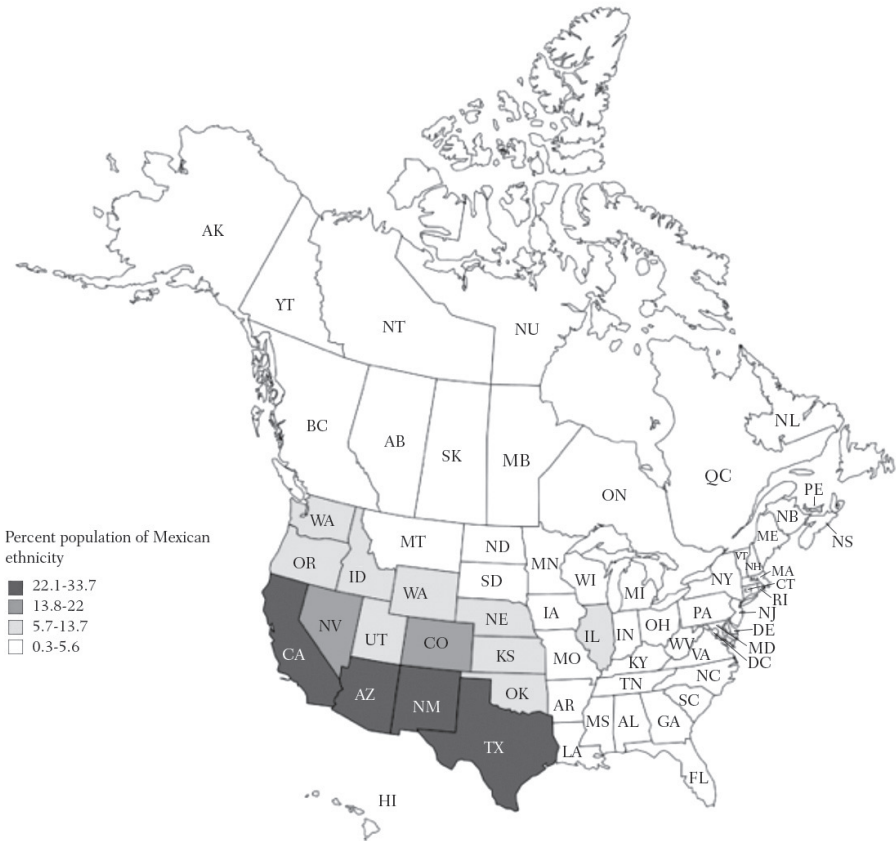


SOURCE: U.S. Census Bureau (2018) and Statistics Canada (2011).

Mexican presence in Canada in 2011 was negligible compared to Mexican representation in the United States in 2010. The 96,000 Canadian residents of Mexican ethnic origin represented only 0.29 percent of the entire Canadian population. Moreover, this figure was only slightly higher in the immigration-intensive provinces: 0.25 percent in Ontario (actually less than in Canada generally), 0.32 percent in Quebec, and 0.37 in British Columbia. Even so, a map of Canada and the U.S. together (Figure 4) shows all Canadian provinces have ethnic Mexican populations similar in size to those of almost all U.S. states outside of the Southwest.

coincides closely with the territory which was part of Mexico (previously New Spain) before the 1846-1848 U.S. invasion and annexation.

FIGURE 4
PERCENT OF POPULATION OF MEXICAN ETHNICITY, U.S. STATES (2018)
AND CANADIAN PROVINCES (2010)



SOURCE: U.S. Census Bureau (2018) and National Household Survey 2011.

Mexican migration to the U.S. has shown major shifts in both sources and destinations over time. As Massey and his colleagues showed, patterns have changed in response to economic conditions (Massey, Rugh, and Pren, 2010). Before the 1980s, around 70 percent of migrants came from the “historical” migrant region and settled in the four border states with Mexico (see Table 3). Although not near the border, Illinois also received an important number. However, regions of origin and destinations changed over the next decade:

During the 1990s Mexico's central region rose in prominence as a source for U.S. migrants and by 2006 accounted for roughly a third of all undocumented migrants. Although the majority of migrants from the central region went to traditional destinations in California, Texas, Illinois, and the Southwest, the flows also diversified to incorporate new destinations in the Midwest, Northeast, and Southeast, with significant streams into New York-New Jersey, North Carolina, Georgia, and Florida. (Massey, Rugh, and Pren, 2010: 150)

TABLE 3
PERCENTAGE OF ORIGINS AND DESTINATIONS OF IMMIGRANTS
FROM MEXICO BEFORE AND AFTER 1980

<i>Origins</i>	<i>Before 1980 (%)</i>	<i>By 2006 (%)</i>	<i>Destinations*</i>	<i>Before 1980 (%)</i>	<i>By 2006 (%)</i>
Historical Region Durango, Guanajuato, Jalisco, Michoacan, San Luis Potosi, Zacatecas, Aguascalientes, Colima, Nayarit	70	45	Borderlands Texas, Arizona, California, New Mexico	86	61
Central Region Mexico City, Guerrero, Hidalgo, State of Mexico, Morelos, Oaxaca, Puebla, Queretaro, Tlaxcala	10	37	Great Lakes Illinois, Indiana, Michigan, Ohio, Wisconsin	5**	12.5
Border Region Baja California, Chihuahua, Coahuila, Nuevo Leon, Sinaloa, Sonora, Tamaulipas	20	11	Southeast D.C., Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia	NA	10
Southeastern Region Campeche, Chiapas, Quintana Roo, Tabasco, Veracruz, Yucatán		7	Northwest Idaho, Nevada, Oregon, Utah, Washington	NA	8.5

*Other regions were not included in table. Numbers may vary due to rounding.

**Data correspond to the state of Illinois only.

SOURCE: Massey, Rugh, and Pren (2010).

The proportional increases in Mexican-born populations also show an evolving pattern. Between 1990 and 2010, a total of fifteen states showed an increase of 1,000 percent in Mexican immigrants (see Table 4), including in the North, East, and Southeast.

TABLE 4
U.S. STATES WITH MORE THAN 1,000-PERCENT INCREASE
IN MEXICO-BORN POPULATIONS (1990 TO 2010)

<i>Percentage of Mexico-born population</i>	<i>States</i>
Less than 1%	Kentucky, Mississippi, Ohio, South Dakota
1 - 1.99%	Alabama, Delaware, Iowa, Minnesota, South Carolina, Tennessee
2 - 4.99%	Arkansas, Georgia, Nebraska, North Carolina, Utah
More than 4.99%	None

SOURCE: Rosenblum et al. (2012).

Based on percentages (see Table 5), Mexicans are most prevalent in Texas, California, New Mexico, Arizona, Nevada, and Colorado. But based on *numbers*, the top places include Illinois, which in 2010 was home to 1.6 million Mexican-Americans, and also Florida, Washington, Georgia, North Carolina, and New York. Illinois, Florida, and Washington all have more Mexicans than New Mexico or Nevada. Illinois has more than twice as many Mexican-Americans as Colorado and showed an important increase in that population from 2000 to 2010. Ethnographic studies, such as Smith's (2005) study of Mexicans in New York, emphasize the connection with particular source regions such as the city of Puebla.

Other studies have emphasized the variability of Mexican migration. For example, Light's *Deflecting Immigration* (2006) showed how local government in the Los Angeles area used housing policy to redirect Mexican migration. Garip (2017) differentiated Mexican migration to the U.S. in terms of several separate streams of migration, prominent at different points in time, and for different reasons. Massey suggested the increased salience of the immigration issue in the U.S. is partly attributable to the increase in the number of affected areas.

TABLE 5
U.S. STATES BY MEXICAN-AMERICAN POPULATION

<i>Ranked by Percentage Mexican-American</i>			<i>Ranked by Numbers of Mexican-Americans</i>		
<i>State/Territory</i>	<i>Mexican-American Population</i>	<i>Percentage</i>	<i>State/Territory</i>	<i>Mexican-American Population</i>	<i>Percentage</i>
Total U.S.	31,798,258	10.3	Total U.S.	31,798,258	10.3
Texas	7,951,193	31.6	California	11,423,146	30.7
California	11,423,146	30.7	Texas	7,951,193	31.6
New Mexico	590,890	28.7	Arizona	1,957,668	25.9
Arizona	1,957,668	25.9	Illinois	1,602,403	12.5
Nevada	540,978	20	Colorado	757,181	15.1
Colorado	757,181	15.1	Florida	629,718	3.3
Illinois	1,602,403	12.5	Washington	601,768	8.9
Oregon	369,817	9.7	New Mexico	590,890	28.7
Idaho	148,923	9.5	Nevada	540,978	20
Utah	258,905	9.4	Georgia	519,502	5.4
Washington	601,768	8.9	North Carolina	486,960	5.1
Kansas	247,297	8.7	New York	457,288	2.4

SOURCE: U.S. Census Bureau (2010).

This variability in destinations may apply even more to highly skilled Mexican migrants, though less information is available for them. A study by Ruiz Soto and Selee (2019) focused on a traditional area: Texas. Of the 678,000 university-educated Mexicans in the U.S. in 2017, more than one quarter lived in Texas and 75 percent of them were concentrated in the cities of Houston, Dallas, and San Antonio, as well as in the main transnational areas: El Paso-Ciudad Juárez and McAllen-Reynosa. The study was unable to do more than speculate about the reasons: for example, that Mexicans may be attempting to escape rising levels of violence. The authors also noted a pattern found in Canada: underemployment of the highly skilled, with some immigrants working in construction and food services. In any case, we suspect that highly skilled migrants are distributed much more widely across the U.S.

University-Educated Mexicans' Perceptions of the U.S., Canada, and Their Cities

For a more grounded understanding of the openness of skilled Mexicans to migration to the U.S. or Canada, we conducted a small-scale pilot survey among young university-educated Mexicans. Since migration decisions involve considerations at both national and city levels, our interview questions probed both. On the one hand, respondents expressed a very positive opinion of Canada as a country, preferring it by a wide margin over the U.S. as a potential location. On the other hand, when we posed questions about specific cities to move to, preferences shifted significantly toward the U.S. The U.S. advantage was primarily the attractiveness of southern cities in California and Texas, where Mexicans have the strongest ties. Canadian cities such as Toronto, Montreal, and Vancouver were competitive mainly in comparison to northern U.S. destinations, such as Chicago and New York. Understanding these trends and the thinking behind them are important keys to projecting the future of skilled Mexicans' northward migration.

Our sample consisted of forty respondents between the ages of nineteen and forty, most in their twenties or early thirties, and about equally divided by gender (twenty-one men and nineteen women). We conducted the interviews in face-to-face meetings in public places or on video calls. The volunteers, who responded to media posts, were, or had been, studying at one of seventeen different Mexican post-secondary institutions, both private and public. A wide variety of disciplines and professional fields were represented, including the social sciences and the humanities, architecture, applied sciences, law, and engineering, among others. The results are very preliminary, and statistical reliability cannot be assumed. The structured interviews take about twenty minutes and include items on future academic and professional goals, the possibility of emigration, and the attractiveness of the United States and Canada as possible destinations, emphasizing particular cities within each country.

Interestingly, migration was part of the personal history of many respondents. Seven had migrated to Mexico City from other Mexican states for study or work. Four had indigenous identity or background, and one quarter of the sample had an immigrant background, in that previous generations had migrated to Mexico from other countries, half from countries in Western

Europe and one from the U.S. Fourteen had migrated abroad before, most often to the U.S. or Canada, mostly for education such as exchange programs, internships, or master's studies, with a few taking high school or language courses. Four out of fourteen said they had migrated for other reasons, including agricultural work (in Canada) and visiting family for an extended period (in the U.S.). Four had lived outside North America.

Future migration was in the minds of most respondents, most often to complete their studies, and, while migration for employment was of less interest, many said they would not reject an offer if one materialized. Certain specific "push factors" were mentioned: unpleasant features of the current situation in Mexico, such as violence and the attendant political and economic uncertainty. An international business graduate said, "I would like to move somewhere else; it has been on my mind more and more often lately. Mostly because of the current situation in the country; the insecurity is excruciating, and now I have kids and I have to look after them." A woman in the field of nutrition agreed: "Insecurity would . . . be a key factor. The situation we see today is worrisome, and we would move in order to provide better conditions for our children." In these cases, having a job offer or an academic opportunity is sometimes important, and sometimes not. One woman said she would be willing to take any job as long as it was in a country she liked.

Networks linked respondents to both the U.S. and Canada. Family networks led most strongly to the U.S., an obvious consequence of a much greater Mexican presence. Of the respondents, 52.5 percent had family members in the U.S.; only 5 percent had family in Canada; and 17.5 percent had family ties in both countries. Friendship networks linked respondents to the U.S. and Canada more equally: 20 percent had friends in the U.S.; 27.5 percent had friends in Canada; and 40 percent had friends in both countries.

While most respondents said they would consider moving to either the U.S. or Canada, the general perceptions of Canada were far more favorable. Most had a favorable view of Canada "as a place to live, work, and study," whereas only a few had a similarly favorable view of the U.S. Specific characteristics of the two countries were perceived quite differently. Canada was rated more positively for personal security, social acceptance, public services, and the quality of work; the U.S. was rated more positively on universities (especially important for those considering study abroad), weather conditions, and cultural activities. The two were rated about equally on salaries and feeling at home.

Respondents were asked which country would be more receptive to them as immigrants. Specifically, the question was about where they would encounter more discrimination or have more difficulty getting a job fitting their qualifications. In this case, their perceptions were extremely different. Virtually all respondents thought they would suffer more discrimination based on nationality in the U.S., and the overwhelming majority thought they would experience more discrimination based on culture and skin color. The U.S. was also more often seen as the place where it is difficult to find a job fitting one's qualifications.

While many admired the U.S. as a large, cosmopolitan, powerful, and rich country, they were aware of drawbacks and challenges. This included the impact of anti-immigrant sentiment, intensifying under the Trump administration, and extended to a more general concern about the legacy of the history of U.S.-Mexico relations. One respondent with a philosophy and human rights background observed, "I'm a Mexican, so that really determines my opinion about the U.S.... Our relationship with that country is of subordination, and not collaboration, which would be the ideal." Another respondent with a background in psychology cited current U.S. politics and said, "While I think ... it offers really good job opportunities, right now it's not the best place to be as a Mexican."

Concerns were expressed about broader social conditions: racism, violence, guns, and drugs. The psychologist cited above said, "Important issues, such as gun violence and racism, makes [the U.S.] a hard place to live." For another respondent, a graphics designer, polarization and conflict on these issues were defining features of the U.S. He said, "I think [the U.S.] is a very diverse country, very polarized. There are racist expressions but also people who are very vocal on inclusion and acceptance." Several more general cultural issues also surfaced in the interviews. Some respondents rejected the U.S. lifestyle, which they thought excessively superficial, egocentric, and materialistic. One said, "[U.S. Americans] are very nationalistic and all they care is about themselves. It's like they have a very narrow vision of the world, and they can only see what's happening inside their country. They have very talented people, very capable and educated, very intelligent, and at the same time, there's so much ignorance."

Positive views of the United States centered on job opportunities and the Mexican presence in certain locations. One respondent, a mechanical

engineer, said, “I feel very close to New Mexico and Texas. Just like many Mexicans, I see the influence of Mexico in those places, ... because of the population they have. I think in terms of food or traditions, we’re very much alike.” This point, while expressed in connection with overall perceptions of the U.S., showed the country’s attractions can be region-specific.

Commentaries on Canadian virtues emphasized diversity and multiculturalism. Twelve of the respondents referenced this aspect and spoke highly of Canadian openness to immigration. In their comments about Canada, we noticed they were often making a comparison with the U.S., explicitly or implicitly. One woman in international relations said diversity in Canada is on a “smaller scale,” but Canadians are “more tolerant” than U.S. Americans. A systems engineer made a similar U.S.-comparative comment related to violence: “To be honest, I tend to compare [Canada] with the United States, and that’s perhaps the reason why I have a much better opinion of Canada. I like it, I like it a lot! ... You don’t hear that much about violence [in Canada] like you do with the U.S.”

The extreme Canadian weather was a concern, although a few stalwarts regarded Canada’s winter weather as an asset, attractively framing the natural landscape. But comments on “coldness” in Canada went beyond weather and branched off into cultural matters. One woman in marketing said the Canadian Anglo-Saxon culture was more impersonal and serious than the Latino culture. Yet the systems engineer thought that in cultural terms, Canada would offer a warmer society than the U.S.; by that, she seemed to mean the social programs and public services. She said, “Even though it has colder weather than the United States, I would say Canada is a warmer country, although still not as warm as Mexico. I think as a family you’d have a better income in Canada, and there’s less inequality.”

While views of Canada were positive, they were relatively vague. At least nine respondents confessed to having limited information and were hesitant to express an opinion. As one put it, there is “not much information about Canada out there,” or, at least, “I don’t know much about it.” At the same time, there may be some growing awareness of Canada as a migration destination because of the increased flows documented above. An actuary said, “There are many good opportunities [in Canada]. Lately I’ve seen many people migrating to Canada, like friends or people I used to work with. It’s become more and more important, I think.”

While the general perception of each country matters to prospective migrants, in the end, they decide to move to a specific city, so perceptions of cities matter a great deal. In the United States, Los Angeles was the first choice of nearly one in three respondents. After L.A., the most often mentioned were San Antonio and San Francisco, each ranking in the top three by over two in five. It's clear that Mexicans expect to "feel at home" in U.S. cities with large Mexican-American populations, possibly because they have relatives or friends living there. They were also cities many participants had visited.

A few northern cities were mentioned, particularly New York and Chicago. New York, Chicago, and Los Angeles are the three U.S. metropolises; they have major migration histories, receiving large number of migrants from many places.

In Canada, Toronto occupied the top position, chosen as the place where prospective migrants would feel most "at home." Vancouver and Montreal also rated highly. Respondents mentioned these cities' qualities, having previously visited or lived there, and perceptions of job opportunities. Some were attracted by the French language and culture of Montreal or Quebec City.

When respondents chose cities without regard to the international border, Canada lost out to some extent. U.S. cities stayed in the top rankings, particularly Los Angeles, New York, San Antonio, and San Francisco. Canadian cities tended to be included as a second or third option. Despite the prevailing positive image of Canada as a country, and the many complaints respondents made about U.S. society and policies toward Mexico, U.S. cities still topped the list of destinations where respondents said they would "feel at home."

Still, Toronto, which remained the top Canadian option, was ranked about on the same level as San Francisco and Chicago, and quite close to New York. Toronto was among the top three possibilities across both countries for nearly half the respondents. Chicago lost competitiveness after Canadian options were introduced. To a lesser extent, San Francisco and San Antonio were similarly displaced. By contrast, New York lost very little.

In sum, while Canada as a country was viewed very positively by our respondents compared to the United States, the U.S. options dominated when attention shifted to choices of cities. California and Texas cities were very attractive for respondents in our admittedly small sample of university-

educated Mexicans, and Canadian cities were only competitive with northern U.S. cities such as New York and Chicago. Canadian cities competed most effectively with Chicago. All three top Canadian cities remained competitive as favored destinations relative to Chicago, and Toronto was about on a par with New York, San Antonio, and San Francisco as popular choices for migration.

Conclusions and Prospects

As educational levels rise in Mexico, the potential for skilled migration from Mexico to both the U.S. and Canada is increasing. While the history of migration from Mexico is mostly a story of low-skilled workers moving to the U.S. Southwest, migration has been shifting in terms of origins within Mexico and destinations within the U.S. Moreover, current data show Canada is often chosen as a destination by skilled Mexican migrants, at least in proportion to its size relative to the U.S. We suggest skilled migrants may represent a new and distinct stream in the flow northward, and settlement patterns may differ from those of the past.

Our exploration of the potential for skilled migration to Canada and the U.S., based on interviews with a small sample of university-educated Mexicans in Mexico City, show an openness to migration in general and a willingness to consider emigration to both countries. The enormous U.S. advantages of size, proximity, climate, familiarity, large Mexican communities, and established networks of migration from Mexico are all relevant for skilled immigration. At the same time, the U.S. social and political climate, including the persistent and increasing efforts to reduce immigration from Mexico, as well as broader issues related to crime and drugs and aspects of U.S. culture in general, clearly deter some. Canada seems to have a very positive national image, based on a reputation for fairness and openness to immigration and characteristics such as personal security, cultural diversity, and public services. These perceived assets, combined with the Canadian immigration system, appear to be a significant advantage. Both countries offer economic opportunity, which drives many or most migration decisions. Admittedly our respondents knew much less about Canada, and this may reduce consideration of Canada as an option. While network and family links to the U.S.

are stronger, however, they also exist in Canada. Moreover, people of Mexican origin now in Canada have a much higher average level of education than their counterparts in the U.S.; this is likely to enhance professional and academic networks and increase Canada's attractiveness.

Our analysis of urban destinations yielded important insights. Canadian cities emerged as most competitive in relation to northern U.S. cities. The greater general attractiveness of the U.S. for Mexicans is largely accounted for by the magnetism of California and Texas, as strong for university-educated Mexicans as for less-skilled migrants of the past. But there is also an important focus on U.S. cities of the North and East such as New York and Chicago, and the Canadian cities of Toronto, Montreal, and Vancouver were rated highly by those respondents who considered cities of the U.S. North. For those considering northern destinations, climate was less important, and for many, the prospects of low levels of crime and gun-related violence, openness to cultural diversity and the lack of stigmatization of Mexicans, lower levels of economic insecurity, and the robust public services available in Canada had substantial appeal. For some, Quebec's francophone culture represented an attractive additional option.

Our findings suggest prospective skilled migrants from Mexico view Canada positively but have much less information about Canada than about the U.S. One of Canada's opportunities in competing for prospective migrants, then, is to address this relative lack of information and strengthen public diplomacy at the urban level. In the end, each country's competitiveness in recruiting highly skilled migrants may depend on the development of specific recruitment efforts and, here, employers, educational institutions, and governments will play an important role. While the U.S. is looking for ways to reduce immigration, the Canadian government has set its sights on substantially increased numbers. Based on our findings, Mexico represents an important recruitment target.

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BRAIN GAIN IN NORTH AMERICA: CHANGES IN A LONG-TERM PARADIGM

*Camelia Tigau**

Introduction

Previous migration literature has studied brain gain in terms of talent attraction by certain destination countries or regions, but also as “brain circulation,” which implies the possibility that countries of origin may network with their diasporas abroad, forming epistemic groups and fostering innovation.

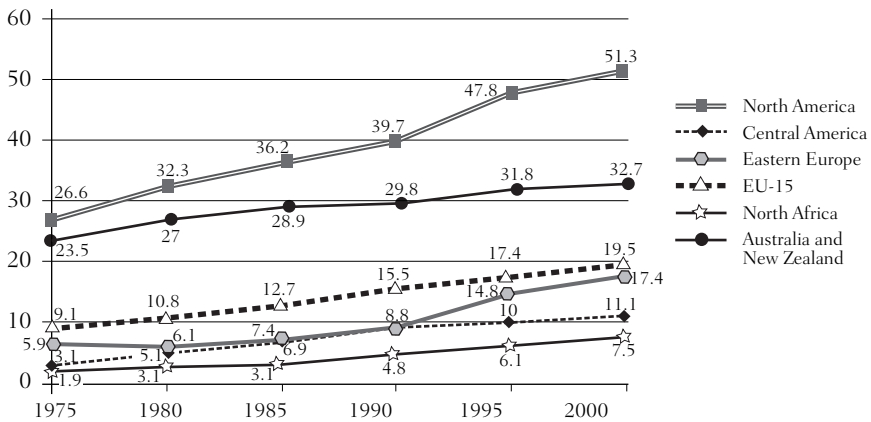
This study focuses on talent attraction in North America, the leading region in brain attraction since World War II. North America has been the leading region in the highly skilled as a percentage of resident population and has been gradually increasing its attraction of professionals from 26.6 percent in 1975 to 51.3 percent in 2000 (see Figure 1). Over half of North American residents (51.3 percent) are highly skilled, compared to 32.7 percent in Australia and New Zealand and 19.5 percent in Western Europe in 2000 (Deefort and Rogers, 2008).

As a geographical and economic region, North America includes the U.S., Canada, and Mexico. As shown here, disparities among the skilled personnel in the region are quite high. This study will focus on the U.S. and Canada in particular, due to the absence of explicit talent attraction policies in Mexico, as the historical review will show. Mexico has been among the main countries of origin of skilled migrants in the world, with over 1 million first-generation Mexican professionals in the U.S. As a member of the NAFTA and later USMCA agreements, it further benefitted from the TN visas, granted to Mexican professionals who worked in the U.S., but did not create mechanisms to attract professionals from the U.S. and Canada, apart from inves-

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tors and retirees. This is why Mexico is more a case for brain drain than for brain gain, compared to the U.S. and Canada.

FIGURE 1
 PERCENTAGE OF THE HIGHLY SKILLED AMONG RESIDENT POPULATION
 AGED 25 OR OVER (1975-2000)



SOURCE: Deefort and Rogers (2008).

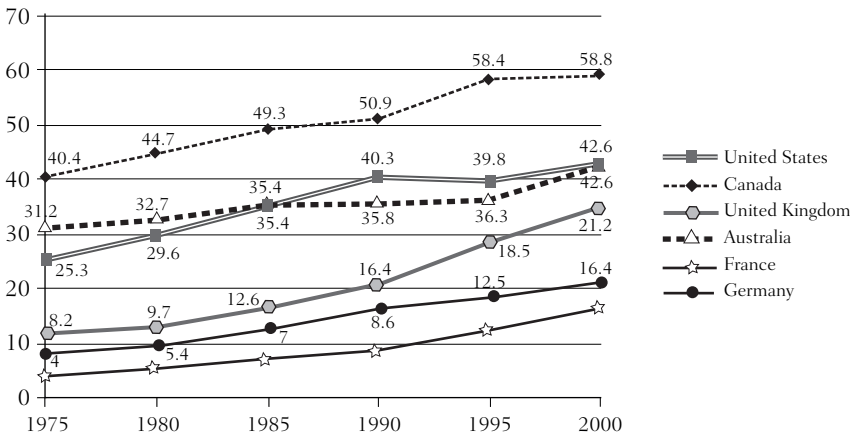
Historically, the U.S. has been the world’s main receiver of skilled migrants, with over 10 million in 2000, four times more than Canada and seven times more than Australia (see Figure 2). In terms of percentage of skilled immigrants compared to the overall cohorts, the U.S. was behind Canada, where skilled migrants represented 58.8 percent of the total in 2020 (Figure 3), compared to just 42.5 percent in the U.S. (Deefort and Rogers, 2008).

This is precisely the tendency that has been questioned since Donald Trump’s campaign and throughout his administration (2017-2021). Apparently, the U.S. president wanted to change the overall cohort of immigrants, emphasizing abilities rather than family-based migration, but also to put a cap on the number of skilled migrants who enter the United States, in order to stop unfair competition with native-born workers.

Many media reports have correlated the moment after Trump’s election in 2016, the travel ban and temporary suspension of the H-1B visa program, with the immediate release of the Global Skills Strategy in Canada, in order to speed up the hiring of highly skilled foreign workers. That initiative has since attracted 24,000 people, according to some estimations (Tejani, 2019;

Argitis, 2019). Many companies and political adversaries have criticized the new immigration programs, which would lead to a slowdown in U.S. competitiveness. For instance, New York City Mayor Michael Bloomberg criticized the tough return policies for international students in the U.S., saying, “We’re committing what I call national suicide. Somehow or other, after 9/11, we went from reaching out and trying to get the best and the brightest to come here, to trying to keep them out. In fact, we do the stupidest thing, we give them educations and then don’t give them green cards” (West, 2011: 4).

FIGURE 2
 PERCENTAGE OF SKILLED MIGRANTS
 IN THE WORLD’S MAIN DESTINATION COUNTRIES

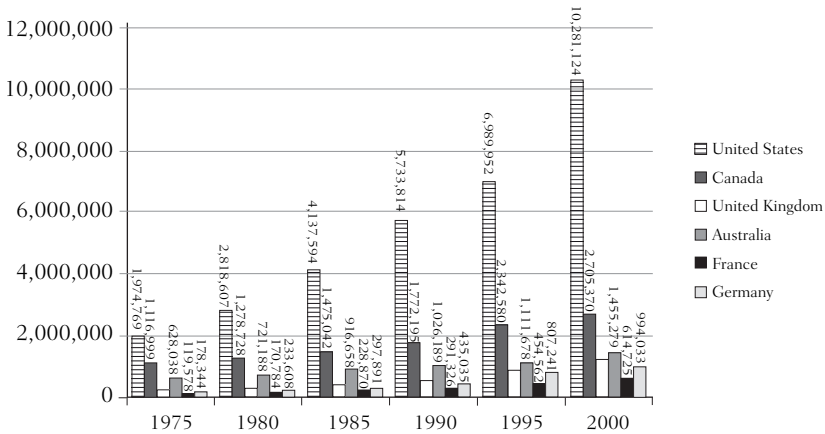


Source: Deefort and Rogers (2008).

Despite Trump’s short mandate, his policies have been previously discussed in many papers. Significant academic production exists about the effects of his anti-migrant discourse on migrants’ well-being. Among others, Matthews and Lord (2017) have studied what they consider the lasting impact of the travel ban and hate discourse on the image of the United States in the world, as well as on a social level and the “people-to-people relations” that have been harmed. Other studies have focused on the return of skilled migrants to their countries of origin (Darmoe, 2017; Lo, Li and Yu, 2019). In a previous academic study, with my colleague Amba Pande, I explored the hypothesis that restrictive policies in the U.S. may favor brain attraction to Canada, as a long-term trend in migration policy in North America (2020).

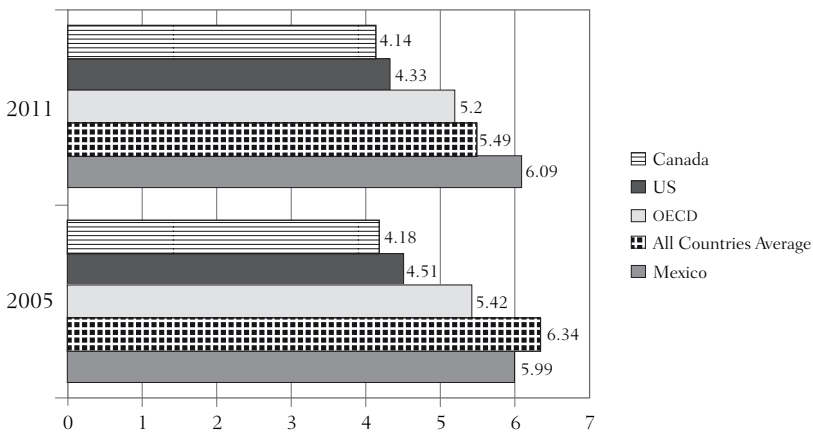
The purpose of this chapter is to offer a historical reflection about how the America First policy differs from the overall tendency of talent attraction in the U.S. I will discuss how Canada benefits from a spillover effect of those individuals who chose to re-migrate because of the U.S. president's anti-migration discourse.

FIGURE 3
NUMBER OF SKILLED MIGRANTS IN THE WORLD'S
MAIN DESTINATION COUNTRIES



SOURCE: Deefort and Rogers (2008).

FIGURE 4
RELiance ON PROFESSIONAL MANAGEMENT IN NORTH AMERICA



Source: World Economic Forum (2011).

This chapter's working hypothesis is that the current migration policies for attracting talent in North America display considerable differences compared to a long-term trend of attracting the most "suitable" population based on race, skills, and financial capital. Changes in the U.S. determine regional and even international challenges, as the U.S. is the main country that currently receives skilled migrants. Any variation in its flows or policy affects the global talent market.

The chapter is structured as follows: a) a theoretical discussion of brain gain, from the perspective of meritocracy and human capital management; b) a historical analysis of migration legislation in North America; c) a comparative discourse analysis of "brain gain" in the U.S. and Canada; and d) conclusions.

A Theoretical Discussion of Brain Gain and Meritocracy

The idea behind brain gain is attracting the "best and brightest" professionals (Batalova and Lowell, 2006) and offering jobs and payment that may benefit individuals and destination economies. Other implications, seen from the countries of origin, rely on those individuals' capacity to return knowledge, networks, and financial investments to their home countries, thus acting as non-official diasporas.

The purpose of this theoretical argument is to discuss the fundamentals of brain gain seen from the destination countries'—the winner's—perspective. This implies establishing a direct relationship between talent attraction, global justice, and meritocracy. The American Dream along with the emerging Canadian Dream are based on the idea that hard-working individuals, foreigners, and native-born workers will not only fulfill their own life projects, but also contribute to a more general project of nation building, the "just" America—or Canada—where studying and working hard will have a good outcome.

However, populist leaders' recent discourses around the world have questioned educational elites and the overall distribution of wealth, mirroring certain research trends in academic literature. The justice of meritocracy has been discussed for at least three decades in international migration policy as well as on a domestic level. Since the 1990s, some authors criticized credentialism and the lack of possibility for the middle and lower classes to climb the social scale (Derber, Schwartz, and Magrass, 1990).

Other academic works have questioned meritocratic criteria in the selection of migrants, especially in the case of Canada, claiming that certain countries act like elite universities, further privileging elites who benefitted from university education in their countries of origin (Lim, 2017). Therefore, meritocracy has implications on a domestic but also on an international level. By promoting skilled migration instead of simply labor migration, they help foster inequality among countries.

It is also important to outline particular attraction policy incentives, such as visa facilities and citizenship, in order to compete on the global market of competencies. Studies by Schachar (2006 and 2011) have outlined countries' efforts to imitate and even overtake the others, for instance, by using methods such as the Olympic citizenship for athletes who may wish to acquire a particular citizenship for the specific purpose of competing in Olympic games. In this way, individuals who are part of certain elites—economic, educational, or both—may have more access to be able to migrate and be accepted in new destinations.

Inside the U.S., this discussion seems to be revived in recent works such as the book of Yale Law School scholar Daniel Markovits (2019), who considers himself part of a privileged educational elite in a meritocratic system that no longer promotes social justice. Even though Markovits accepts the historical benefits of “meritocratic energy, ambition, and innovation” (p. XIII), in his view, meritocracy nowadays only helps reproduce opportunities for the most privileged social classes and geographic areas in the U.S., but does not really allow for equal opportunities of education and jobs across his country. Even though Markovits's book makes no mention of migration or migrant workers, his argument reveals certain problems of U.S. society, including domestic brain drain, bad distribution of resources, the populist vote, and finally, the reasons behind the current questioning of skilled migrant workers.

Many economists already took a stand on whether migrant workers damage the possibilities of native-born workers, some of them linking public opinion on migration with the cycles of U.S. economic crisis and growth (Borjas, 2005). The new approach to meritocracy makes visible how middle classes in the Midwest, for instance, have lost opportunities against local and foreign workers alike. Markovits writes:

Middle-class families cannot afford the elaborate schooling that the rich buy, and ordinary schools lag further and further behind elite ones, commanding

fewer resources and delivering inferior education. Even as top universities emphasize achievement rather than breeding, they run admissions competitions that students from middle-class backgrounds cannot win, and their student bodies skew dramatically toward wealth. Meritocratic education now predominantly serves an elite caste rather than the general public. (2019: xiv)

Meritocracy similarly transforms jobs to favor the super-educated graduates that elite universities produce, so that work extends and compounds inequalities produced in school. Competence and an honest work ethic no longer assure a good job. Middle-class workers, without elite degrees, face discrimination all across a labor market that increasingly “privileges elaborate education and extravagant training,” according to Markovits (2019: xiv).

His point is the division in U.S. society that sparks resentment and even hurts the elites themselves. In this book, meritocracy equals aristocracy, with the difference that aristocrats lived a good life, while today’s meritocrats no longer own their own time. They work and study more and more, under ongoing psychological pressure to maintain their privileges. Poor and rich work alike, for huge amounts of time but very different payment. Markovits finally notes:

This is, in fact, the same alienation that Karl Marx diagnosed in exploited proletarian labor in the nineteenth century. Indeed, as technological development renders mid-skilled workers increasingly surplus to economic requirements, and at the same time places super-skilled labor at the very center of productive life, meritocracy shifts the classic afflictions of capitalism up the class structure. The increasingly superfluous middle classes assume the role once occupied by the lumpenproletariat, while alienated labor comes home to roost in the elite.

Marx’s knife takes an added twist. The elite, acting now as rentiers of their own human capital, exploit themselves, becoming not just victims but also agents of their own alienation. Once more, the elite should not—they have no right to—expect sympathy on this account from those who remain excluded from the privileges and benefits of high caste. (2019: 40)

The overall questioning of merit in the U.S. is linked to inequalities, the management of human capital and domestic brain drain. Not only is the U.S. attracting fewer skilled workers, but it also experiences a serious inequality among its regions, with the Rust Belt states less able to maintain and attract human capital than the Boston-Washington corridor.

Certain new economic theories on human capital may help explain the success of certain cities and regions in attracting and maintaining skilled labor. I am referring to the works outlining the importance of epistemic groups and teams that may foster individual capacities of workers in the knowledge-based economy. Ployhart et al. (2014) emphasize the importance of the combination of human capital and the complementarity that occurs in certain work environments, where innovation and creativity multiply each individual's capacity.

Human capital is based on personal investment in education and brings value to the working units (companies, universities, scientific fields, etc.) that assimilate skilled workers, especially through the complementarity of their capabilities (Campbell, Coff, and Kryscynski, 2012). Briefly put, this theory may be understood as an emphasis on collective as opposed to individual capital. One individual alone may not be able to change the outcome of a working unit in the same way as a varied group of individuals may. This means, in terms of migration, that certain work units in traditional destination countries may attract human capital because of their ability to boost employees' capabilities and provide good remuneration.

Ployhart et al. (2014: 378) also emphasize the importance of promoting human capital resources in order to achieve a competitive advantage as a company or work environment. In this way, work units in successful economies look to attract but also increase the human capital of particular individuals understood as complex resources, by improving and updating pre-existing abilities. According to this approach:

The locus of strategic human capital resource-based competitive advantage is not the content of the resources but the degree to which they are interconnected. It is the interconnections among resources that make the resources immobile and difficult to imitate (not to mention hard to value given the lack of efficient strategic factor markets). Interconnections increase the social complexity, causal ambiguity, and path dependency of strategic human capital resources. (Ployhart et al., 2014: 392)

This theoretical background proves the relevance of attracting skilled workers and combining a variety of human capital resources in order to maintain competitiveness. In what follows, this chapter discusses the past and present of talent attraction in the U.S. and Canada, based on historical legislation and present political discourse.

Historical Background of Brain Gain in the U.S. and Canada

The history of migration legislation in North America shows certain patterns of distinction among migrants that today may be even considered discriminatory. The paupers, the ill, the insane, the people of certain races or sexual orientation were constantly rejected, while labor migration was facilitated according to the necessities of the moment (see Table 1).

I propose a dichotomous model of analysis of skilled migration policy history, dividing migrants into friends (privileged migrants who are allowed to enter) and foes (unwanted foreigners). Based on International Migration Institute Demig Policy Data (2020), the proposed timeline summarizes the migration legislation in North America, divided into nine stages according to the growing preference given to skilled migrants.

TABLE 1
FRIENDS AND FOES IN MIGRATION LEGISLATION OF NORTH AMERICA

<i>Migration Stage</i>	<i>Friends (Privileged and Preferred Migrants)</i>	<i>Foes (Unwanted Aliens)</i>
1. From the early eighteenth through the nineteenth centuries: free movement and little regulation	free white persons of good moral character (U.S., 1790); colonizers and Europeans (U.S., 1824)	paupers (1891, U.S.) and the poor (Canada, 1910)
2. End of the nineteenth century: racial and historically-based prohibitions	children (Canada, 1892); Japanese (U.S., 1894)	Chinese (U.S.: 1875-1888, 1902, ending in 1943); (Canada: 1931) the ill and insane (U.S.: 1882; Mexico: 1865; Canada: 1906); Spaniards (Mexico: 1827); British (Canada: 1907 and 1913); foreign laborers (Canada: 1897); anarchists (Mexico: 1909); Japanese (Canada: 1910)
3. ww I: Agriculturalist period	agriculturalists (during the entire nineteenth century in all three countries, in particular, Mexican agricultural workers (U.S.: 1917-1921, 1942-1964)	the charity class; migrants from enemy nations; the illiterate and South East Asians (U.S.: 1917); recalcitrant and undesirable foreigners (Mexico: 1917) alcoholics, illiterates, those guilty of espionage (Canada: 1919)

TABLE I
FRIENDS AND FOES IN MIGRATION LEGISLATION OF NORTH AMERICA
(continuation)

<i>Migration Stage</i>	<i>Friends (Privileged and Preferred migrants)</i>	<i>Foes (Unwanted Aliens)</i>
4. Interwar period 1921: start of "skills" preferences	the skilled (U.S.: 1921, 1924; Mexico: 1947; Canada: 1949); British (Canada: 1923)	Japanese (U.S., 1921); foreigners with bad conduct, prohibition of labor migration (Mexico: 1926); those who leave the country without permission (Mexico: different years, 1926)
5. WWII and its aftermath: boom of European refugees	Family reunification with minors and spouses, especially from Mexico and Canada (U.S.: 1924); returned citizens from the U.S. (Mexico: 1934; Spanish: 1934); displaced people after WWII, preferably from Europe and the skilled (Canada: 1947; U.S.: 1948; Mexico: 1947)	Mexicans (U.S.: deportation of 1930, 1954); foreigners who do not comply with language criteria (Mexico: 1934; U.S.: 1941); Jews (Canada: 1947); ban of previous war enemies and sexual minorities (Immigrants Acts of 1952 in the U.S. and Canada); communists (U.S.: 1953)
6. The Cold War emancipation: end of racial discrimination, start of selection based on education and citizenship to skills integration	certain European countries under the category "preferred class" (U.S. and Canada: 1952); domestic servants from British Guiana (Canada: 1962); workers of distinguished merit (U.S.: H1 visas); Cubans (U.S.: 1966, 1982) Citizens from Hong Kong (1966); Hungarians (1956); and Czechs (1968); Canada Families of H1 workers (U.S.); Vietnamese (U.S.: 1975 1982, 1987); Laotians and cambodians entrepreneurs and investors (Canada: 1980 and 1987); Mexicans (U.S.: 1986); Canadians, especially businesspersons (U.S.: 1988)	homosexuals, drug dealers and consumers (Canada: 1952, based on the doctrine of suitability); irregular migrants (Canada: 1973); and undocumented aliens (U.S.: 1986); quotas for refugees (max. 50,000 in the U.S.: 1980)

TABLE I
FRIENDS AND FOES IN MIGRATION LEGISLATION OF NORTH AMERICA
(continuation)

<i>Migration Stage</i>	<i>Friends (Privileged and Preferred migrants)</i>	<i>Foes (Unwanted Aliens)</i>
7. The human rights turn in the 1990s	Refugees from Russia (U.S.: 1990); specialty occupations and employable skills (U.S.: 1990); domestic workers (Canada: 1990); soviet Union scientists employed in biological, chemical, or nuclear technical fields, high-level defense projects (U.S.: 1992); separate investor program for Quebec (Canada: 1991); business visitors, treaty traders, and investors from Canada and Mexico (U.S.: NAFTA, 1994); temporary Protected Status: Honduras, Nicaragua (1998); El Salvador (U.S.: 2001); Chileans and skilled labor from around the world (Canada: 1998); nurses (U.S.: 1999)	Ban on “bogus” refugees (Canada: 1990) and further restrictions for refugees, criminals, terrorists, and irregular migrants (Canada: 1993 and 1995); Cubans (U.S.: 1994)
8. Cooperation for twenty-first century talent competition/A regional market for talent	Family-related migration, victims of trafficking and violence and the skilled (U.S.: American Competitiveness in the 21st Century Act, 2000); same-sex family reunification (Canada: 2000)	Terrorists (U.S. Patriot Act, U.S.: 1996, 2002); restrictions on caregivers based on skills (Canada: 2002)
9. Migration restrictions in the populist stage (after 2017)	Skilled migrants in a limited number, preferably with graduate studies under the America First policy (U.S.: 2017); Global Skills Strategy (Canada: 2017)	Muslims (U.S. travel ban of 2017), chain migration/ family reunification (America First Policy, U.S.: 2017); caps and temporary hold on H-1B visas (U.S.: 2017, 2018, 2019, 2020)

SOURCE: IMI (2020) (rows 1 to 8); row 9, developed by the author.

The first legislation on migration in North America dates back to the end of the eighteenth century and it allowed free movement, with little regulation. Nonetheless, the first Naturalization Act of 1790 in the U.S., restricted naturalization to “free white persons” of “good moral character.” Three decades later, after Mexico’s independence from Spain in 1821, Mexican authorities encouraged the settlement of European migrants who wished to work in agriculture in order to populate the northern part of the country.

At that time, the selection of migrants in North America did not depend on their skills, but was race-based. The governments of the U.S., Canada, and Mexico assumed that European migrants were more suitable for integration and had more compatible moral values. Poor migrants or those with bad health were required to pay a certain amount of money to enter the U.S. and Canada. The first migrants were not required to speak English or Spanish, a criterion introduced as literacy tests after World War I.

In Canada, the British North America Act of 1867 included conditions to facilitate the attraction of a large influx of immigrants as a key economic strategy to bolster national demand for domestic goods and stimulate the nation’s small manufacturing sector. In addition, Canada looked for immigrants to settle the largely unoccupied lands in the West as a means of securing national sovereignty in these areas (IMI, 2020).

The end of the nineteenth century marked the start of racial- and historically-based prohibitions in North America, a tendency that lasted at least a century. The recruitment of immigrants began to emphasize skills at the beginning of the twentieth century, according to the type of agricultural and industrial economy that each country was promoting. For instance, in 1907, the Immigration Branch of Canada adopted an intensive plan to recruit British farmers and domestic workers. This means that skills have always been important in the recruitment of migrants; they just differ over time. For instance, in the period before World War I, the United States and Canada promoted hiring agricultural and rail workers, the types of skills that boosted the economy at that time.

Skilled migration as we understand it (migration of professionals with university degrees) was only promoted after World War II, with the boom of European refugees. In the beginning, these refugees settled in North America, many times with the financial aid of organizations such as the Provisional Intergovernmental Committee for the Movement of Migrants from

Europe (PICMME, founded in 1951), a first version of today's International Organization for Migration.

In 1947, Canadian Prime Minister Mackenzie launched the "absorptive capacity" guidelines and created new immigration classes, including entrepreneurs and professionals, domestic workers, nurses' aides, and those sponsored by their future employers. Even while preference for the British, French, and U.S. Americans continued, greater emphasis was placed on migration that could promote economic growth.

In the U.S., the Immigration and Nationality Act of 1952 (the McCarran-Walter Act) gave preferential treatment to highly skilled migrants whose services were needed in the country, together with their spouses and children. This act also created the H1 visa, a category previous to today's H-1B.

In the decades that followed, preference was given to domestic workers and refugees, apart from certain skills that correspond more to the knowledge economy, such as engineers or researchers. While the U.S. and Canada display similar systems for attracting skilled workers and domestic migration governance, Mexico follows different patterns aimed at the return of its workers from the U.S. or lobbying for Mexican workers in that country.

The Cold War marked the beginning of a new stage, which consisted of ending racial discrimination, to start the selection based on education and "citizenship to skills" integration. In 1967, Canada implemented its points-based system for selecting immigrants, one that no longer discriminated based on race, but fulfilled domestic market requirements. This manner of selecting migrants has long been seen as the best way to attract the most skilled and has further inspired similar proposals in the U.S. and Australia, the other two main competitors on the global talent market. Four years later, in 1971, Canada also promoted the policy of multiculturalism to include migrants from a broad range of cultures and social backgrounds, "encouraging them to integrate into their society and take an active part in its social, cultural, economic, and political affairs" (Canadian Multiculturalism Act, 1971 and 1988).

In the 1970s, both the U.S. and Canada passed laws to encourage the entry of business people and intra-company transferees (on the L-1 visa to the U.S., 1970) and attract temporary skilled workers (Employment Visa Regulations of 1973, Canada).¹ Despite similarities in U.S. and Canadian

¹A comparison between temporary workers and skilled vs. agricultural ones may be a subject for future studies.

immigration legislation, no explicit mechanisms for cooperation on skilled migration existed until 1988, when the Canada-U.S. Free Trade Agreement (CUSFTA) was signed. Similar to the upcoming NAFTA (1994), CUSFTA facilitated the temporary entry into the United States of Canadian professional business persons “to render services for remuneration.”

The agreement marked the beginning of a human rights turn in migration policy in the 1990s, especially after Mexico joined NAFTA. In 1994, a regional market for the mobility of skilled personnel emerged, even though on unequal terms for the signing countries. The U.S. created special conditions for Mexican and Canadian workers under the TN visa. This agreement further promoted the attraction of human capital to the U.S. from both neighboring countries. As the legislative timeline shows (Table 1), Mexico has no talent attraction or brain gain policy, apart from certain scholarships given to graduate students, who are required to return to their countries of origin upon finishing their studies. This justifies why the present chapter centers on the policy of the U.S. and Canada as the main countries that attract skilled human capital.

After NAFTA came into effect, each country, especially the U.S. and Canada, continued enforcing its own migration laws that promoted skilled migration over other types of unskilled labor. In the U.S., a new Immigration Act enacted in 1991 established the H-1B visa program as it is known today, by limiting it to foreigners who temporarily perform work in “specialty occupations.” Both the U.S. and Canada promoted the immigration of Eastern Europeans, especially skilled ones, after the fall of Communism. Canada had an East European Self-Exiled Persons Designated Class, while the U.S. facilitated the entry of 750 scientists from former Soviet Union states, plus their family members, under the Soviet Scientists Immigration Act of 1992.

Attracting skilled workers was further emphasized with the American Competitiveness Act of 2001 and the reform to the Omnibus Appropriations Act (U.S.), which increased the number of H-1B skilled workers and extended the stay of intra-company transferees with L-1 visa. At the same time, Canada launched its Foreign Credential Recognition Program (2005) to facilitate the assessment and recognition of foreign qualifications for both regulated and nonregulated occupations.

This brief historical analysis shows an improvement in the laws on migration in the U.S. and Canada, when seen from the perspective of racial

and gender discrimination. It also shows a greater emphasis on skilled migration starting with World War II, under the assumption that this type of migration would contribute to economic development. In what follows and might be considered a ninth stage, is a change in the general discourse on migration in the U.S., which questions the attraction of skilled foreigners and migrants, in general using economic but also cultural arguments. Canada, by contrast, is following the same step-by-step attraction of foreign labor, especially skilled labor, taking advantage of the prejudiced discourse in the U.S.

TABLE 2
NEW H-1B VISA APPLICATIONS APPROVED PER FISCAL YEAR

<i>Company</i>	2015	2016	2017	2018	<i>Change 2015-2018 (%)</i>
Amazon	1,066	1,414	2,494	2,839	166.00
Facebook	422	472	728	669	59.00
Apple	532	635	675	701	32.00
Microsoft	969	1,142	1,474	1,256	30.00
Google	849	682	1,071	724	-15.00
Tech Mahindra	1,571	1,227	2,224	590	-62.00
Cognizant	3,849	3,946	3,212	507	-87.00
Tata Consultancy	4,766	2,025	2,312	533	-89.00
Wipro	3,185	635	1,236	284	-91.00
Infosys	2,799	2,340	1,188	73	-97.00

SOURCE: D'Souza (2019).

The current ninth stage corresponds to a change of paradigm in migration policy laws and discourse in the U.S., as proposed in the hypothesis of the present study. The America First Policies (2020) implemented during Donald Trump's presidency further emphasized skills for attracting foreigners in order to eliminate "chain migration" or family reunification. However, the H-1B visas were stopped every year since 2017, either to remove backlogs, limit the entry of certain individuals such as those who also corresponded to the Muslim travel ban enforced in 2017, or for health reasons during the COVID-19 pandemic in 2020. Presidential discourse against H-1B pretended

that foreign workers were unfairly competing with the native-born, thus damaging U.S.-born professionals. The outcome was that some companies, especially the ones with Indian capital, hired fewer foreign workers on the H-1B visa (see Table 2). These data confirm the hypothesis that the present stage in immigration policy represents a step backward in terms of talent attraction for the U.S., with clear advantages for Canada.

A Comparative Discourse Analysis of “Brain Gain” in the U.S. and Canada

This section is based on the state of the art of the brain-gain-vs.-brain-drain topic in independent U.S. and Canadian reports and related in-depth features quoted in the media. Independent reports, often released by migration and political think tanks, may be studied as a hybrid type of communication among academic and official sources and the public. They may also be considered a bridge among public opinion, actors involved in migration policy, and academic studies. This type of publication may have a direct impact on public policy. The pieces quoted below attempt to summarize the main arguments involved in our topic, as opposed to the option of a possible content analysis that would count related news and media reports. Most of the documents chosen were released after the Donald Trump presidency, but previous reports that mention similar topics are also included.

Results were summarized in four recurring topics: 1) the need to maintain brain gain through comprehensive immigration reform; 2) domestic brain drain in the U.S.; 3) brain waste; and 4) the Canadian Dream competing with the American Dream.

Topic 1: The Need to Maintain Brain Gain through Comprehensive Immigration Reform

As a result of the historical emphasis on skilled migration, the profile of immigrants to the U.S. has been changing to include more professionals. A report released by the Migration Policy Institute (Batalova and Fix, 2017) assesses a slow shift in the composition of migrants to the U.S., consisting

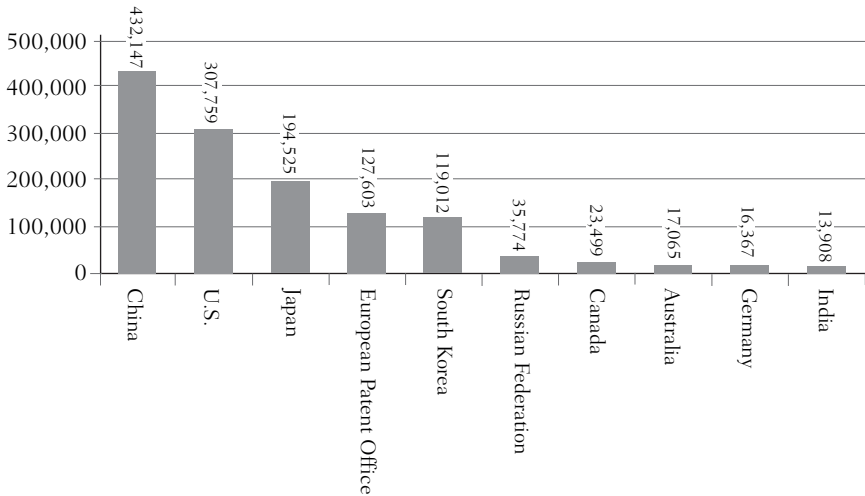
of a greater presence of skilled migrants (48 percent at present, compared to 31 percent between 2011 and 2015). All migrants to the United States are more educated nowadays and almost half enter on temporary visas such as the H-1B (Batalova and Fix, 2017: 34).

Nevertheless, the need to maintain brain gain through a comprehensive immigration reform that would attract more and better skilled migrants has been a topic of discussion for at least a decade, as has been the correct utilization of migrants' abilities. In 2011, a report released by the Brookings Institution (West, 2011) outlined "the contribution made by talented, hard-working, and entrepreneurial immigrants whose skills and knowledge created a prosperous new country" as one of the strongest narratives in U.S. history. By contrast, this report analyzed the way in which the U.S.'s "outmoded visa system" discourages skilled immigrants, with severe consequences for the economy. West called for a comprehensive immigration reform, in direct opposition to the way later proposed by the Trump administration, in order to increase or at least maintain the country's traditional brain gain.

West focused on migrants' contributions to the U.S. GDP. In particular, skilled migrants in the twenty-first century have contributed to the founding of at least a quarter of the new tech companies, co-authored a quarter of international patents, and founded more than half of the new tech start-ups in Silicon Valley. His evidence supports the economic argument for a better selection of skilled migration as opposed to family reunification, making the case for hiring more STEM workers (2011: 3). He bases his evidence on the declining number of patents filed by U.S. innovators, a situation that has worsened since this report's publication. China has indeed surpassed the number of U.S. patents in numbers (Figure 5). Even more interestingly, patent applications per million population for the top ten origins in 2018 show the U.S. is behind other countries such as South Korea, Japan, Switzerland, China, and Germany (see Figure 6).

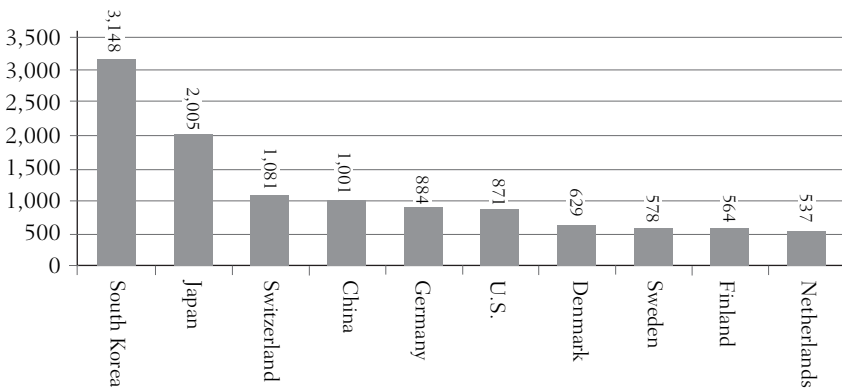
West made a point that would be constantly revisited after Donald Trump's presidential campaign in 2016 and in his subsequent administration: the need to improve the selection of migrants according to their skills, but without a cap (Kennedy, 2019). While institutions such as Brookings recommended an increase in skilled migration, Donald Trump believed a cap should exist to protect native-born workers.

FIGURE 5
PATENT GRANTS BY THE TOP TEN PATENT OFFICES (2018)



SOURCE: World Intellectual Property Organization (2019).

FIGURE 6
PATENT APPLICATIONS PER MILLION INHABITANTS
FOR THE TOP TEN COUNTRIES (2018)



SOURCE: World Intellectual Property Organization (2019).

Back in 2011, West also compared the U.S. and Canadian immigration systems, finding that Canada was following a better international recruitment strategy based on its points system and incentives for permanent residency

and citizenship. His report proposed the “creation of a broadly representative, independent federal immigration commission” that would depoliticize the topic for more objective decisions (West, 2011: 7). Far from being depoliticized, migration has been one of the main issues of the presidential campaigns in 2016 and 2020.

Topic 2: Domestic Brain Drain in the U.S.

A more recurring topic has been the domestic brain drain experienced by the U.S. as a result of unequal development across the country. A Social Capital Project report (SCP, 2019) discusses geographic inequalities produced by the domestic brain drain in the last fifty years in the U.S., which caused poor states to lose their skilled to more prosperous tech hubs and metropolises, the same places foreign workers go.

The SCP report considers brain gain a problem of inequality among international and domestic regions. Brain drain is a result of bad economic planning, among other social and political issues. It is also the complaint of the losers, since for every brain drain problem there is a brain gain or human capital winner.

For instance, the SCP report shows constantly rising brain drain from the Rust Belt and Southeastern states as opposed to considerable brain gain along the Boston-Washington corridor and on the West Coast. Similarly to foreign workers, highly-educated native-born adults move to “dynamic states with major metropolitan areas . . . leaving behind more rural and postindustrial states.” This causes regional inequality, economic stagnation, and declining social capital in states with major outmigration (SCP, 2019: 3). This economic division also corresponds to a political one, as “a greater share of the highly-educated tend to hold liberal political views, compared to those with less than college education. Those living in urban areas are also more likely to hold liberal political views, whereas those living in rural areas are commonly conservative. [U.S.] America’s major metropolitan areas tend to vote Democratic, while most other areas of the country vote Republican” (SCP, 2019: 23).

Before studying international brain drain, we should therefore analyze the domestic level and migration from rural to urban areas. According to his research for CityLab project, Richard Florida found that the end result of

domestic brain drain is “a lopsided ‘winner-take-all’ pattern of regional haves and have-nots. Our politics become ever more divisive and polarized as the ‘big sort’ grows ever bigger, eating away at the social fabric of our nation” (2019).

Florida’s research confirms this brainpower-gaining trend, which tends to widen the geographic divide between the winners and losers of the knowledge economy. Florida writes, “Behind this lies a tale of two migrations: the skilled and educated ‘mobile’ on the one hand and the less educated ‘stuck’ on the other.” Florida even recalls an anecdote from his life in Pittsburgh in 1999 when the local authorities created “Border Guard Bob,” “a uniformed sentinel who would patrol the region’s borders to convince talented local grads to stay—an initiative that quickly became the butt of jokes and was scuttled.” Florida’s conclusion is the same as SCP’s, both outlining how the health of associational life in the United States is affected by the geographical disparity of social capital drain:

Brain drain has significant consequences—economic, yes, but also political and cultural. By increasing social segregation, it limits opportunities for disparate groups to connect. And by siphoning a source of economic innovation from emptying communities, brain drain can also lead to crumbling institutions of civil society. As those natives who have more resources leave, those left behind may struggle to support churches, police, athletic leagues, parent-teacher associations, and local businesses. (Florida, 2019)

Very relevant to this study is the ninth stage in skilled migration history, which corresponds to a populist trend in politics and also shows a shift in the topics treated by reports and media, from international brain drain that favors the U.S. to domestic brain drain that damages the country. One of the solutions to this domestic brain drain, according to Florida, may be remote work, with the advantage of lower housing prices in less successful states.

The topic is also featured by Milligan (2019) in *U.S. News*, based on the same idea of brain drain that leads to economic loss and, furthermore, political polarization. This results in “two, mutually suspicious [U.S.] Americas: one that’s more urban, liberal, and diverse, and one that’s more rural, conservative and homogenous.” Even though Milligan states that “education is not a predictor on its own,” he also finds that “nearly all of the states with the biggest brain drain voted for Trump, while nearly all of those gaining educated residents cast their Electoral College votes for Clinton.”

Topic 3: Brain Waste

The third topic is brain waste or de-skilling of foreign workers. Not only are professionals needed for a more competitive U.S. economy, but there is also concern about how their abilities are actually used. Batalova and Fix, in the aforementioned Migration Policy Institute report, explain that the education of migrants is even higher and growing faster than that of the native-born. According to the report, this trend was especially pronounced in the Rust Belt. “In Michigan and Ohio while 59 to 63 percent of recent arrivals had at least a bachelor’s degree, 26 to 27 percent of the native-born were college graduates” (Batalova and Fix, 2017: 2).

“What may come as a surprise is that 25 percent of recent arrivals who are unauthorized immigrants are college graduates. MPI estimates that approximately 1 million unauthorized immigrant adults possess a university degree” (Batalova and Fix, 2017: 6).

By contrast, the report also shows an increase in the underutilization of migrants’ abilities. Batalova and Fix find that “one in four, or nearly 2 million, U.S. college-educated immigrants were either working in low-skilled jobs or unemployed. This ‘brain waste’ comes at a cost of nearly [US]\$40 billion in unrealized earnings annually, with a resulting loss to federal, state, and local governments of [US]\$10 billion in uncollected taxes” (Batalova and Fix, 2017: 35). Similarly to another report by McHugh and Morawski (2017), they recommend better licensing procedures and better policies to encourage employers to “reduce their bias against foreign degrees and work experience, and creating opportunities to bridge educational and language gaps.”

Topic 4: The Canadian Dream Competing with the American Dream

The competition between U.S. and Canadian migration policies is a shared topic in the reports and media features in both countries. It is often described as the U.S.’s recent inability to attract and retain foreign graduates. In 2018, Edgecliffe-Johnson warned in *The Financial Times* that “Corporate America’s Visa Loss is Canada’s Brain Gain.” Like many other media features, he starts with an Indian engineer in the U.S. who moves to Canada because of visa

hassles and difficulties in running a start-up in the U.S. Apparently a work permit in Canada takes five days to process, compared to three months in the U.S. Edgecliffe-Johnson analyzes how the America First immigration policy has affected skilled and unskilled workers alike, both white-collar and blue-collar workers. In particular, the travel ban and hate speech affected Indian migrants, some of whom chose Canada as a country for re-emigration and second citizenship.

This type of publication has been more recurrent since 2017. For instance, Singh (2019), featured by *CBS News*, states that graduate applicants from India to the U.S. fell by 8.8 percent, while Canada saw an increase of international graduate enrollment of 16.4 percent in 2017. Consequently, high-tech manufacturing companies such as Deloitte estimated that up to 2.4 million jobs could go unfilled between 2018 and 2028, costing the U.S. economy US\$2.5 trillion (Singh, 2019).

The issue was commented on by many migrants who found an opportunity to show their discontent with Trump's policy. In an *Expatrius Blog Network* post, Reiche (2019) notes the growing attraction of Canada as a second or first option for skilled migrants. It is pictured as a country friendly to foreigners, and this image helps build on the Canadian Dream possibly overtaking the American one. Reiche writes:

Seeing opportunities rather than threats in skilled foreign workers, Canada implements its Global Skills Strategy, which makes it easier to bring in foreign talent. Focusing on tech talents, the immigration system allows developers, computer analysts, software engineers, and alike to get work permits to enter Canada within two weeks of application. Moreover, Canadian policies try to retain the brightest foreign talent in the country already upon graduation, by granting foreign students work permits for up to three years after graduation. (2019)

The Canadian Dream was previously studied in various papers that summarize the history of Canadian migration policy from the perspective of people looking for a better life in North America (Ranke, 2012). This idea, which may come across as a promotional image of Canada, is used by the media and public figures alike. The Canadian government speaks of a "round 2" of brain gain in Canada, releasing news on visiting academics' part in Canadian research chairs. According to one release on its webpage:

Canada is the destination of choice for some of the world's leading scientists and scholars, including expatriate Canadian researchers who are coming home to further their thriving research careers. They see that Canadians respect the work of researchers who create new knowledge and help train the next generation of students. They understand that the Government of Canada has made science a priority following unprecedented investments in basic science. (Government of Canada, 2018)

Various Canadian public figures also help build on this public diplomacy discourse to favor the attraction of skilled foreigners. One hypothesis to be confirmed by further longitudinal studies is the circular relationship between the favorable discourse on migration policy in Canada, migration policy programs, and benefits to the Canadian economy. For instance, the National Bank of Canada's chief economist Stéfane Marion (quoted in Tejani, 2019) also explains how Canada went from "brain drain" to "brain gain," with Canada ranking first among OECD countries in attracting highly skilled immigrants as a proportion of total entries.

While that discourse may seem like propaganda, it actually corresponds to a particular economic approach. This open-door policy is of course based on labor market and demographic needs, as more Canadians are leaving the workforce than graduating to replace jobs in health care, technology, and services. Over time, one of the challenges of Canadian migration policy has been brain retention, that is, the ability to maintain a highly skilled workforce that has often been attracted by a greater number of and better paying jobs in the U.S. An article by Lemieux, Dorland, and Givoni (2018) addresses the puzzle of the sustainability of this sudden brain gain in Canada. Talent retention will indeed require better paid jobs and a wider range of projects at tech companies in Canada.

Conclusions

North America, the main region for attracting talent since World War II, is the most relevant case study for brain attraction vs. brain drain. It is also a good starting point for a normative theoretical discussion: what is the correct management of human capital?

The discussion of brain gain from the perspective of meritocracy and global justice entails a different understanding of present populist claims

around skilled migration. What may seem like an irrational policy may in fact have ethical underpinnings. Under conditions of populist claims for justice, meritocracy has been questioned for perpetuating elites, rather than offering equal opportunities. Therefore, the selection of skilled migrants was questioned in the U.S. for damaging local workers, with new arguments that differ from historical migration policies.

The replacement of the American Dream with America First policies creates a new, unfriendly image of the country as a possible destination, and also affects the integration and coexistence of migrant minorities. In the long term, it remains to be seen whether the Canadian Dream will overtake the American Dream, in terms of attracting more skilled foreign workers.

Paradoxically, the analysis of brain gain also leads to further considerations about brain drain, which may even be redefined in terms of forced migration: when professionals are forced to leave their place of origin (town, city, or region) to find work in their own country or abroad. As the U.S. case shows, brain drain is often based on incorrect domestic economic policies, and a lack of internal migration planning. One of the results of this study is that domestic brain drain should be a greater topic of study to complement existing literature on an international level.

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**United States/Mexico Migration Trends,
Policies, and Border Management**

TRUMP'S ASYLUM BAN AND THE LÓPEZ OBRADOR RESPONSE*

*Mónica Vereá***

During his four years as president, Donald Trump drastically toughened U.S. immigration policy through multiple executive orders and federal regulations. His main objective was to accelerate apprehensions and deportations, restrict the admission of immigrants and temporary workers, substantially reduce the admission of refugees, and deny asylum to the growing number of applicants who arrived at the U.S. border during this period. Trump drastically complicated the established procedures for undocumented immigrants and asylum-seekers, including those already living in the United States, making their lives miserable and rendering them more vulnerable than before.

Simultaneously, during that, caravans of whole families coming from Central America's Northern Triangle countries (Guatemala, Honduras, and El Salvador) crossed Mexican territory heading toward the Mexico-U.S. border. They were mainly fleeing extreme poverty, unemployment, climate change, persecution, and growing criminal violence, in order to ask for asylum or cross the border irregularly to get to the "promised land."

At the beginning of his term, the new Mexican president, Andrés Manuel López Obrador (AMLO), established an "open door" migration policy oriented to respecting migrants' human rights and, in that vein, welcoming them and giving them an official permit to stay and even work, moving freely through Mexican territory. AMLO's attitude was drastically reversed in May 2019 due to Trump's pressure and threat to impose trade tariffs if Mexico did not halt all illegal migration and change to a high-enforcement policy. So, in this essay, I will examine the different measures imposed by the Trump administration during his four years in office to limit the admission of asylum-

* An initial version of this chapter can be found in a longer essay (Vereá, 2021).

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seekers. I argue that the implementation of an asylum ban has been consistent with Trump's anti-immigrant agenda and has made it almost impossible to gain asylum in the United States. The imposition of the Migrant Protection Protocols (MPP, also known as Remain in Mexico), and the López Obrador response with a bilateral agreement has made our country into a buffer zone for our northern neighbor, stopping and detaining migrants mainly from Central America at a very high economic, political, social, and humanitarian cost.

The Central American Caravan and Trump's Asylum Ban

The thousands of migrants coming in a "caravan" from the Northern Triangle countries crossing Mexican territory began increasing significantly in early 2018, and, by March, new contingents followed the first caravan. Formed by multiple families, the caravans constitute a new form of collective organization of migration that initiated in Honduras, El Salvador, and then Guatemala. A group of around 7,000 persons in different contingents crossed Mexico hoping to reach the Mexico-U.S. border to request asylum in the U.S.¹

Migration from Central American countries to Mexico and through Mexico toward the United States is not new. A long migratory tradition exists, mainly from Guatemala; they come to work temporarily mainly in agriculture in Mexico's southern states. Traditionally, Central Americans have also crossed Mexican territory heading for the United States, but this flow has increased significantly during recent years as it can be seen in Graph 1, much more than that of Mexicans.² So, Mexico is a country of migrant destination, transit, and emigration, with the largest diaspora in the United States: 36.6 million people of Mexican origin population lived in the United States in 2017, and the Mexican-born accounted for 11.2 million in the same year (Bustamante, Flores, and Shah, 2019).

The approach of a caravan intensified Trump's anger, and he accused the Mexican government of doing nothing to stop the flows and once again

¹ The contingents were formed with the support of human smugglers, civil society organizations, and persons who spontaneously decided to join in when they found out it was forming (Mohar, at press).

² Apprehensions at the U.S. southern border came to 859,000 in 2019, double the number of the previous year; of these, Mexicans accounted for 169,000, while others, including Central Americans, accounted for 689,995 (United States Border Patrol, 2019).

threatened to withdraw from the North America Free Trade Agreement (NAFTA) if Mexico did not respond.³ In order to increase his political capital with his base, Trump flashily dispatched thousands of troops to the southern border to stop the flow, a very important deployment in recent years. Approximately 5,000 active-duty and National Guard troops are operating at the border in support of the Department of Homeland Security (DHS).⁴

In response to the approach of the caravan in March 2018, Trump established a “zero tolerance” policy and started separating parents from their children when they attempted to cross the border “illegally” into the United States, an eminently immoral decision. Even though the law allows families who cross “illegally” to remain together while their case is decided, children were forcibly separated from their parents and placed into DHS custody while their parents were prosecuted; humanitarian organizations characterized this as inhumane.⁵ Fortunately, amid a national and international outcry demanding that families remain together, Trump was forced to sign an executive order reversing this highly controversial policy in June 2018, as ordered by Dana M. Sabraw, a California federal judge.⁶ The Office of the DHS Inspector General revealed that a group of separated families are unaccounted for, because the government lacks an effective tracking system. When this policy halted, more than 1,100 migrant families had been separated, according to the American Civil Liberties Union (Kelly, 2020).

The Trump administration used a system called “metering” at the border. This limits the number of migrants who can apply daily for asylum with officials of U.S. Customs and Border Protection (CBP) at any port of entry, leading to waits that can last months or even years.⁷ Moreover, the waiting

³ During recent years, NAFTA was renegotiated and implemented on July 1, 2020 as T-MEC in Mexico, USMCA in the United States, and CUSMA in Canada.

⁴ In March 2019, 2,900 active-duty troops were operating at the border in support of the Department of Homeland Security (DHS), along with approximately 2,000 National Guard troops. The Pentagon declared that they might send more military on assignments that could put them in contact with migrants, signaling a break with current practice, since the military is not a law-enforcement body (Burns, 2019). In April 2020, Trump deployed 540 additional troops at the border due to COVID-19 concerns (Snow, 2020).

⁵ Fourteen thousand migrant children, the vast majority unaccompanied, were in the custody of the federal Office of Refugee Resettlement (ORR), which is responsible for the facilities where they were being held at the end of 2018 (Mittelstadt, 2018).

⁶ Dana M. Sabraw ordered a halt to family separation at the U.S. border and the reunification of all families that had been separated (Jordan, 2018).

⁷ It was first implemented by the Obama administration in 2016 to deal with the surge of Haitians arriving at California's San Ysidro port (Chishti and Bolder, 2020).

period to be heard in court can be years because of a backlog of more than 1,218,737 immigration cases by June 2020 (TRAC Immigration, 2020). Trump disliked the fact that by the time immigrants show up for their hearings, they have often put down roots with their children, jobs, and mortgages.

In June 2018, Trump took another very aggressive unilateral measure in response to the Central American caravan in order to dismantle the asylum system. The system gives immigrants a legal opportunity to live in the United States only when they can demonstrate that they would face persecution, torture, or death if they returned to their home countries. Trump began formulating a policy called “Remain in Mexico,” which would require asylum-seekers to wait in Mexico until their cases are decided, regardless of their nationality; this system was formally implemented later. Alternatively, Senate Republicans proposed barring Central American minors from seeking asylum unless they applied at home. Barring migrants who enter the country between border checkpoints from claiming asylum is a flagrant disregard for U.S. and international law. In order to sidestep that, the Trump administration established the Transit-Country Asylum Ban, a very important weapon for the DHS to make any asylum-seeker ineligible who transited through another country but cannot demonstrate they had applied for and were denied asylum there. The rule is a *de facto* asylum ban applied to most asylum-seekers entering the U.S. through the southern border. Thus, migrants deemed ineligible to apply for asylum under the new transit-country rule are formally treated as having failed to comply with the credible-fear requirement (Chishti and Bolter, 2020). Due to this situation, the Department of Justice and the DHS have proposed to amend the regulations governing credible-fear determinations. This is unconstitutional because, by law (established in the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), the DHS must implement a screening process to identify potentially valid claims for asylum, to prevent aliens placed in expedited removal from being expelled to a country where they would face persecution or torture (Federal Register, 2020). Initially, separate court rulings allowed the asylum ban to move forward; nevertheless, in September 2019, a federal court reinstated a nationwide block on the ban along the southern border.

In January 2019, Trump started implementing the “Remain in Mexico” policy formally known as Migration Protection Protocols (MPP) without a

formal bilateral agreement.⁸ The objective is to return non-Mexican undocumented migrants or asylum-seekers to Mexico indefinitely while their claims are processed. The law states that once an asylum-seeker has been screened and interviewed by an immigration judge, he or she must wait in U.S. territory until an individual decision is reached on whether that person should be released or detained. Since then, as of March 2020, more than 50,000 asylum-seekers were sent to Mexico to wait, where almost none have access to legal help with their claims (Ibe, 2020a). This constitutes a violation of the principle of non-refoulement, a principle of international law that prevents countries from returning, expelling, or extraditing migrants to territories where they might be subject to persecution, torture, or death. This is the case of Mexican border cities such as Tijuana and Ciudad Juárez, highly violent locations, placing asylum-seekers in further danger (Verea, 2020). The announcement and implementation of an asylum ban has been categorized as an audacious and inhumane move consistent with Trump's anti-immigrant agenda.

In April 2019, San Francisco District Judge Richard Seeborg blocked Trump's "Remain in Mexico" policy, enjoining the MPP. In his ruling, Seeborg stated, "The program probably violates the Immigration and Nationality Act, the Administrative Procedure Act, and other legal protections to ensure that immigrants are not returned to unduly dangerous circumstances."⁹ In March 2020, the Supreme Court said the Trump administration could continue to implement the policy while lower-court challenges continued (Ibe, 2020a).

It is important to note that, throughout 2018, Trump pressured former Mexican President Enrique Peña Nieto to sign a safe third country agreement but was formally rejected several times. These agreements state that asylum-seekers must make their claim in the first country they enter with safe third country status after fleeing their home countries, which in this case would force them to seek asylum in Mexico instead of the United States.¹⁰ Trump

⁸ It is part of section 235(b)(2)(c) of the Immigration and Nationality Act (SRE, 2018) and was called the Migration Protection Protocols (MPP).

⁹ The U.S. government could appeal the ruling to the U.S. Court of Appeals for the 9th Circuit but has not indicated whether it will do so (Sacchetti, 2019).

¹⁰ If a country has not been designated a "safe third country," as Mexico has not, an asylum-seeker may pass through it and apply for asylum in the next country with safe third country status. For example, an asylum-seeker from Honduras may pass through Guatemala and apply for asylum there, since it is the next country with safe third country status.

believed that this type of deal would discourage Central American families from coming to the U.S. in caravans (Partlow and Miroff, 2018).

The Prompt Asylum Case Review (PARC) program for non-Mexicans and the Humanitarian Asylum Review Program (HARP) for Mexicans were established by the Trump administration in October 2019.¹¹ Both have the purpose of barring asylum eligibility for individuals who transit through another country to reach the U.S.-Mexico border. They aim to adjudicate any humanitarian claims and remove within ten days for those who do not meet the standards. Both programs have given the government new tools to deny the vast majority of protection claims made by Central Americans, Mexicans, and, potentially, migrants from other corners of the world (Chishti and Bolter, 2020).

After that, the Trump administration reached a safe third country agreement with Guatemala, which would require asylum-seekers passing through Guatemala to the U.S. to apply for asylum there. This has been interpreted as a violation of U.S. refugee protection laws due to the fact that Guatemala cannot qualify as a safe third country, as it lacks infrastructure to assist large numbers of refugees. Trump made an agreement with El Salvador that they can receive non-Salvadorans sent from the United States and forced to seek asylum there. And finally, with Honduras, he established a similar agreement stipulating that the U.S. could send asylum-seekers back to Honduras if they passed through the country without first seeking asylum there. These agreements include a commitment to developing the capacity of the asylum system within these countries, as they are incapable of offering asylum-seekers protection (Ibe, 2020a). Therefore, under the new rule, Hondurans and Salvadorans would have to apply for asylum in Guatemala or Mexico before they are eligible to apply for asylum in the United States. Guatemalans would have to apply for and be denied asylum in Mexico. Since then, the U.S. has deported around 1,000 Honduran and Salvadoran asylum-seekers to Guatemala (Ibe, 2020b). These agreements could be a violation of U.S. refugee protection laws due to the fact that Guatemala cannot qualify as a “safe third country” since it lacks the infrastructure to assist large numbers of refugees and is incapable of offering them protection. Due to the COVID-19 pandemic, the U.S. has temporarily halted the deportation of non-Guatemalan asylum-seekers to Guatemala, because reports revealed that the

¹¹ Mexican asylum-seekers have one of the lowest asylum grant rates: 11 percent in fiscal year 2019 (Chishti and Bolter, 2020).

U.S. was deporting infected migrants. Advocates are now challenging these agreements in U.S. courts, but meanwhile Trump strategically moved the U.S. border further south in order to dismantle the U.S. asylum system.

AMLO Shifted Mexican Migratory Policy from a Humanitarian to an Enforcement Strategy

Since the beginning of his presidential term in December 2018, Andrés Manuel López Obrador took a different approach and began to assist Central American migrants crossing through Mexican territory under a “humanitarian policy.” He offered them shelter and Visitor Permits/Visas for Humanitarian Reasons (TVRH). These renewable visas, which allowed them to work, in addition to the help offered by some Mexican authorities for their transportation to the northern border, constituted an important pull factor; this was interpreted even by migrants coming from long distances like Africa and Asia as an invitation to cross our territory. According to the Centro de Estudios Sociales y de Opinión Pública from December 2018 to April 2019, 26,584 TVRH were given out, while one year before, from January to November 2018, only 8,000 had been issued, a significant difference (Cámara de Diputados, 2019). In order to reduce migration through our territory, López Obrador announced at the beginning of his administration that it would allocate one US\$100 million from the Yucatan Fund to Mexico’s Sowing Life Program to Honduras, El Salvador, and Guatemala. However, none of the government agencies have information on the investments that have been made, the type of jobs created, or the number of people benefited from the program (*Forbes* Staff, 2020).

On the other hand, at the beginning of his administration, AMLO de facto accepted Trump’s “Remain in Mexico” policy without a formal bilateral agreement, providing the U.S. with detention centers in different northern-border Mexican cities where asylum-seekers could be held indefinitely. AMLO’s passive response was interpreted as part of a non-confrontational policy with Trump, perceived as a very powerful man greater than himself, probably seeking to promote the signing of USMCA in exchange, or to try to diminish Trump’s anti-Mexican attitude policy throughout almost his entire term, and also the eventual creation of what AMLO called a “Marshall Plan” for Central

America. To address the root causes of Central American migration, AMLO proposed a US\$30-billion initiative to invest in the region. Trump informally supported it, declaring that his government would commit to giving US\$5.8 billion in private and public investments in the Northern Triangle as well as an additional US\$4.8 billion for Mexico, including US\$2 billion in development aid for southern Mexico (SRE, 2018).

In March 2019, President Trump again reacted aggressively, demanding that AMLO stop the irregular migratory flows increasingly coming in caravans, threatening to close the U.S.-Mexico border, besides withdrawing U.S. economic support to Central American countries. One month later, Trump gave the Mexican government a “one-year warning” before closing the southern border and threatened to impose trade tariffs if Mexico did not put a stop to all illegal migration (Karni and Kanno-Youngs, 2019). This caused AMLO to shift his government’s humanitarian strategy, a reversal of his initial “open-doors” policy welcoming migrants and providing them with the means to continue their journey to the U.S. Table 1 (see annex) shows the shift by AMLO’s government due to the significant growth of migrant detentions in Mexico, a product of the implementation of the enforcement policy: 31,396 migrants were detained in June 2019, four times the number of 8,521 in January of the same year (mostly Central American migrants), showing a change in strategy similar to Peña Nieto’s in 2014.¹² Since then, these detentions have fallen by half (16,066 by August 2019) and a third (8,328 by February 2020), which shows that the enforcement policy, a change of strategy, did work. On the other hand, U.S. apprehensions varied after the beginning of the Trump administration: during fiscal years (FY) 2017 and 2018, apprehensions at the U.S. border fluctuated between 12,000 and 46,000 apprehensions monthly. Nevertheless, in FY 2019 apprehensions started to raise significantly, from 51,000 in October 2018 to 92,833 in March 2019 and 132,856 in May; and since then they have diminished every month to reach 40,507 apprehensions in September 2019 and 21,475 in May 2020 (see annex, Table 2). The downturn in detentions since June 2019 shows that the huge pressure imposed by Trump to AMLO did work for the U.S. The majority of migrants apprehended now come from Central America, compared to the year 2000, when Mexicans were the majority (see annex, Graph 1).

¹² Table 3 (see annex) shows how detentions grew significantly in 2015 and 2016 and dropped in 2017.

It is important to note that since 2014, violence in Central America has prompted the migration of tens of thousands of families and unaccompanied minors seeking asylum in the United States, which U.S. law permits. In response to this, Obama and Peña Nieto made an agreement whereby the Mexican government established the Southern Border Plan, which increased the number of detentions from 88,506 in 2012 to the 198,141 peak in 2015. In 2018, the number declined to 131,445 but rose again to 179,445 detentions in 2019, mostly of migrants from Central America (see Table 1). It is still unclear what Mexico received in exchange.

Unsatisfied with this shift in AMLO's approach, Trump announced in May 2019 that he would levy a 5 percent tariff on imports from Mexico starting June 10, stating that "until such time as illegal migrants coming through Mexico, and into our Country, stop . . . the tariff will gradually increase until the illegal immigration problem is fixed" (Karni and Kanno-Youngs, 2019). In an extremely hasty response, AMLO formally accepted "Remain in Mexico" and signed a bilateral Migration Collaboration Agreement (MCA) in June 2019.¹³ This agreement allows for the deployment of the National Guard to combat irregular migration; the expansion of the Migrant Protection Protocols along the entire U.S.-Mexico border; and increased collaboration to disrupt migrant smuggling networks. López Obrador accepted that asylum-seekers would wait in Mexico under the MPP, and Trump agreed to address the conditions driving migration by investing in economic development efforts in southern Mexico and Central America. An eventual negotiation of a safe third country agreement that would require non-Mexican asylum-seekers who transit through Mexico to pursue their protection claims in the United States was mentioned. Nevertheless, AMLO has stated that with the intensification of the detentions in Mexico there would be no need to sign that kind of agreement (Ruiz Soto, 2020). López did not warn his counterparts that Mexico's institutions could not possibly stop all migrant flows because we have neither the staff and infrastructure nor the economic means to handle it. This agreement gave Trump shelters in different cities for asylum-seekers in deplorable conditions, migrants who can wait months or even years at Mexico's expense. As of March 2020, nearly 65,000 people had been put under the

¹³ Mexico's Foreign Minister Marcelo Ebrard flew to Washington D.C. on May 31, 2019 to prevent the levying of 5 percent tariffs on all imports from Mexico, which would otherwise have come into effect on June 10.

jurisdiction of the MPP, and only 517 of them won protection out of 44,916 completed cases (Loweree, Reichlin-Melnick, and Ewing, 2020).

In order to fully cooperate with the persecution and deportation of migrants, López Obrador obsequiously responded to Trump's pressure by deploying around 25,000 brand new Mexican National Guard troops to our southern and northern borders and in the interior;¹⁴ the economic cost implied in this also means leaving states and municipalities unguarded, when they are in great need of heightened security. Since then, National Guard troops have served as border patrols, with little or no training to carry out migratory operations and prevent the transit of Mexican and Central American migrants to the United States, a highly controversial policy compared to AMLO's previous humanitarian one, and unprecedented in the history of migratory bilateral relations. This new enforcement policy gave Trump sufficient arguments to say, "I am using Mexico to protect our border . . . I want to thank Mexico . . . for the 27,000 soldiers . . .," to which AMLO replied in one of his morning press conferences, "We have nothing to be ashamed of; Mexico's sovereignty has been defended. At the same time, we don't want confrontation" (Ramos, 2019). And he is right. Trump managed to get the Mexican government to pay for the controversial wall with the deployment of National Guards to deport them to their country of origin, and also with shelters, where thousands of Central Americans await a resolution by U.S. immigration judges. By January 2020, Mexico had received a total of 61,000 migrants returned by U.S. authorities under the agreement. As of March 2020, 31 percent of the 65,000 cases under MPP were pending, and 12 percent had not yet had a first hearing (Ruiz Soto, 2020).

Final Remarks

President Trump violently changed the asylum system at the U.S.-Mexico border, and only very few asylum-seekers, mainly from Central America, can obtain protection today. He stopped virtually all caravans coming from Central America, people fleeing persecution and poverty, from entering the United States, deliberately ignoring U.S. and international law. The imple-

¹⁴ Ten thousand Mexican National Guard troops patrolled the Mexico-Guatemala border and fifteen thousand the U.S.-Mexico border (Arista, 2020).

mentation of an asylum ban has been categorized as an audacious and inhumane move consistent with Trump's anti-immigrant agenda.

AMLO's informal acceptance and then the formal Migration Protection Protocols agreement made our country a buffer zone for our northern neighbor, stopping, detaining, and sometimes forcibly deporting migrants entering the U.S. and has made it almost impossible to gain asylum in the U.S. The type of MPP bilateral agreement is an unprecedented policy in the history of U.S.-Mexico migratory relations, as it is highly costly in economic, political, social, and humanitarian terms. As a result, Mexicans have been paying the high cost of the deployment of one-third of our National Guard troops, urgently needed to deal with our deteriorated internal security, all over the country in order to detain and deport migrants and asylum-seekers, doing the job the Trump administration should do. We have created shelters in different cities for asylum-seekers in deplorable conditions, where they can wait months, or even years, at our expense. Mexico's new National Guard should not be implementing Mexican migration policy as border patrols, with little or no training to carry out this kind of operation. This important deployment of guards has caused migrants to move to more dangerous routes, where migrants are more vulnerable to attacks by criminal groups and corrupt officials. Even though we recognize that National Immigration Institute (INM) agents are overwhelmed by their new functions, advocates have reported numerous human rights abuses by them and also by National Guard troops during enforcement actions.¹⁵

During his four years in power, Trump aggressively threatened the Mexican government demanding it pay for the building of an important extension of the border wall. Its construction has been constantly jeopardized and rejected by several congressmen and civil rights groups because of its high economic cost and its unnecessary purpose. So, Trump managed to force AMLO to pay for the controversial wall with a virtual one: the deployment of National Guards and the establishment of shelters with food at a very high economic, political, and social cost. We have migrants stationed on our southern border, desperate to cross our territory, and asylum-seekers who have crossed Mexico's border, plus those deported by the U.S. government or who are waiting to be granted asylum along the northern border;

¹⁵ Migrants interviewed said they suffered sexual abuse, kidnapping, and theft in Mexico (Binford and García Bochenek, 2020).

they are living in deplorable conditions with limited shelter capacity, at a high human cost. This situation has raised significant concerns about the dangerous conditions and the increased number of migrants waiting in Mexico, concerns that AMLO seldom deals with. López Obrador did not warn the Trump administration that Mexico's institutions could not possibly stop all migrant flows because they have neither the staff and infrastructure nor the economic means to do so.

It is important to highlight that Central Americans do not want to stay in Mexico; they want to get to the "Promised Land," be it as asylum-seekers or irregular migrants. Nevertheless, the immediate and unintended consequence of this situation has been a significant increase of asylum-seekers in Mexico because now they have no opportunity to ask for it in the U.S. and many have decided to stay in Mexico. Thus, between January 2018 and October 2019, 90,397 applicants for asylum in Mexico were registered (29,631 in 2018 and 60,766 in 2019, double the amount). At the end of 2019, 70 percent of them had not received information about their cases.¹⁶ In August 2019, migratory stations were hosting an average of 61 percent more migrants over their capacity, and some up to 300 percent of their capacity.

The COVID-19 pandemic has impacted negatively in Mexico since March 2020. The AMLO administration, through the INM, followed United Nations instructions to evict shelters to avoid contagion and, in March 2020, deported 3,653 Central American migrants, regardless of whether they were waiting for their asylum request to United States (Pradilla, 2020). At the same time, in order to reduce the spread of the virus, the Trump administration temporarily restricted nonessential travel across the border during 2020. López Obrador again agreed to receive Central American migrants denied entry into the United States (DHS, 2020). The return of large numbers of migrants to Mexico's northern border, all placed in crowded shelters without knowing if they have COVID, could aggravate the contagion. If we add the migrants waiting or detained along our southern border, the situation becomes a time bomb that could have a significant negative impact, especially in those specific regions. Thus, AMLO's open door policy was radically

¹⁶ Forty-five percent of the applicants are from Honduras, 16 percent from El Salvador, and 14 percent from Venezuela. Of the total, 27.52 percent are minors, and 62 percent applied for asylum in Chiapas and 11.25 percent in Mexico City. The number of applications in Chiapas increased sharply in the first seven months of 2019 and has decreased since then (Asylum Access, 2020).

transformed, leading him to accept the unacceptable in foreign policy, adopting since then a closed-door immigration policy to ensure non-confrontation with President Trump, a radical change of strategy with high costs for our citizens and finances.

Annex

TABLE I
DETENTION OF MIGRANTS IN MEXICO 2018-2020 BY MONTH

<i>Month</i>	2018	2019	2020
January	8,721	8,521	13,672
February	10,779	10,194	8,328
March	11,425	13,508	
April	11,032	21,197	
May	9,911	23,241	
June	9,033	31,396	
July	8,614	19,822	
August	12,748	16,066	
September	12,780	13,517	
October	18,044	12,256	
November	12,080	9,727	
December	6,278	7,305	
Total	131,445	179,445	

SOURCE: Secretaría de Gobernación, Unidad de Política Migratoria, *Boletín Mensual de Estadísticas Migratorias 2018, 2019, 2020*, Cuadro: 3.1 Eventos de extranjeros presentados ante la autoridad migratoria, según entidad federativa, http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/Direccion_de_Estadistica

TABLE 2
US APPREHENSIONS IN THE US-MEXICO BORDER FY2017-2020

<i>Months</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
October	46,184	25,488	51,005	35,406
November	47,211	29,085	51,857	33,524
December	43,251	28,995	50,751	32,857
January	31,576	25,975	47,979	29,205
February	18,754	26,666	66,883	30,076
March	12,195	37,390	92,833	30,236
April	11,127	38,243	99,273	16,039
May	14,519	40,339	132,856	21,475
June	16,087	34,089	94,902	
July	18,187	31,299	71,978	
August	22,288	37,524	50,684	
September	22,537	41,486	40,507	
Total	303,916	396,579	851,508	228,818

SOURCE: U. S. Department of Homeland Security, U. S. Customs and Border Protection, in: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

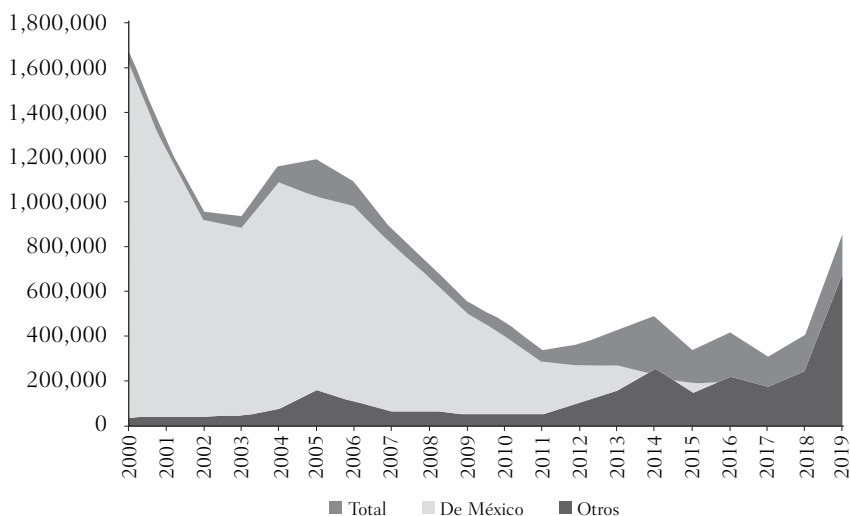
TABLE 3
DETENTIONS OF MIGRANTS IN MEXICO 2012-2019 BY YEAR

<i>Year</i>	<i>Total</i>	<i>Central Americans</i>
2012	88,506	82,161
2013	86,298	80,757
2014	127,149	119,714
2015	198,141	179,618
2016	186,216	151,429
2017	93,846	80,599
2018	138,612	123,797
2019*	144,591	132,107

* Data as of August

SOURCE: Unidad de Política Migratoria, Secretaría de Gobernación, Registro e identidad de personas, "Boletín Mensual de Estadísticas Migratorias Síntesis 2019", http://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/Boletines_Estadisticos/2019/Boletin_2019.pdf

GRAPH I
ILLEGAL ALIEN APRENHESIONS BY FISCAL YEAR 2000-2019



SOURCE: United States Border Patrol, tables: Total Illegal Alien Apprehensions By Fiscal Year; Illegal Alien Apprehensions From México By Fiscal Year, in. <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/BP%20Total%20Apps%2C%20Mexico%2C%20OTM%20FY2000-FY2018%20REV.pdf>

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POCKETS OF DISPOSABILITY: BORDER CITIES AS OPEN-AIR JAILS FOR ASYLUM-SEEKERS

*Ariadna Estévez**

In Latin America, thousands of people flee criminal violence, the environmental devastation caused by development, and political repression. Forced migrants cross international borders in search of international protection in the United States and Canada, but also in traditionally transit countries like Mexico, where they must make a home. In addition, a global network of smuggling and contraband brings people from Africa and Asia to Mexico's southern border and the border cities between Mexico and the United States, through South and Central America, so they can live the "American Dream."^{1 2}

Meanwhile, President Donald Trump's war against asylum left about 60,000 persons stranded in Mexico waiting for hearings or decisions about their asylum requests, as well as another 15,000 waiting to be able to apply. While

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¹ Migrant smugglers operating in Bangladesh, Ecuador, and Colombia work together with well-established networks of government officials and commercial airlines that facilitate the cocaine traffic from Colombia to Europe, through Eastern Europe (Bosnia) and Africa (Guinea Bissau, Niger, Zimbabwe, and South Africa). Ecuador has become a transit area for international migrants. For at least the last eight years, people from Asia, Africa, the Caribbean, and the Middle East have increasingly come into the country in order to move on to other destinations, mainly the United States to the north and Brazil, Chile, and Argentina to the south (Álvarez Velasco, 2016; Cohen, 2019).

² Europe has gradually closed its continental borders, forcing migrants to choose routes and destinations not on the basis of their proximity or colonial ties, but on availability. The transatlantic routes are available because of a transnational smuggling ring in which corruption, clandestine distribution channels for illegal products like cocaine, and the web of human smugglers make smuggling and contraband a huge criminal enterprise. These two routes, Europe and North America, are the most important business for the smugglers: 55,000 are smuggled annually from Africa to Europe in business deals worth US\$150 million; and three million people are smuggled from South and Central America and the Caribbean in a US\$6.6-billion market. Overall, contraband is a US\$6.75-billion-a-year business. These routes are available because of the well-established transnational corruption networks and the clandestine channels for cocaine distribution, an enormous criminal market that takes advantage of greater and greater flows of forced migration (UNODC, 2010; Dixon et al., 2018).

these figures are terrifying, the true horror lies in the legal limbo and living limbo that the war on asylum is causing. The waiting lists for asylum hearings get longer and longer, leaving people stranded in border cities like Tijuana, Baja California, where they are forced to live temporarily in shelters without work permits or money, and, in the longer term, on the margins of the city (in drainage systems, on levees, or on the street), where they are vulnerable to organized crime and exposed to the elements and drugs. They can spend months stuck there, locked into a city that becomes an open-ai red cell. I have called these precarious spaces “pockets of disposability.”

This chapter describes pockets of disposability empirically and conceptualizes them as the consequence of migratory and asylum policies throughout the world: the fact that Tijuana is host to African and Asian migrants is due in part to the closing of Europe’s continental border, but more specifically to the closing of the United States border. I argue that U.S. actions exacerbate the precarious urban conditions in Tijuana and other border cities in Mexico and the world, creating these pockets of disposability. To develop this argument, first I will describe what I consider Trump’s war against asylum. Then, I will go into the consequences this has had on Tijuana in terms of persons who are stranded and in legal limbo. I will then analyze how this creates pockets of disposability, and, finally, I will comment on other cities that are also pockets of disposability in Europe and South America, in order to generalize this conceptualization.

Trump and His War on Asylum

In early 2017, Trump issued three executive orders that improved border control, increased deportations, and limited asylum and granting of refugee status (Center for Migration Studies, 2020). The first was the Border Security and Immigration Enforcement Improvements, which notoriously focused on building a 2,000-mile-long border wall, increasing construction of private detention centers, hiring another 5,000 Border Patrol agents, and expanding swift deportations (White House, 2017a). The second order, Enhancing Public Safety in the Interior of the United States, centered on deportation, which is why it banned sanctuary cities and encouraged prison authorities to cooperate with Immigration and Customs Enforcement (ICE),

under the aegis of the Department of Homeland Security, in identifying undocumented migrants in prison so they could be deported. In addition, migrants who had committed a criminal offense could be deported, including for the crime of working without a permit. To carry this out, the order stipulated the hiring of 10,000 new ICE agents (White House, 2017b).

Finally, the executive order Protecting the Nation from Foreign Terrorist Entry into the United States suspended visas for up to ninety days of citizens of countries considered prejudicial to the interests of the United States (Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen) and indefinitely ceased the resettlement of Syrian citizens altogether. It also closed the U.S. refugee program for 120 days, preventing any person requesting asylum from claiming refugee status in the United States for that same period. In addition, it reduced the quota of refugees from 110,000 to 50,000 a year (*New York Times*, 2017; Penn State Law, 2020). Later in 2017, Trump reinforced the anti-Muslim policy that forbade the entry of citizens of Chad, Libya, North Korea, and Somalia, and severely limited the issuance of temporary work visas and green cards, and ordered the gradual dismantlement of the Differed Action for Childhood Arrivals (DACA).³ Finally, he decreed the end of Temporary Protected Status (TPS) for citizens of Haiti, Nicaragua, and El Salvador.

By April 2018, the situation became even worse for undocumented immigrants and asylum seekers who attempted to cross the border. The attorney general issued a zero-tolerance policy that turned undocumented immigration into a crime when previously it had only been an administrative offense. The attorney general's justification was that undocumented immigration had increased 203 percent between March 2017 and March 2018 (United States Department of Justice, 2018). Therefore, the Border Patrol arrested migrants and took them to prison. However, the law bans children from prison, and therefore the authorities sent the migrant children to temporary detention centers. It turned into a scandal. Even Trump's allies criticized the measure as inhumane and pointed out that it could be instrumentalized for sex and human trafficking of children. While only 46 percent of immigrants arrested by Border Patrol agents were actually processed, they did arrest precisely the adults accompanied by children. More than 3,000 children were separated

³ Legal clinics opposed several of these decisions and finally managed to have DACA recognized in June 2020 (Penn State Law, 2020).

from their parents, which meant that “family separation was therefore not an unintended consequence of the ‘zero-tolerance’ policy but an effort to punish families,” according to a Human Rights Watch’s brief (2018). This policy radicalized the San Diego Operation Streamline that was enforced for the first time in early 2018 and increased the number of undocumented immigrants on trial by 1,200 percent, focusing on parents, as a way to force families to leave the United States (ACLU San Diego, 2018). In June of that year, Trump issued another executive order, *Affording Congress an Opportunity to Address Family Separation*, putting an end to family separation (White House, 2018).

In October 2018, the Honduran caravan arrived at the U.S. border—I will address this in more detail in the next section. The group included entire families, single women with their children, homosexual men and transsexuals who were fleeing homophobia, women running from sexual violence, and those attempting to save their sons from forced induction into gangs. President Trump threatened to militarize the U.S.-Mexico border even further. Local militias were also arming to receive the caravan. Trump’s response was to announce in December the Migrant Protection Protocols (MPP), also known as *Remain in Mexico* which established that “certain” foreigners who arrived at U.S. points of entry without documentation would be forced to wait in Mexico for their asylum cases to be resolved. The protocols were applied starting in January 2019, mainly to immigrants from Honduras and Central America (DHS, 2019b).

In July 2019, the Departments of Homeland Security and of Justice adopted a *Interim Final Rule*, which stipulated that asylum applicants who had not requested asylum and been denied in a third safe country “were not eligible for asylum” in the United States (DHS, 2019a). For Trump, safe third countries were basically Mexico and Central America. In early September, the U.S. Supreme Court backed the *Remain in Mexico* policy, saying it was legal for asylum applicants to be forced to wait in a safe third country while waiting for their asylum request to be ruled on, despite the fact that these measures openly violate the rights of no return and to due process. In February, the Ninth Circuit Court of Appeals of the United States blocked the policy, but held its decision, since Trump argued that eliminating the policy on the southwest border would encourage migrants to “run for the border.” In March 2020, in the middle of the COVID-19 lockdown, the Supreme Court ruled that the policy could stay in place while the litigation was being resolved

(Álvarez, 2020; De Vogue, 2020). By January 2020, Trump had signed safe third country agreements, called Asylum Cooperative Agreements, with El Salvador, Honduras, and Guatemala. A final Homeland Security provisional rule issued in November 2019 allowed Trump to force compliance with those accords, beginning with the one signed with Guatemala (Narea, 2019; DHS, 2019a).

Mexico's Subordinate Role

A couple of months after the MPP were applied for the first time, in August 2019, the waiting list for asylum in Tijuana, which had existed for years, had swollen to 10,000. Only thirty-four persons a day could cross the border, a system controlled by the Border Patrol called “metering,” and the wait time was from six to nine months. In early 2019, only Tijuana, Nogales, Ciudad Juárez, Piedras Negras, and Nuevo Laredo had more than 100 people on waiting lists, for a total of 4,800 people. By August, Mexicali, San Luis Colorado, Agua Prieta, Ciudad Acuña, Reynosa, and Matamoros also had waiting lists. In all, these cities are processing more than 26,000 names on the asylum waiting lists, and the courts have returned 32,000 people whose applications are being processed. A total of 58,000 asylum-seekers have been stranded along the Mexican border in sixteen cities. Tijuana has the longest waiting list, while Ciudad Juárez has received the most returnees (13,100) (Kao and Lu, 2019). The shelters in other cities (Matamoros, Nuevo Laredo) are overpopulated and cannot admit anymore migrants, forcing them to sleep on the streets. About 6,400 returned to their home countries, aided by the Mexican government (Kao and Lu, 2019).

In September 2019, court began to be held in tents in Laredo and Brownsville, Texas, to process the large number of asylum requests under the MPP (Álvarez, 2019). The government did not open the tent-courts to journalists until January 2020, which is when they were able to report that the trials were terrible. The asylum applicants could not see the judge in person because the hearings were carried out via teleconference even before the COVID-19 quarantine. Since the tents are on the border, the applicants had trouble finding legal council for the trials, already a difficult process even before the measures. Once the hearing is over, the applicants have to wait on the Mexican

side until their next hearing, which could take months to happen. They sleep outside, next to the tents that, according to *Forbes*, are built and maintained by the Deployed Resources corporation, based in New York, a company that normally builds the tents used at mass rock concerts like Lollapalooza. The Department of Homeland Security paid Deployed Resources US\$48.9 million to build these “tent courts” (Çam, 2019: 333).

As if the United States weren't earning enough money with its war against asylum, in February 2020, it announced a hike in the price of an immigration application. In that same month, Trump also announced his intention of ratcheting up the rates for appealing in these cases to almost US\$1,000. The cost of an immigration judge's decision and the request for reconsideration or reopening a case is US\$110, but if Trump's proposal were successful, it would soar to US\$975 and US\$895 (Swales, 2020).

According to a Refugees International report, since the MPPs were issued, Trump had left about 60,000 asylum applicants on Mexican soil waiting for hearings or the resolution of their cases, and another 15,000 are waiting to be able to actually apply. This, together with the fear sparked by COVID-19 and the May 2020 murder of George Floyd by Minneapolis police, discouraged asylum applicants, especially those from Africa and Haiti who had traveled to Mexico to seek asylum. However, in line with Ortega Velázquez's thinking (2017), Mexico's asylum system is not much better than that of the United States, despite the fact that asylum is established in the Constitution as a right, and constitutional rights are for everyone, including foreigners. This is due to the fact that the Law on Refugees, Complementary Protection, and Political Asylum has broken down the category of refuge into that given to political exiles, refugees, and persons with complementary protection. Individuals have thirty days to present a claim, and they are then informed about the decision within up to ninety days. If asylum or refugee status is denied them, they can appeal within the following fifteen days. However, the very same asylum officials who reject an application in the first place are those who review the appeals. Most of the time, their argument for denying asylum is, as in the United States, the possibility of taking a domestic flight to a safe place, which is not really a possibility. In addition, immigration officials do not inform migrants that they have the right to request asylum when they enter the country, and when individuals do know about this right, the authorities convince them not to apply (Ortega Velázquez, 2017). Just like in the United

States, in Mexico, asylum law and procedures are designed to prevent people from achieving refugee status.

In addition to the legal barriers to the right to asylum, Mexico has recently become the United States' guard dog along its extraterritorial borders with Guatemala. Although the Mexican government had a moderate, humanitarian policy toward Central American migrants when President Andrés Manuel López Obrador took office in late 2018, in June 2019 this tolerant attitude changed when Trump threatened Mexico's government with a 5-percent tariff on Mexican products if the government did not stop migration through the Mexican-Guatemalan government in forty-five days, using at least 6,000 militarized National Guard troops. Mexico complied by sending 2,400 troops (Pradilla, 2019a). In August, migrants from Africa and Haiti detained at the Siglo XXI detention center in Tapachula, Chiapas, began a series of protests against the Mexican government, demanding that they be allowed to continue their journey toward the United States. The demonstrators stated that immigration officials had demanded US\$1,500 from each of them for safe conduct. In October 2019, the National Guard and the Federal Police repressed the protest and prevented them from continuing northward. In October, the Africans continued their protests (Recamier, 2019: 338).

Getting Rid of the Migrants: The Pockets of Disposability

As I wrote in *Guerras necropolíticas y biopolítica de asilo en América del Norte* (Necropolitical Wars and the Biopolitics of Asylum in North America) (2018), the U.S. asylum system was already difficult for asylum-seekers to navigate. However, from the time he took office in 2017, Donald Trump went to war openly against asylum through his “unorthodox” use of his executive power, using it to unilaterally legislate on issues of asylum and migration (Waslin, 2020). Michele Waslin argued that, historically speaking, U.S. presidents have issued executive orders and proclamations for political ends, but Trump issued them to implement a de facto immigration policy and ignore Congress in the process. According to Waslin's quantitative analysis of executive orders and proclamations since 1945, Trump issued ten of the fifty-six executive orders related to immigration, and nine of the sixty-four proclamations. In

addition, 8 percent of Trump's executive orders deal with immigration. These were issued to establish policy, to reinterpret current laws, or to instruct the institutions of the administration of justice. Trump produced up to 20 percent of these political instruments, with which he de facto implemented his country's immigration policy without consulting the legislative branch at all, which is the most racially diverse in U.S. history. Twenty-two percent of the members of the House of Representatives and the Senate are from ethnic minorities, that is, 116 members. These minorities include members of the Afro-American, Native-American, Asian-American, and of course, Latino communities (Pew Research Center, 2019). It is possible that Trump's very peculiar use of his executive power is due to his authoritarian personality, because he "often exercises his executive authority without much process, circumventing the well-established procedures for consultation and securing input from Congress, federal agencies, White House staff, and the public" (Waslin 2020: 64). It is true that he issued the majority of his immigration-related executive orders at a time when the Republican Party had a majority in Congress. However, it is also true that he used his executive power to stop migration and asylum requests, which reaffirm his colonial power in the region, making Mexico the United States' extraterritorial border where it could *throw away* refugees and deportees, that is, all the people that it deemed undesirable, who simply have the door shut in their faces, leaving them stranded in cities that become jails, like Tijuana.

With no jobs, no money, and no certainty about their future, the migrants find temporary refuge along the riverbanks in Tijuana, under bridges, and even in drain pipes. These spaces are a legal and social limbo that lead to precarious conditions, which in turn lead to death or disease. I call these open-air jails for asylum-seekers and other displaced persons "disposal foci." Tijuana's geographical location has made it a refuge for all manner of migrants, asylum-seekers, irregular migrants, and deportees stranded there. When they arrive, migrants go to permanent or even temporary shelters, but cannot stay for extended periods of time; this means that if their circumstances do not improve, they have to leave anyway. This is the case of the thousands of Mexican deportees who have lived in the United States all their lives and no longer have any family in Mexico.

In February 2017, I visited the migrant shelters to document this humanitarian crisis as it unfolded; there I met Mexican women who had escaped

the cartels and gender violence, as well as Guatemalans, Hondurans, and Salvadorans fleeing from the ceaseless gang violence in Central America.

There were also Haitians who had arrived in Mexico from Brazil; they had received refugee status in Brazil after the 2010 earthquake in their country, but were forced to leave due to Brazil's deep economic and political crisis, which has drastically reduced job opportunities. The Haitians were not necessarily typical "economic migrants": many are engineers, doctors, and architects between the ages of twenty and thirty. In fact, this little-known group made up most of the migrants stranded in Tijuana. According to Tijuana-based migrant activist Soraya Vázquez, of the Tijuana Humanitarian Aid Strategic Committee, six Haitians arrived in Tijuana on May 23, 2016. The next day there were 100. In early 2017, about 18,000 Haitians had entered Mexico, but by the end of 2018, only 3,500 remained, distributed in Tijuana and the state capital, Mexicali. They attempted to get asylum in the United States, but, when they failed, they tried to stay in Mexico. The shelters managed by the Catholic Church helped them get jobs and build homes (*El Herald de México*, 2018). By mid-2019, about 4,000 Haitians living in Baja California were claiming regular migratory status. Asylum-seekers cannot legally work and do not have permanent residency; and, if they are Haitian, they often do not speak Spanish. However, they must support themselves and their families while they wait for U.S. immigration officials to decide if their asylum applications can be approved or not.

The Haitians were living in Tijuana's open-air garbage dumps, in the drainage system, and in the area around improvised shelters. Many were looking for informal market manual labor, cleaning houses and offices, working in maquila plants, or delivering pizzas for only US\$1.30 a day. When they arrived to Tijuana in 2016, they lived in precarious houses in the El Bordo area, a dried canal of the Tijuana River, right next to the U.S. border, which was already inhabited by Mexican homeless and drug addicts (Aviña Cerecer, 2020). They lived in houses made of aluminum foil, cloth, and plastic waste products, called "ñongos" (40.9 percent); deep underground holes (2.2 percent); the drainage system (19.2 percent); bridges (18 percent); and hillsides (13 percent). The local authorities evicted them in 2016 and finally they settled in a community of 3,000. The middle-class educated Haitians have opened small businesses such as restaurants; they have married Mexicans and signed up in university programs, melting into Tijuana's cosmopolitan environment.

The Hondurans have not been as lucky. When the 7,000- to 15,000-person caravan arrived in Tijuana in December 2018, they found the border closed. One hundred of them tried to cross the border forcibly but were driven back (*BBC Mundo*, 2018). They have been the target of xenophobic attacks since they arrived, probably because they do not have the same cultural and economic capital as the Haitians, or because they arrived at a moment when the asylum crisis broke out. In addition, the “Mara” stereotype of gang members hangs over the heads of Honduran males. More than 6,000 Hondurans are currently in Tijuana, added to an even larger group of people seeking asylum, because from the time the Remain in Mexico policy came into effect, the city has acquired more and more migrants.

In April 2020, 10,000 persons were on waiting lists, and 6,400 were sent back to wait for their next hearing (Kao and Lu, 2019). Trump called these people “invaders” and sent the army to prevent them from crossing the border. By the end of 2018, the United States had deported 28,218 Hondurans (Pradilla, 2019b). By January 2019, more than 2,500 Hondurans were living in precarious conditions in shelters or on the streets, without access to food and ill from the climate conditions that they are unaccustomed to—they are from a tropical climate and are vulnerable to diseases common in extreme climates like the desert. They are also exposed to organized and “normal” crime (*Proceso Digital*, 2019). For example, on December 15, 2018, drug traffickers robbed and killed two Honduran teenagers who refused to buy drugs.

As we can see, thousands of Hondurans, Africans, and even Mexicans are facing terrible conditions and remain in a limbo of time and space confined to the outskirts of the city, making them invisible and disposable. In their comparative study of Tijuana and two other Mexican cities, Puebla and Monterrey, Marchand and Ortega Ramírez (2019) examine the impact of migration in urban transformation, using the concept of “cities of the world,” which refers to the growing insertion of third cities of the world in the global political economy through low-skilled migrations. They analyze different types of populations in these cities, including the Haitians in Tijuana, and conclude that they produce and reproduce these cities with their economic activities and integration into the economy. However, the authors do not take into account the role of precarious work, homelessness, illness, and exploitation in these migratory groups. Although their study states that it provides a bottom-up vision of migration’s urban spatialization in Tijuana,

they neglect those places where illegal commerce takes place, that is, the marginalized areas where drugs are sold and prostitution and other informal services are provided (Marchand and Ortega Ramírez, 2019).

Del Monte Madrigal (2018) is more realistic about Tijuana and its conditions' possible spread to similar locations, calling them "vortices of precariousness." Using the results of an ethnographic study in Tijuana, he defines a vortex of precariousness as "an enveloping series of spatial-temporal processes, composed of violent and socio-culturally exclusive forces that recursively structure the gradual and exponential degradation of material, social, and subjective conditions of subsistence (Del Monte Madrigal, 2018: 13). The author observed different types of "constellations of precariousness" that display interrelated processes: the experiences and background of subjects linked together on a macro-, meso-, and micro-level through the lack of housing and structural processes in the border space. These constellations include "critical moments" such as deportation, family breakup, the border limbo, and drug use, but he also sees deportation and migration as structural factors. According to Del Monte Madrigal, "Each one of these precarious constellations begins in a precarious context and goes through a process of transnational mobility across the border several times . . . and in that back-and-forth, precariousness progressively accumulates due to the coming together of structural and subjective processes like the reinforcement of the border, the toughening up of immigration policies, clandestine conditions, drug use, and the processes of being jailed" (Del Monte Madrigal, 2018: 41).

While I think that Del Monte Madrigal's conceptualization of the vortices of precariousness is powerful because it is based on profound ethnographic observation and an understanding of life in extremely precarious spaces, I also think that it lacks a vision of the role of the law and immigration policy, such as Trump's unilateral anti-asylum legislation, in the creation of these spaces. While the vortices of precariousness clearly describe the centripetal structural forces that gradually lead migrants to live in precarious urban spaces, such as migratory processes, violence, and discrimination, the concept lacks an examination of the role of laws and immigration and asylum policies in the construction of these spaces in the way that I have described until now, particularly the managerial vision of asylum justice and Trump's presidential executive actions.

Analyzing the role of anti-asylum measures in the definition of spaces of precariousness allows us to identify what Edward Soja calls "the political

organization of space.” Soja’s idea of spatial (in)justice maintains that wealth and poverty are geographically distributed along the lines of class, race, and gender. These forces determine what he calls “spatial injustice,” which is “created through the biases imposed on certain populations because of their geographical location” (2009: 3). For him, this phenomenon is the “discrimination of location,” which “is fundamental in the production of spatial injustice and the creation of lasting spatial structures of privilege and advantage” (3). While Soja’s examples go from the use of the law for urban apartheid and residential segregation to militarization, I think that national borders and the laws that define mobility, such as asylum, deportation, visas, etc., are key for creating spaces of injustice. The war against asylum is creating a local discrimination against asylum-seekers, deportees, and global migrants in border cities like Tijuana.

In the same way, the discrimination based on location is insufficient for describing this situation because the radicalization of poverty in and of itself is not enough to illustrate the restrictions to subjects’ possibilities for action. In the context of global forced migration, agency is defined with what Alice Elliot (2016) calls “forceful hope.” The laws use a series of legal categories that simultaneously include some forced migrants while excluding most of them: labels like “asylum-seeker,” “convention refugee,” and “persons who require protection.” On a subjective level, these labels are never clear for the subjects. In a very brief but powerful article, anthropologist Alice Elliot (2016) questioned the legitimacy of distinguishing among these different kinds of forced migrants, and between them and the notion of economic migrant. She points out that young white Europeans travel without anyone supposing they are economic immigrants. However, the reasons behind the journey of racialized individuals from Africa, Asia, and Latin America are always questioned. She states that while forces such as “hope,” “war,” or “a desire to travel” are not the same, they create “paradoxical hierarchies and artificial distinctions” because these forces are generally superimposed on the narratives of migration (Elliot, 2016).

She then defends a different approach to forced migration, one that does not take into consideration desperation, but rather hope for the future, based on these narratives that tell stories of war, violence, but also of hope, a desperate “forced hope.” I think that Elliot’s “forced hope” summarizes very well the interaction among the subjective and structural causes of forced migration. However, its importance goes beyond explaining the push and pull factors

involved in conventional migration studies. Forced hope is the subjective basis for the precarious spaces' continuing to exist. As explained above, it is a kind of painful, desperate optimism produced amidst desperation, suffering, and disappointment. Forced hope is what motivates migrants onward on their journey. Those who remain trapped on the deportation and asylum waiting lists are caught in the centripetal forces of the vortex of precariousness, but in the context of the interruption of their migratory project, they enter the vortex as waste, as disposable subjects, whose death is no longer productive. This is why "pockets of disposability" describes these spaces better in the context of global forced migration.

The pockets of disposability are receptacles for persons rejected in the migratory administration, a surplus of the world's population, you could say, a specialization that Henry A. Giroux calls the "machinery of disposability." He writes, "What has emerged in this new historical conjuncture is an intensification of the practice of disposability in which more and more individuals and groups are now considered excess, consigned to zones of abandonment, surveillance, and incarceration" (2014). Deportees, persons forced to flee from natural disasters like the Haitians, and from unimaginable violence in their countries of origin, like the Central Americans, but also the Mexicans, become disposable. They are human waste on Mexico's trash heaps and in its drainage systems, at the port of entry of one of the richest nations in the world.

Conclusions and Epilogue: Open-Air Jails in Mexico and the World

The pockets of disposability are, then, areas of spatial injustice where vulnerable populations defined by their nationality, class, race, and gender are forced to live in inhuman living conditions and work in illegal labor markets. It is a radicalized version of what sociologists call poverty pockets, that is, neighborhoods where the extremely poor tend to be herded into ghettos even as prosperity around them grows (Mohda et al., 2016). They are part of what Ruth Wilson Gilmore (Card, 2019) calls "geographies of racial capitalism," that is the creation of mass imprisonment for the exploitation of blacks and other ethnic minorities for the reproduction of an economic system that

permanently favors whites and subordinate minorities (Giroux, 2014). Pockets of disposability are, in fact, open-air jails for disposable forced migrants.

However, Tijuana is not the only place in Mexico where pockets of disposability are being created. Other border cities along the Rio Grande are becoming spaces where the United States disposes of asylum-seekers (Kao and Lu, 2019). Mexicali, San Luis Colorado, Nogales, Agua Prieta, Ciudad Juárez, Ciudad Acuña, Piedras Negras, Nuevo Laredo, Ciudad Miguel Alemán, Matamoros, and Reynosa: the majority of these cities are on the Mexico Travel Advisory list (Department of State, 2020). Therefore, in addition to privation, asylum-seekers are constantly subjected to crime (kidnapping, smuggling, forced labor for criminal organizations, and murder) and disease, due to the lack of sanitary measures, as well as the lack of access to social services and health care in general. These places are also occupied by homeless people (Aviña Cerecer, 2020). Ciudad Juárez, Chihuahua, one of the country's deadliest cities, especially for women, has received 11,500 migrants, including deported Mexicans (Gallegos, 2018), Honduran asylum-seekers, and Cubans. Only 850 of them are living in shelters.

Nor are the pockets of disposability exclusive to the border between the United States and Mexico. These places where the rich dispose of asylum-seekers, deportees, and migrants in general can be found the world over. They exist in places where desperation meets up with hope, such as Venezuela's borders with Colombia and Brazil, as well as in cities where rich countries export their migratory borders, cities like Athens. With regard to the Venezuelan crisis, 95 percent of its 1.2 million migrants go through Cúcuta, Colombia. They set up on river banks and hills, in small cardboard houses or improvised tents without any kind of sanitation services. They work in the informal sector, and, if they were women or girls, in prostitution. Venezuelans also migrate to Brazil through Roraima, where 40,000 have crossed and have been victims of xenophobic attacks.

Finally, thousands of migrants are trapped in Athens because the European Union's asylum and migratory directives force Greece to receive their visa and asylum applications. Many of them have settled in the anarchist neighborhood of Exarchia. Locals and migrants share spaces peacefully, but drug traffickers have recently taken over the area, and the government blames the migrants.

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DETAINED MIGRANT CHILDREN: ILLEGAL, DISCRIMINATORY, AND RACIALIZED NORMS IN MEXICO AND THE UNITED STATES

*Elisa Ortega Velázquez**

Introduction

One of the actions states carry out to control irregular migration is to detain migrants who do not have an entry or residency permit or a job, and then later to expel or deport them. This implies criminalizing irregular migration and is the cause of mistreatment and other violations of the human rights of these persons. In the case of children,¹ detention is never an appropriate option and only increases the vulnerability they are already subject to. In addition to their age, that vulnerability stems from the fact that they are mobile in the first place, that some are unaccompanied or have been separated from their parents, from their irregular migratory status, their ethnic group, gender, sexual preference, and gender identity in the case of adolescents, and also, to a great extent, from the context of generalized violence they come from.

Despite the fact that international human rights norms state as a general principle that children should not be detained due to irregular migratory status, both Mexico and the United States have illegal, discriminatory, racist systems for the detention of unaccompanied child migrants. In fact, in these two neighboring countries, detention is a fundamental part of their policies of control and dissuasion of irregular migration, despite the fact that it violates human rights and for years has proven to be inefficient.

The central hypothesis of this chapter is that, in practice, the political imperative of controlling irregular migration takes precedence over the right of unaccompanied migrant children to not be detained and to be treated with dignity, regardless of the country involved and how that country views international human rights law.

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¹ In this chapter, I will use the terms “children,” “boys,” “girls,” and “adolescents” interchangeably.

First of all, I study the principle of non-detention of unaccompanied migrant children in international law, which in general terms affirms and recognizes that right; however, it also recognizes that in practice migrant children are detained. For that reason, it stipulates that if detentions do take place, it must be as a measure of last resort and must be done with certain guarantees.

Secondly, I analyze the detention system for migrant children in Mexico, which is legalized in migratory legislation and policies, and illegalized in laws protecting the rights of children on different levels (international, constitutional, and federal) that affirm the principle of their non-detention. That is to say, in Mexico a constant tension exists between the different normative spheres (control/protection) that coincide in the treatment of migrant children; without a doubt, control predominates. This is a normative framework that comes under no convention, is unconstitutional and illegal and has normalized and legalized differentiated, discriminatory treatment of migrant children for the simple fact of being migrants.

Thirdly, I examine the U.S. detention system in a country that has an open preponderance of border control constitution the rights of children, to the point that it does not even have a provision stipulating that children have the right not to be detained. The detention system for unaccompanied migrant children is completely legal there, but “shielded” by a series of legal guarantees so that detention conditions are the least onerous possible for the children. The issue is that these protections rest on racialized laws that apply only to one class of unaccompanied migrant children, excluding Mexicans from that sphere of protection. That is, the law openly and in a racist way only protects one class of children.

Fourthly, I conclude that both Mexico and the United States offer no effective protection for unaccompanied migrant children, but rather criminalize them and treat them according to illegal, discriminatory, racist standards directly conflict that with the human rights proclaimed by the international system. Thus, when children become migrants, they lose access to the rights they have as children and, in general, as persons, given that the access to those rights unfortunately continues to be inextricably linked to the citizenship/nationality binomial and the legal/ processed migratory status in the case of non-nationals.

The Principle of Non-Detention of Migrant Children in International Law: Detention as a Measure of Last Resort with Guarantees

Legally, detention of a migrant because of his/her migratory status, regardless of age, can be called for in two situations.² As a *criminal sanction*, for breaking immigration law, which penalizes, among other things, a) the irregular entry of foreign persons into a country or their entry through non-official places; b) entry into the country when a prohibition of re-entry is in place; c) being in the country when the law stipulates specific entry impediments; or, d) being in the country in order to work, study, or reunify with family without the corresponding authorization. This is the case of states that expressly penalize and criminalize irregular migration. The second situation is as a *precautionary measure* (administrative detention), in order to a) investigate a foreign individual's migratory status that is presumed to be irregular; b) investigate their identity; c) ensure their permanence and accessibility while their administrative proceedings for expulsion or deportation are being carried out; or, d) ensuring that their expulsion/deportation order is carried out and they leave the country.

The detention of migrants due to their irregular migratory status, whether as a criminal sanction or as a precautionary measure, criminalizes the migrant and is the cause of mistreatment and human rights violations. However, the practice is generalized in different places despite the negative effects it has on migrants and their human rights. When dealing with children, it never seems an appropriate option and results in the increase in the vulnerability they are already subject to because of factors such as: traveling unaccompanied or having been separated from their parents, irregular immigration status in their destination country, ethnic background, gender, sexual preference, gender identity, and the context of generalized violence they have left behind.

² In this essay, I refer to a person as being "detained" if he/she has been deprived of his/her freedom, without being able to freely enter and leave the place where he/she is lodged, regardless of the different terminology or euphemisms used to describe that situation: to house, to apprehend, to secure, to intern, to lodge, to have in custody, to hold, etc. This is because what is important are the practical implications and the legal nature of this fact, which often lead to understanding it in accordance with the principles, norms, and standards involved in the right to personal freedom.

For all of these reasons, in international law, the principle of non-detention of migrant children prevails. In fact, current human rights discourse maintains that all children, regardless of who they are, have rights and require that states adopt special protective measures due to their age and the vulnerable circumstances they are in, for example, due to their mobility. Thus, international human rights norms stipulate that, regardless of their nationality or immigration status, migrant children must have access with no discrimination whatsoever to a minimum level of rights in the state they find themselves in, guaranteeing them and respecting at all times their best interests, their right to survival and development, and their right to be heard in those proceedings that affect them (Ortega Velázquez, 2019).

Specifically, with regard to detentions, the conventions on the Rights of the Child of 1990, the international standard par excellence for the rights of the child, stipulates that detention must be considered the very last resort and absolutely exceptional (Art. 37 b, c, and d). In the words of the Inter-American Court of Human Rights (IACHR), taking migrant children's freedom away as a punitive sanction to ensure migratory control is "arbitrary" and contrary to the American Convention on Human Rights (COIDH, 2014a: par. 147). In the same way, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) has stated,

In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation. (CDTM, 2013: par. 61)

The UN High Commissioner for Refugees (UNHCR) has stated that children who need international protection must never be detained and, whenever possible, must be handed over to the care of family members already residing in the country of asylum. Otherwise, the authorities whose duty

is to assist unaccompanied children must find alternative solutions to ensure they have appropriate accommodations and supervision (ACNUR, 1999: Directive 6).

Thus, we can say that the general rule in international law is non-detention of children for migratory reasons. And, diverse national and international bodies that work on human rights issues have made declarations in the same vein. For example, when the CMW examined rulings that stipulated the loss of liberty for infringing on regulations governing entry into a country, it has recommended that, in order to adjust national legislation with the Convention on Migrant Workers, as well as other international instruments, depriving a person of his/her liberty for having irregularly entered in the territory [of another state] should be eliminated as a crime punishable by law (CDTM, 2006: par. 15). Along the same lines, Mexico's National Human Rights Commission has emphasized that "the criminalization of undocumented migrants . . . increases their vulnerability, since they are at all times susceptible to the arbitrary actions of federal, state, and municipal public servants for extortion, mistreatment, and, on occasion, even sexual abuse" (CNDH, 2005: 2).

If a child migrant is detained, international law maintains, on the one hand, that certain substantive and procedural guarantees must be observed as required by international and national norms to avoid an arbitrary detention. On the other hand, specific protection mechanisms must be included to make sure those guarantees are appropriate for children's rights, particularly the principle of the best interest of the child (Art. 9, International Pact of Civil and Political Rights, and Article 7 of the American Convention on Human Rights) (COIDH, 2001a: par. 124; 2001b: par. 102; 2022: par. 115-135; 2003a: par. 123). Any restriction to the right of personal freedom must be imposed exclusively due to the causes and conditions established beforehand by the constitutions or laws emanating from them and specifically stated in them, and subjected strictly to procedures defined objectively therein (COIDH, 2014a: par. 416 and 419).

In the case of children, the right to be heard (Art. 9.2, Convention on the Rights of the Child) is particularly important: they must be given swift access free of charge to legal assistance and assistance of other kinds, and in addition, they must have a tutor and legal representative appointed for them to defend their interests and ensure their well-being (Comité sobre los Derechos del Niño, 2005: par. 63). Any delay in the implementation of these

measures represents a threat to their safety, leaving them more exposed to the risk of being victims of trafficking and other abuses (Asamblea Parlamentaria del Consejo de Europa, 2005). These guarantees must also be taken into account in the framework of the procedures related to alternative measures to detention (or to determine the most appropriate option in each case). In addition, children must be guaranteed the right to question the legality of being deprived of their freedom before a court or other competent, independent, and impartial authority, and to a swift decision about that action (Art. 37, Convention on the Rights of the Child). That is, they must be guaranteed the right to have effective recourse to avoid arbitrary detention (COIDH, 2003a: par. 126; TEDH, 2002).

In cases of detained unaccompanied migrant children, the right to contact a family member is fundamental. That is why both the detaining authority and those in charge of the place where the child is held must immediately notify his/her relatives or representatives, taking into account his/her best interest. The aim of the notification is so the child may receive timely assistance from the person contacted (COIDH, 1999a: par. 106; 2003b: par. 130; 20004: par. 93). Finally, migrant children have the right to consular assistance, recognized for any foreign person detained outside his/her country of origin, according to Article 36 of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990). This right implies the detainee's ability to communicate with a consular official and that the state in whose territory he/she was detained must notify him/her of that right and ensure the means for making it a reality (COIDH, 1999: par. 119).

In short, international law affirms in general terms the principle of non-detention of unaccompanied migrant children. However, it recognizes that in practice these detentions do take place, and therefore stipulates that they must be made only as a last resort and observing certain guarantees.

The Detention System in Mexico: Illegal, Discriminatory Norms, and Counterposed Normative Frameworks

In Mexico, constant tension exists between the normative frameworks that come into play in dealing with migrant children: on the one hand, the frame-

work of the rights of the child, whose constitutional and federal regulations offer solid bases for saying that migrant children may not be detained in the country; and, on the other hand, the immigration framework, whose federal norms also offer solid bases for maintaining that Mexican immigration law has legalized in a discriminating, differentiated way the detention of migrant children, contravening the international, constitutional, and federal framework of the rights of the child. That is, Mexico has two counterposed normative frameworks: one for protection, based on the international human rights system, and the other for control, based on border controls. The latter is the one that prevails.

a) THE NORMATIVE FRAMEWORK FOR PROTECTION

Article 4, paragraphs 9 and 11 of the Mexican Constitution recognizes the principle of the best interests of the child, which must guide all actions of the state with regard to children and closely follows that established in the Convention on the Rights of the Child. In addition, Article 1 of the constitution stipulates that all persons in Mexico shall enjoy the human rights recognized in the document and the international treaties the country is party to. This implies that the norms and principles both of the universal system and the inter-American system of human rights are fully applicable and mandatory for all authorities since Mexico has ratified both the Convention on the Rights of the Child (September 21, 1990) and the American Convention on Human Rights (March 2, 1981), plus the fact that it has accepted the jurisdiction of the Inter-American Court of Human Rights (December 16, 1998), responsible for enforcing the American Convention.

The 2014 General Law on the Rights of Girls, Boys, and Adolescents (LGDNNA) focuses on protection and recognizes that children have rights and are a priority group that requires special intervention; at the same time, it recognizes that they must be considered in their own terms and that they require a distinct, specific approach. In addition, it includes special protection measures for vulnerable groups, such as migrant girls (Art. 89). The law also stipulates that shelters to house the children must be managed by the National System for Integral Family Development (DIF) and that they must fulfill standards of well-being (Art. 94), such as respect for the principle of

separation and the right to a family unit (Art. 95). Due to the logic of holding children for as short a time as possible in closed-door facilities, the LGDNNA obliges DIF authorities to find as soon as possible the best solution for the child and avoid his/her stay in shelters given the last-resort, exceptional nature of this measure, which implies, in the last analysis, that the child is not free (Art. 111.VIII).

b) THE NORMATIVE FRAMEWORK FOR CONTROL:
ILLEGAL, DISCRIMINATORY NORMS

The 2011 Migration Law uses a security approach and stipulates that all migrants who cannot prove their legal presence in Mexico shall be detained at a National Migration Institute (INM) immigration station as a matter of “public order,” until their immigration status can be determined (Art. 99). The law calls the act of depriving a migrant of his/her liberty as “presentation,” which implies “temporary lodging,” until his/her immigration status can be regularized or he/she can be “helped to return.” Nevertheless, regardless of the euphemism utilized, we are talking about being detained at an immigration station for later deportation.

In the case of unaccompanied migrant children, the INM is obligated to immediately turn them over to the DIF in order to put a priority on their being held in places where they can receive appropriate attention while their migratory situation is resolved and so the consulate of their country can be advised (Art. 112.I). However, breaking with the logic of protection for all children required by the LGDNNA, the Migration Law allows migrant children to be “lodged” under “exceptional circumstances” in immigration stations until they are transferred to a DIF facility (Art. 112.I). These “exceptional circumstances,” according to Article 176 of the law’s regulation, are the unavailability of DIF shelters and in cases when the children require attention that “cannot be offered” in the DIF shelters. Thus, the law allows for the detention of migrant children under these circumstances and leaves the authorities with a very broad margin of discretion for determining what the “exceptional circumstances” are that allow them to detain them in immigration stations. Once the children are detained, INM Children’s Protection Officials (OPI) must begin proceedings to determine their best interest and

establish the protective measures to ensure it (Art. 169 to 177 of the Regulation and Art. 4 and 7 of the Circular that Stipulates the Procedure for Attention of Unaccompanied Migrant Boys, Girls, and Adolescents).

The law states that the detention can only be made by INM personnel and it cannot exceed thirty-six hours, counted from the time when the person is placed in the custody of the INM (Art. 68). However, Article 111 states as a general rule, that from the moment when detainees are “presented” (detained), the INM has fifteen more working days to resolve their immigration status. This time period can be extended to sixty working days when there is no information about their identity and/or nationality, or difficulties arise for obtaining their identity and travel documents; when the consulates of the country of origin or residence need more time to issue those documents; when there is an impediment for their travel through third countries or obstacles for establishing the itinerary for travel to their final destination; and when a medically accredited illness or physical or mental disability makes it impossible for them to travel. This time period can be extended indefinitely—as, therefore, can the detention of the individuals involved—if an administrative appeal (a request for review) or a legal appeal (a request for appeal) is presented (Art. 111).

The length of detention stipulated by the Migration Law is excessive and violates Article 21 of the Constitution, which sets thirty-six hours as the maximum duration of an administrative detention, which is the kind of detention a migrant is subject to. However, immigration authorities have attempted to play a game of concepts, arguing that, since it is not a detention, but a “lodging,” they are not limited to the thirty-six hours established in the constitution (Sin Fronteras IAP, 2012: 17).

In short, the Migration Law and its regulation has openly legalized the detention of migrant children at immigration stations for excessive periods of time that are not in accordance with the general standards applied to the administrative detention of other persons who are not migrants. This is in frank contradiction to the international, constitutional, and federal normative frameworks that prohibit their detention and argue for differentiated treatment, precisely due to their age, and for the protection of all children. The Mexican detention system is characterized by conferring differentiated, discriminatory treatment that is disrespectful of their rights to migrant children for the simple reason that they are migrants. What prevails in this case

is not their status as children and human rights, but their status as migrants and the security approach. For this reason, the Migration Law has escape valves that allow them to be detained “in exceptional circumstances.” The problem is that the system operates almost entirely through the exception and detains children every day, despite all the legal human rights norms that prohibit it.

The main effect of all of this is that these children’s vulnerability is increased and their human rights are violated even more (CNDH, 2005; Musalo and Frydman, 2015; Ceriani, 2012). This unmasks at least two situations in Mexico: the *de facto* criminalization of irregular migration and the lack of immigration laws, practices, and policies with an approach compatible with children’s rights and needs (Consejo de Derechos Humanos, 2009: par. 24-25). Thus, in Mexico, migrant children fall between two radically opposed normative spheres: one that is inclusive and aims at protection, referring to the rights of the child; and another that is exclusionary, that aims at control, with reference to the national policies and laws for controlling irregular migration (Ortega Velázquez, 2015).

c) THE DETENTION SYSTEM IN ACTION: ILLEGAL, DISCRIMINATORY PRACTICES UNDER COVER OF COUNTERPOSED NORMATIVE FRAMEWORKS

Mexico’s detention system is illegal and discriminatory: it violates the international, constitutional, and federal standards of children’s rights and human rights. What is more, in practice, the treatment of migrant children in Mexico also violates the standards of the Migration Law itself (even taking into account its own illegal and unconstitutional aspects and its not conforming to international conventions).

In the first place, despite the fact that most of the time the children are detained by INM agents, reports also exist accusing federal, state, and municipal police forces of also detaining them, often illegally, since they are not authorized to do so and can only do so with a prior cooperation agreement with the INM (CNDH, 2006). In addition, the OPI, which should accompany the children throughout the entire process, has been criticized because it suffers from the conflict of interest of being judge and jury in the migratory process, as well as being insufficient in number and not being well trained in children’s

rights (INSYDE, 2013: 3; CNDH, 2016: 78 and following; Consejo Ciudadano del Instituto Nacional de Migración, 2017: 80).

In the second place, although the law stipulates that the INM must immediately transfer unaccompanied migrant children to DIF shelters, in practice, this only happens to a very limited extent. The main reason is the DIF's operational and financial incapacity. For example, a 2015 study points out that only 6 percent of the children who arrived at a detention center were transferred to a DIF shelter. Two things happen to the remaining 94 percent: they are summarily deported or they remain in detention at the immigration stations for 15 to 300 days (Musalo and Frydman, 2015).

In the third place, the best interests of the child are not respected:

- 1) Immigration detention centers are closed spaces that do not guarantee the rights that the children must be able to exercise during their stay (education, recreation, health, appropriate nutrition, etc.), and not all of them have a specific space for children (Consejo Ciudadano del Instituto Nacional de Migración, 2017: 140-144; Asilegal, Sin Fronteras and FUNDAR, 2019: 32; CNDH, 2005, 2017);
- 2) The best interests of the child are not determined in the administrative immigration proceedings. The case files are identical for children and adults. This is very serious if we take into account that children, precisely due to their age, do not have the ability to understand, interpret, or evaluate their participation in those proceedings that an adult would (Asilegal, Sin Fronteras, and FUNDAR, 2019: 21; Consejo Ciudadano del Instituto Nacional de Migración, 2017: 81, 146-147);
- 3) Some reports point to children remaining in detention at immigration stations for from 15 to 300 days (Musalo and Frydman, 2015). This detention is prolonged even further if they seek asylum and are held in DIF shelters (Georgetown Law Human Rights Institute Fact-Finding Project, 2015: 30), up to six months (Asilegal, Sin Fronteras, and FUNDAR, 2019:21);
- 4) No real, legal alternatives to detention exist. The law includes as the only possibility that of undergoing the immigration proceedings at liberty in "custody" (Art. 101), which would mean that the migrant would be handed over in custody to his/her diplomatic representative or a recognized, respected entity or institution whose aim is linked to the protection of human rights. However, this alternative is very lim-

ited: for example, in 2013, fourteen persons were handed over in this kind of custody (Sin Fronteras, 2012). And despite the fact that more have been given this treatment in recent years, it does not seem to be a widely used measure (Consejo Ciudadano del Instituto Nacional de Migración, 2017: 42).

In the fourth place, under the pretext of the COVID-19 pandemic, in 2020, Mexico detained and summarily deported unaccompanied migrant children to their countries of origin in the first months of the pandemic. It is estimated that from March to July 2020, Mexico deported 447 children, especially to El Salvador, Honduras, and Guatemala (UNICEF, 2020). This practice violates sanitary standards to prevent the propagation of the virus to other countries, since the children were deported without having tested them to see if they had COVID-19. In addition, their rights to due process and to request asylum were also violated. What is more, they were returned to the very places and to the people from whom they were fleeing (for example, street gangs in the case of the countries of northern Central America). This puts their lives at risk in two ways: not only because they return to the context of violence and poverty they were initially fleeing from, but also because of the stigma and discrimination they face because of their return and being possible carriers of the virus, in addition to the imminent collapse of the health services in their countries of origin (Ortega Velázquez, 2020a).

The Detention System in the United States: Racialized, Instrumentalized Laws

1. A LEGAL DETENTION SYSTEM WITH “PROTECTIONS”

In the United States, the system openly gives border control preponderance over the rights of the child: unaccompanied migrant children do not have a fundamental right that protects them from detention, either internationally or constitutionally. In this country, the system for the detention of unaccompanied migrant children is completely legal, but is “shielded” by a series of protections established in a legal decision and two federal laws that regulate the conditions of detention and establish standards of their protection while in government custody.

Internationally speaking, the standards for non-detention of migrant children established in the Convention of the Rights of the Child are not binding for the United States because it has not ratified this international treaty. On a regional level, despite its being a member of the Organization of American States (OAS), the inter-American standards prohibiting the detention of migrant children also do not apply because it has not ratified the American Convention on Human Rights, nor has it accepted the jurisdiction of the Inter-American Court of Human Rights (COIDH). Thus, the United States has a weak—or practically non-existent—acceptance of the international standards regarding children.

On a constitutional level, the Supreme Court has decided that unaccompanied migrant children do not have a fundamental right to be free of government custody because “juveniles, unlike adults, are always in some form of custody” (U.S. Supreme Court, 1993: 302). In 1985, human rights defenders brought a suit against the government in the case of *Flores v. Meese* to question government policy on custody of unaccompanied migrant children (U.S. Supreme Court, 1993: 296). In this case, the plaintiffs argued that the right of due process had been denied the children due to the conditions of their detention and restrictive policies about liberty. However, the court maintained that “the best interests of the child” is likewise not an absolute and exclusive constitutional criterion for the government’s exercise of the custodial responsibilities that it undertakes” (U.S. Supreme Court, 1993: 304). For this reason, since no fundamental right was involved, the court concluded that the regulatory legislation of the Immigration and Naturalization Service (8 c.F.r. § 242. 24) did not infringe on the detained children’s right to due process, and that, rather, to the contrary it was part of the pursuit of a “legitimate public end” that the court itself identified as “the children’s welfare” (U.S. Supreme Court, 1993: 306-311). Thus, for the court, the detention of unaccompanied migrant children does not violate the Constitution. The only important point from the constitutional point of view is that the detention must comply with minimum standards and that the children’s fundamental rights must not be infringed upon (U.S. Supreme Court, 1993: 303-304).

The detention system for unaccompanied child migrants is regulated in three instruments: the legal settlement agreement of *Flores* (the government’s response to the *Flores v. Meese* case) and two federal laws.

- a) The Flores Agreement of 1997 is centered on three issues:³ 1) it requires that the government free children from migratory detention without unnecessary delays into the custody of their parents, other adult relatives, or authorized programs that are willing to accept their custody; 2) if the aforementioned is not possible, it requires that the government place the children in a “less restrictive” environment, appropriate for their age and any special need they may have; and, 3) it mandates the government to implement minimum standards of well-being for the care and treatment of the children in migratory detention.
- b) The Homeland Security Act of 2002 (§462) mandates, on the one hand, the Department of Homeland Security (DHS) to detain, transfer, and deport unaccompanied migrant children, and, on the other hand, the Department of Health and Human Services (HHS), through its Office of Refugee Resettlement (ORR), to care for and take custody of unaccompanied children during their stay in the country. In the custody of the ORR, the children receive basic education services, are evaluated by social workers and health professionals, and are assigned a social assistant who aids in handing them over to a qualified sponsor, who may be a parent, a close or distant relative, or an unrelated sponsor (GAO, 2016: 30). The ORR’s general orientation is to place the children in the least restricted environment possible and connect them with a tutor or sponsor in the United States. In certain circumstances, in addition, it must do follow-up services to guarantee the child’s safety after reunification.
- c) The Trafficking Victims Protection Reauthorization Act 2008 codifies parts of the Flores Agreement and includes three categories of protections to 1) improve the care and custody of unaccompanied children; 2) guarantee the safe placement of these children with tutors or sponsors; and, 3) make the immigration process friendlier for the children. The law requires the DHS, through Customs and Border Protection (CBP), to notify the ORR that it has an unaccompanied migrant child in its custody within forty-eight hours of the apprehension. Then, ICE must transfer the child to the ORR within seventy-two hours. However, in the case of children from Mexico or Canada, this is only pos-

³ The full name of the agreement is the Stipulated Settlement Agreement, *Flores v. Reno* CV 85-4544-RJK (Px) (CD Cal 1997) (Flores Agreement).

sible if they argue before the DHS that they have been victims of human trafficking or they fear a return to their country of origin. Otherwise, they are deported to their country of origin (8 USC, §1232 (a) (2); (b) (1) (2) (3); (c) (2)).

In short, in the United States, unaccompanied migrant children have neither a fundamental nor a human right to not be detained in accordance with the international standards. The fact that children must always be under government custody because of their age is normalized and legalized, but judicial and legal standards do exist that regulate the treatment of their detention. In general, priority is given to their being handed over to relatives or, if that is not possible, their being placed in the “least restrictive” environment possible. In addition, the conditions of detention must comply with minimum criteria for the well-being of the children.

2. THE DETENTION SYSTEM IN ACTION: RACIALIZED AND INSTRUMENTALIZED LAWS

The legal, protective, humanitarian detention system for unaccompanied migrant children in the United States does not operate in practice as stipulated by the legal bases that “shield” them with protection.

In the first place, this is because the system’s protections are constructed with the exclusion of Mexican children. That is, it is a system whose protective standards are based on racialized norms that protect a certain class of children and exclude the children who are nationals of Mexico or Canada—a country from which it is very improbable that there will be a large number of unaccompanied migrant children, compared to Mexico. Mexican children who migrate alone and are apprehended by the DHS only have the right to be transferred to the ORR and enjoy the protections mentioned in the Flores Agreement and the national security and trafficking laws if they argue that they have been victims of trafficking or are afraid to return to Mexico. In all other cases, they are detained in immigration jails to await deportation to Mexico.

In the second place, this is because the system in action, just like in the Mexican case, does not operate as stipulated by law; much less is there

respect for the best interests of the child (Lee and Ortega Velázquez, 2020). For example, the transfer of unaccompanied migrant children—clearly, the non-Mexicans—to the ORR does not always happen in the seventy-two hours stipulated by law, and the children often remain in the CBP border cells for longer periods (LIRS, 2015: 13; Rogerson, 2016: 871). In addition, the Trump administration made it more difficult in recent times for children to be released from ORR custody to that of qualified sponsors because of a policy that requires fingerprint and verification with ICE of the sponsor's immigration status (ORR, 2019). This criminalizing policy dissuades parents or relatives, who are also migrants with irregular status, from requesting custody of the children, despite the fact that they would be the most appropriate adults to care for them (Justice for Immigrants, 2019).

In the third place, this is because the system has a predetermined approach: usually the ORR institutionalizes the children in large bodies. In fact, they are not placed in more appropriate places because the DHS does not give it information about the children's background that would help with an appropriate placement (LIRS, 2015: 15-16, 22-23; Aronson, 2015: 39-40). In addition, in these institutions, the information about the children, including their meetings with counselors, is not confidential, and can be used against them during their immigration proceedings (Nilsen, 2018). Recently, federal data even revealed thousands of complaints about sexual abuse and harassment of children in these facilities (Gonzales, 2019).

3. RACIALIZED AND INSTRUMENTALIZED LAWS THAT FORM THE BASIS FOR THE DETENTION AND DEPORTATION OF UNACCOMPANIED MIGRANT CHILDREN FROM THE UNITED STATES IN TIMES OF COVID-19

Taking advantage of the COVID-19 pandemic and in order to “stop the spread of the virus” (International Rescue Committee, 2020), the U.S. government has intensified the detention and swift deportation of irregular migrants, both children and adults, and of asylum-seekers. It does this regardless of whether it deports migrants who have contracted the COVID-19 virus (Montes, 2020), thus propagating the virus (Kassie and Marcolini, 2020) in poor countries (Brigida and Pérez, 2020) with broken health systems. In the case of the children, the Trump administration violated their right to due process and

to apply for asylum and completely ignored the legal protections that exist in the detention system for unaccompanied migrant children.

The Trump administration legally based these practices on the March 24, 2020 Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists (HHS, 2020), an interim emergency regulation that allowed the Centers for Disease Control and Prevention (CDC) to prohibit the entry into the United States, for reasons of public health, of persons who could propagate diseases, in accordance with the faculties given them by the Title 42 of the Code of Federal Regulations §70 and §71. The peculiar thing about this norm is that it is only applicable to a certain class of persons: undocumented migrants, including asylum-seekers and unaccompanied migrant children who arrive by land to one of the U.S. borders; and the southern border with Mexico is clearly the one with the most traffic (Ortega Velázquez, 2020).

The justification for this racialized norm is that these persons could be carriers of COVID-19 and that they could be a threat for the detention centers and their staff (Kanno-Youngs and Semple, 2020). For this reason, when Border Patrol agents apprehend them on the borders, especially the southern border, they summarily deport them (Lind, 2020), mainly to Mexico (Miroff, 2020), even if they argue that they fear persecution in their countries of origin or if they are unaccompanied migrant children.

This policy dismantles the legal protections written into the detention system for unaccompanied children, since none of the regulations included therein are followed. Some children are deported only hours after stepping onto U.S. soil. Others are taken out of U.S. government shelters in the middle of the night and put on airplanes without even telling their families (Dickerson, 2020), in direct violation of the ICE policy that stipulates that they must only be repatriated during the day (Congressional Research Service, 2020). Still others are detained and shut away in hotels for days or weeks instead of sending them to government shelters, which are empty and where they would be able to get legal advice, to await deportation to their countries of origin (Merchant, 2020). This situation is quite controversial and has already sparked legal suits against the Department of Justice. The latter has attempted to evade court supervision by detaining unaccompanied children in hotels, arguing that the hotels fall outside the area of protection offered by the Flores Agreement (AZCENTRAL, 2020).

The deportation of almost 2,000 unaccompanied migrant children (*Dallas Morning News*, 2020) in the middle of the pandemic flagrantly contravenes the norms of the legal protections in the case of being apprehended and detained by the DHS. In the past, if they arrived at the border without an adult, they had access to an administrative procedure that allowed them to argue their reasons for staying in the United States. Those who did not manage to pass through this filter were deported to their countries of origin, but care was taken that they would have a safe place to return to. In today's context, these practices are no longer current and the U.S. system is one of "custody keep-away" (O'Toole, 2020); later, they deport them alone, returning them to the places they have been fleeing from.

In short, the CDC order is not part of a coherent public health plan for dealing with the pandemic. Rather, it is a clear example of how the law is instrumentalized to serve specific political interests in racist, classist immigration and asylum management by the United States.

Conclusions

Since the adoption of the Convention on the Rights of the Child (1989), children's rights have become an important international concern. An entire discourse has been constructed around them, which fights to consider them subjects with full rights and to whom states owe certain extra obligations due precisely to their age. This discourse, rising out of human rights, is based on non-discrimination and is written in the convention as the maxim, "all children, all rights." This means that the enjoyment of the rights established therein is due to all children present within the jurisdiction of a state, regardless of whether they are nationals or foreigners (whether they have regular or irregular immigration status), refugees, asylum-seekers, or those without a country.

Despite this, when certain issues involve the sovereignty of states (for example, the handling of migrants and asylum-seekers), the human rights discourse no longer seems so clear. In the case studied in this chapter, international law affirms in general terms the principle of non-detention of unaccompanied migrant children. However, it also establishes an escape valve so that detention of these children can take place; but in that case, certain guarantees must be established and it must take place as the last possible

resort. That is, there is no absolute human rights norm that protects migrant children from detention, despite being children and not having committed any crime. The international system itself recognizes the possibility that detentions happen, but as a last resort and fulfilling certain guarantees.

The government administration of migrants uncovers the nation-state's mechanisms of exclusion of the "others" (foreigners), reflected in the citizenship-nationality/foreignness, belonging/deportability, and rights/injustice binomials. For this reason, the political imperative of controlling irregular migration undoubtedly always takes precedence over the right of unaccompanied migrant children to not be detained and to be treated with dignity, regardless of the country involved and its acceptance or not of international human rights law. In the cases of Mexico and the United States, two countries with very different traditions in terms of international law acceptance, the results seem to be similar: neither gives effective protection to unaccompanied migrant children; rather, both countries criminalize them and treat them according to illegal, discriminatory, racist standards that cannot possibly be in accordance with the human rights proclaimed by the international system. Thus, when children become migrants, they lose access to the rights they might have as children and, in general, as persons, given that the access to rights unfortunately continues to be inextricably linked to the citizenship/nationality binomial and legal/processed immigration status in the case of non-nationals.

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MIGRATION MANAGEMENT AND CONTROL IN MEXICO: MECHANISMS FOR DOMINATING PEOPLE IN RESISTANCE

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*Berta Guevara****

Introduction

Any conversation on migration and human rights requires us to examine the impact on the bodies and identities of thousands of sexualized and racialized people forced to leave their places of origin, marked by colonial histories, to establish themselves in receiving areas, also marked by colonialist structures (Herrera Rosales, 2018). For that reason, we propose an analysis rooted in the recognition of the intersectional effect of colonialism, patriarchy, and capitalism as systems that structure necropolitical frameworks, defined as “the set of policies and laws enacted to produce situations, moments, and spaces that force people to leave their homes or pressure them into situations and spaces of death” (Estévez, 2018: 2).

We start from the intersection of these systems of oppression because they are the foundation on which the hegemonic global system of migration management has been erected in the Global North (Prieto Díaz, 2016; Estupiñán, 2014). This system in turn is imposed on other regions of the Global South through cooperation, regularization, and asylum agreements, as well as the externalization of borders by means of financial and military aid from the United States to Mexico and northern Central America.

From this analytical framework of interwoven systems of domination, we seek to reflect on their territorialization through three mechanisms of migration management, which we can trace at the global level and will then analyze in the context of Mexico’s migration policy over the last two years,

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in light of U.S. national security policy as it impacts on Mexico and northern Central America. These mechanisms are the externalization of borders, regional asylum agreements, and the criminalization of the defense of the rights of movers, people in mobility, also called the “crime of solidarity” (Penchaszadeh and Sferco, 2019).

Finally, we conclude with an analysis of these mechanisms’ effects on the bodies and agency of people forced to move who in turn have consolidated resistance processes through collective organizing and the construction of political subjects.

A Global Framework for Migration Management Mechanisms

The hegemonic approach to managing human mobility is linked to the contexts and interests of the nations of the Global North. We can identify three important factors behind the present-day migration management system: the need for geostrategic territorial control of borders and post-Cold War migration; the 9/11 attacks, which promoted the association of migration, terrorism, and national security (Prieto Díaz, 2016); and the incorporation of migration into neoliberal governance (Estupiñán, 2014).

These factors underscore the convergence of neocolonialism and capitalism as the core components of a militarized view of irregular migration, cast as a national security threat for the Global North. They also reveal a neoliberal management approach to benefit economically from irregular migration and make “movement of people more orderly and predictable as well as productive and humane” (Ghosh, 2012: 26). This approach disregards the forced nature of mobility and the historical processes of colonialism, pillage, exploitation, racism, and discrimination connecting migratory flows and routes.

As Estupiñán (2014) argues, based on the notion of migratory management technologies, both direct and indirect mobility governance exists, made up of policies and multilateral agreements on control, screening, and dissuasion. In this case, we will examine three mechanisms: the externalization of borders, regional asylum agreements, and the criminalization of the defense of rights of people on the move (movers), which, due to their global reach and impact in the area of human rights violations, are of interest for this essay.

Dismantling Asylum Systems

In the last decade, the number of unwillingly displaced people domestically and internationally doubled, growing to 79.5 million in 2019 (ACNUR, 2020). At the same time, different regions moved ahead in weakening asylum systems and signing North-South bilateral agreements for the outsourcing of international obligations and human rights violations through so-called safe third country agreements.

In the United States, the Trump administration launched an aggressive campaign to block asylum-seekers through measures implemented by executive orders like the 2017 Travel Ban, which restricts entry for people from thirteen countries in Asia, Africa, and South America; dismantling the Central American Minors Program, which allowed children and adolescents from Central America with family members in the U.S. to apply for asylum; the imposition and expansion of metering or waitlisting at the Mexico-U.S. border, denying claims of family and gang violence as grounds for asylum—disproportionately affecting women and young people—using the precedent of the Matter of A-B case; and others like those invoked in the context of the pandemic, to allow immediate expulsion of migrants at U.S. borders without the option to apply for asylum.¹

Additional measures included formal and “informal” safe third country agreements signed between 2018 and 2019. The first such agreement, which has remained in place as a unilateral policy, was Remain in Mexico or the Migrant Protection Protocols (MPP), which allow the U.S. to return asylum-seekers to Mexico pending a hearing on their application (Coalición Pro-Defensa del Migrante A.C., and American Friends Service Committee, 2019). Later, in 2019, the United States signed Asylum Cooperative Agreements (ACA) with Guatemala, El Salvador, and Honduras.

These agreements can be traced back to 2015, when the European Union (EU) formed the European Agenda on Migration to set quotas for distribution among member states; then, in 2016, an agreement was signed with Turkey under which all asylum-seekers with pending proceedings or who were rejected in Greece were returned to Turkey. Other such agreements are the Emergency Trust Fund for Africa, used to block migration and accelerate assisted

¹ See DHS (2020).

deportation and “voluntary” repatriation (Akkerman, 2018), and those that promote assisted integration by international organizations subservient to neocolonial and capitalist interests. Also, in 2012, Australia signed safe third country agreements with the governments of Papua New Guinea and Nauru (Karlsen, 2016) in an effort to stem the flow of ships carrying refugees from Iran, Indonesia, Sri Lanka, Vietnam, Bangladesh, and Myanmar.

Militarization and Externalization of Borders

The most dehumanizing effect of an approach based on the growing militarization of migratory police is the death of hundreds of people on their journeys. Based on figures published by the International Organization for Migration Missing Migrants Project (IOM, n.d.), between 2014 and 2019, 36,465 people died in the context of human mobility, 54.3 percent in the Mediterranean, 23.9 percent in Africa, and 10.5 percent in the Americas.

Precisely, the prime examples of border militarization are the United States and the European Union. In the U.S. case, beyond the media impact of the promise to build a wall that already stretches along almost 1,000 kilometers of the United States-Mexico border, other more relevant issues exist, like the more than 6,000-percent growth in the budget for border control between 1980 and 2018. Also, the deployment of 60,000 Customs and Border Protection (CBP) agents made it one of the largest federal security agencies, reinforced with high-tech infrastructure that includes drones, heat and motion sensors, biometrics, and aerial patrols (Miller, 2019), while privatizing migrant detention centers represented a financial windfall for the capitalist elites.

In the case of the EU, the European Border and Coast Guard Agency (FRONTEX) has been transformed into a migratory control apparatus with a budget that grew 3,688 percent between 2005 and 2016 and has the full support of border surveillance and security systems for land and naval control in the Mediterranean and Eastern Europe (Akkerman, 2016). In addition, the European Union has advanced its border externalization agenda toward countries in North Africa through advisory services cooperation for the formulation of national migration control policies.

Also, plans for direct investment have been implemented based on migratory cooperation agreements with countries that act as border guards in

response to changes in migration routes in the wake of the safe third country agreement with Turkey. For example, in 2016, the European Union made a plan to sign agreements with Jordan, Lebanon, Niger, Nigeria, Senegal, Ethiopia, and Mali (European Commission, 2016). These agreements were the prelude to a Memorandum of Understanding between Italy and Libya in 2017, which allowed Libya to reinforce its border security with funding and training of its naval forces and border patrol, despite its conspicuous lack of a consolidated democratic state, and provided for the creation or adaptation of migrant detention centers.

These examples of the militarization of migration policy in the Global North and its self-perceived periphery can be understood based on the notion of the security industrial complex (Jones, 2018) and its relationship with migration control (Douglas and Sáenz, 2013). This refers to two central themes of our analysis, the encroachment of security and surveillance on all areas of life in response to social and environmental crises along the lines of the logic of the internal enemy. On the other hand, military and security companies exercise considerable power in shaping political agendas and security budgets in the United States and the EU, which benefit them in the form of contracts and research and development funding of military technology for civilian use in areas like border surveillance and migration control.

Criminalization of Migration and Human Rights Advocacy

Recent years have seen increasingly visible media reports of persecution against people who, acting individually or as part of civil society organizations, have been prosecuted for humanitarian actions to safeguard migrants' lives (Vosyliūtė and Conte, 2019; Front Line Defenders et al., 2019). This reflects a global trend toward securitization in migration policy, which, on the one hand, makes irregular and criminalizes the flow of people who cross borders to safeguard their lives and, on the other, limits human rights defenders' capacity for action by defining any action in solidarity as a crime (Penchaszadeh and Sferco, 2019).

Recently, the United Nations Special Rapporteur on the human rights of migrants released a report discussing the migrants' and defenders' right to

freedom (2020). The document describes a series of measures that restrict the exercise of rights, which are exacerbated in countries with approaches centered on security and militarization. Hostility toward the exercise of rights and organizing by migrants and people in need of international protection has led to the imposition of new legislative and institutional restrictions that affect access to other rights, like life; access to basic services like legal aid, healthcare, housing, and education; protection against human traffickers and gender violence; information; asylum; fair working conditions; freedom of speech and assembly; and freedom from discrimination (Special Rapporteur on the human rights of migrants, 2020).

Such criminalization measures also permeate detention and deportation regimes, especially in countries with security-based approaches, where people are discouraged from exercising rights and organizing. For example, in 2018, inmates at a detention center in Louisiana were repressed and held in isolation after launching hunger strikes (Special Rapporteur on the human rights of migrants, 2020). Meanwhile, networks and solidarity actions by members of transit communities and civilian and religious organizations (Parrini and Alquisiras, 2019) have faced various forms of harassment and retaliation for their activities, ranging from surveillance, stigmatization, and public intimidation to harassment and criminal or administrative sanctions.

Margarita Martínez Escamilla (2019) examines how criminal law has been weaponized to crack down on actions in solidarity. A noteworthy example is the case of Spanish defender Helena Maleno, who was the object of a criminal investigation in Tangiers, Morocco, facing penalties that could even include life in prison. Since most criminal investigations of this kind in Europe and North America have ended in acquittal or been dismissed by the courts (Vosyliūtė, 2019), we can assume that their true aims are intimidation, reputational harm, harassment, and dissuasion of the targeted individuals and organizations.

Mexico, a Regional Node of Territorialization of Migration Management and Control Mechanisms

October 13, 2018 marked a milestone in the history of regional migration. That day, dozens of people assembled in San Pedro Sula, Honduras, to embark

on a collective migration. Two days later their numbers had swelled to over 2,000 when they crossed the border with Guatemala and on October 20, a total of 7,233 people were reported crossing into Mexico's Suchiate Municipality (COMDHSM et al., 2019).

Between 2018 and 2020, this first group or caravan—that we categorize as an “exodus”—was followed by new migrant caravans from northern Central America, the Caribbean, and Africa (COMDHSM et al., 2019). Their needs are as diverse as their faces, nationalities, genders, and ages. They form an exodus fleeing from social, economic, political, and environmental conditions of death; they move through very risky territories of uncertainty and vulnerability, but that also provide local expressions of hospitality and solidarity, to finally realize the shared vision of a land of life and liberty (COMDHSM, 2019).

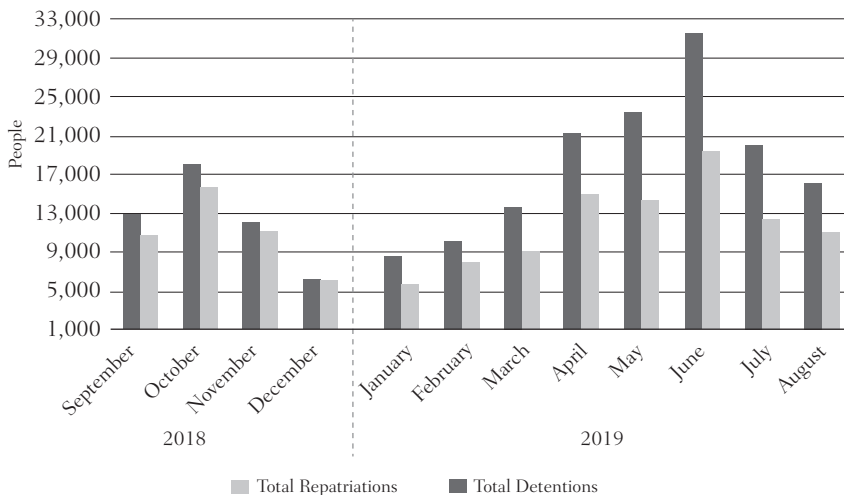
In the midst of this migratory phenomenon, the Mexican state and its regional neighbors have adopted and consolidated a policy of border security and migration control centered on militarizing their territories (Storr, 2020), strengthening the detention and deportation regime over and above the right to seek asylum, and criminalizing the defense of human rights for migrants and asylum-seekers (Front Line Defenders et al., 2019).

Militarization of Borders and Human Rights Violations

Although the military approach to managing migration in Mexico can be traced to the late twentieth century (París, 2014), it intensified at the southern border through the Merida Initiative of 2008 and the launch of the Southern Border Program in 2014, financed by the United States under the aegis of its war on organized crime. These facts are central to understanding the move to reinforce security forces in the region to contain the migrant caravans. The first caravans in 2018 were met with a constant deployment of joint operations involving hundreds of officers from the National Institute of Migration (INM), the Federal Police, and the Secretariat of the Navy (COMDHSM, 2019). In fact, as reported by the Migration Policy Unit (UPM) (2019), October 2018 saw the greatest number of detentions in the year, with 18,044, 75.5 percent of them in the states of Chiapas, Oaxaca, Tabasco, and Veracruz. Although the federal administration that took office in December 2018 initially offered a discourse of respect for human rights and migration regularization, leading

to a substantial drop in migrant detentions, threats by the U.S. government in the first quarter of 2019 following a spike in detentions at the Mexico-U.S. border put an end to the new discourse (see Graph 1). In April and May, the INM deported 67 percent more people than in the same period the previous year. Also, reports began to appear denouncing the presence of military police at migration checkpoints on Mexico’s southern border. In fact, in those months new caravans were formed by migrants from Central America, the Caribbean, and several African countries, most of whom ended up crowded into detention centers (COMDHSM et al., 2019).

GRAPH 1
MIGRANT DETENTIONS AND REPATRIATIONS IN MEXICO
(SEPTEMBER 2018-AUGUST 2019)



SOURCE: Developed by the authors with information from UPM (2019).

This was only the prelude to an intense military buildup throughout the border region. In response to U.S. threats to impose tariffs on Mexican exports to force it to strengthen migration control and in the midst of the ratification of the United States-Mexico-Canada Agreement (USMCA), on June 7, 2019,² the Mexican Foreign Relations Ministry signed an agreement promising to deploy the National Guard on the southern border and make the MPP

² See U.S. Department of State (2019).

official along Mexico's entire northern border. The agreement turned June into the month with the most detentions in recent history, with 31,560 people detained for migration-related reasons. In July, the National Guard boosted its deployment to 26,000 officers as part of the so-called "Northern and Southern Border Migration and Development Plan" (Storr, 2020).

In step with Mexico's militarization of migration policy, the nations of northern Central America implemented similar measures. For example, through the Protocol for Joint Action between the National Civilian Police and Armed Forces of 2018 and the Special Migration and Foreign Nationals Act in 2019, El Salvador created the legal basis for police border control efforts to operate jointly with military forces. Also, Guatemala has used task forces made up of its army and National Civilian Police, created during the Internal Armed Conflict (1960-1996) and reactivated in 2016, to embrace a discourse of national security and border control as ways to minimize the actions of organized crime. These forces have received training from the U.S. Southern Command, the Texas and Arkansas National Guard, and the CBP for monitoring all the country's borders.

Bilateral Agreements to Dismantle Asylum Systems

Starting in January 2019, the general saturation in refugee proceedings was made more complex by the implementation of MPP on Mexico's northern border. From then through July 2020, a total of 65,877 asylum-seekers in the United States were returned to Mexico (TRAC Reports Inc., 2021). These persons are especially vulnerable, being exposed to violence from organized crime and gangs in several of the country's most dangerous cities, added to the fact that most of them lack access to protection, support, or legal advice or representation networks (Coalición Pro Defensa del Migrante, A.C. and American Friends Service Committee, 2019). Estimates indicate that in only around 1 percent of MPP cases have the petitioners been granted asylum (COMDHSM et al., 2019).

Faced with this situation, many people have desisted from their asylum petitions. Mexican authorities have persuaded others to board buses from the northern border to border crossings in the south, where they are abandoned (COMDHSM et al., 2019). MPP and the Mexican government's efforts to

force migrants to return constitute a severe violation of the principle of non-refoulement. Also, transporting asylum-seekers to the southern border, combined with other government actions, has transformed cities like Tapachula, Chiapas, into “prison cities” or pockets of disposability for people in need of international protection or awaiting regularization of their migratory status (Estévez, 2018).

It bears noting that for years the Mexican asylum system has been sunk in a deep crisis. The exponential growth of asylum petitions, skyrocketing from 1,296 in 2013 to 70,609 in 2019 (COMAR, 2020), reflects the context of expulsion in the region and many peoples’ inability to get to the United States and apply for asylum. Facing this surge in applications, the Mexican Refugee Aid Commission (COMAR), instead of boosting its capacity for action, has suffered a gradual reduction of its budget and continues to be plagued by severe delays in processing applications, extending even beyond a year.

This panorama was palpable from early 2019, when the Mexican government announced the launch of a temporary program of humanitarian guest visas (TVRH), which allowed recipients to stay in the country for a year, even asylum-seekers whom the authorities had persuaded to withdraw their applications. However, the shutdown of the program in February was the beginning of the end for handling cases of regularization and asylum in southern Mexico, leading to multiple protests and the formation of new caravans between March and October; the last was a group of more than 2,000 people, mainly from Haiti and Africa, which was blocked by more than 500 Mexican army soldiers and INM agents (COMDHSM et al., 2019).

Also, the despair of long waits to attain migratory status and continue their journey led hundreds of people to camp outside the offices of the INM, COMAR, and the Siglo XXI migrant detention center. Even so, the most shocking images of this process of disarticulation of asylum systems and border militarization forcing migrants to wait indefinitely at Mexico’s southern and northern borders show events like the death of three Africans after capsizing in a boat off the Tapachula coast to dodge military checkpoints on land in the state of Chiapas. The eight survivors spent several weeks in detention before they were granted humanitarian visas (COMDHSM et al., 2019).

Agreements signed between the Mexican and U.S. governments, like that extending MPP to the entire northern border and another on militarization to contain migrants and asylum seekers in the south, were expanded to

countries in northern Central America. Between June and September 2019, the governments of Guatemala, Honduras, and El Salvador signed Asylum Cooperation Agreements with the U.S. Department of Homeland Security (DHS), which in essence transformed them into “safe third countries.” These actions are cause for concern because the same governments have acknowledged the challenges of implementing policies and legal and institutional structures to ensure the protection of migrants and refugees (CIDH, 2019). In addition, prevailing conditions of poverty, inequality, gang violence, and organized crime make it impossible to recognize them as “safe countries,” thus creating an irreconcilable inconsistency regarding fundamental guarantees in the asylum system.

Criminalization of Organizing to Defend Migrant and Asylum-Seekers’ Rights

Another face of the militarization of migration that seeks to maintain governability and control of migratory flows is increasing restriction of space for civil society organizations and communities in solidarity to participate in the defense of migrants’ human rights. In some countries in the region like El Salvador, criminalization is achieved by implementing zero-tolerance policies against gangs and social sectors seen as threats to the government, accusing them of complicity with criminal groups as a strategy to discredit them. In Guatemala, criminalization has been pursued by enacting laws like the Non-Government Organizations for Development Act (Decree 4, 2020), which gives the state powers to surveil, intervene, and cancel the registration of organizations that “disrupt public order” and impose civil and penal sanctions on their managers and partners and restrictions on international financing, among other measures.

In Mexico in recent years, in the context of the migrant caravans and the government response, detentions and arrests of human rights defenders have been reported, using the supposed offense of “disruption of public order,” as well as the detention and deportation of migrants with experience in human rights defense in their countries of origin, who have been apprehended by agents of different law enforcement agencies and then taken to migrant detention centers and rapidly deported (Front Line Defenders et al., 2019).

Also, we have seen growing use of criminal investigations as instruments of harassment and dissuasion of solidarity actions. In June 2019, two Mexican human rights defenders were detained in different places in the country and taken to Tapachula, Chiapas, on charges of human trafficking. However, a judge ruled that there was insufficient evidence and released them pending trial. The case was special, serving as an exemplary measure days after the signing of an agreement between Mexico and the United States, which had human trafficking as one of its central topics (Front Line Defenders et al., 2019).

Finally, we have seen acts of surveillance, intimidation, and repression against migrant shelters and civil society organizations. There have been increasing reports of heightened police and National Guard presence around shelters. Also, in January 2020, the INM attempted to deny organizations it had previously accredited access to migrant detention centers to monitor human rights and provide legal advice. Although the Ministry of the Interior intervened promptly to lift the restrictions, the incident revealed the government's intention to impose increased restrictions on spaces for defense of rights and consolidate various criminalization mechanisms designed to discourage solidarity actions in a country with a long and distinguished history of hospitality toward migrants, refugees, and asylum-seekers.

Impact and Resistance; the Construction of Political Subjects

At many points in history, we can attest to the physical, emotional, cultural, economic impact produced by the legacy of systems of domination, primarily from colonialism and capitalism, which remain in place with redoubled strength in today's world.

In the case of migration management, the impact on people is multifaceted: the control of bodies and territories through externalization, militarization of borders, and criminalization of human rights defenders. This can lead to people lacking the minimum conditions for subsistence in their places of origin or of transit, and even harsher conditions in receiving territories.

The implementation of both development programs to forestall migration and anti-migrant policies like those described above, with a focus on

militarization supposedly intended to hamper irregular migration, has failed to produce the desired effect (for example in the 2018 exodus), and on the contrary has altered the migratory dynamic by increasing risks and human costs. Faced with these realities, people are unwitting victims. They are victims unrecognized as such. They are victims denied access to reparations and justice. They are victims without the time or strength to resist the harm inflicted on them by structures that discriminate, criminalize, and kill.

However, accepting one's victimhood does not imply transformation. The terms are not synonymous and that is where talk of resistance takes on meaning. Resistance emerges from oppression. As Lenin explained in his debate with Hilferding, it is not only in newly opened-up countries, but also in the old, that imperialism leads to annexation, to increased national oppression, and, consequently, also to increasing resistance (Lenin, 1917).

Resistance

For Latin America, the concept of resistance is intricately entwined with its history, from the opposition of original peoples against colonialism to the rejection of present-day institutional measures that seek the violent physical and cultural eradication of its peoples and the appropriation of their wealth, like policies for resource control and extraction (Fajardo, 2005).

Stated differently, resistance at different historical moments is linked through organizing by people who have been historically oppressed by a system like capitalism, which gives rise to a permanent revolutionary situation driven by the exacerbation of social contradictions. It can be stationary, organized, unorganized, or developing (Fajardo, 2005).

Revolutions are a constant throughout history, but society's structure has not yet been transformed. The oppressive systems remain the same. Various critiques have been leveled against revolutions and different forms of resistance or social movements, but it is important to clarify that self-proclaimed revolutions embrace the established social conceit of pursuit of hegemonic power, setting aside the revolution's main achievement embodied in the movement itself, organizing, annexation, closeness, empathy rooted in pain, dispossession, and uprooting. Revolutions are replete with individual and collective resistance and memory. They resist based on everyday

experience, the struggle for access to rights, nonconformism, questioning accepted truths, doubt, rage, and the hope for a better life.

Consequently, it is important to seek harmonization between modern-day processes of resistance and the struggle for political power, given that some theoretical positions reject the pursuit of political power on the grounds that it should suffice to resist immediate situations, even affirming that power can be derived wholly from everyday experience. Dignity is not a private matter, because our lives are so intertwined with those of others as to make private dignity impossible. It is precisely the pursuit of personal dignity that, far from taking us in the opposite direction, brings us face to face with the urgency of revolution (Holloway, 2005).³

Today, processes are evaluated by an essentially local and regional dynamic, which does not strive to “take power,” but rather to build power. In other words, some projects have abandoned traditional left views regarding power, which saw taking central power as a step toward deciding the fate of an entire population. This other perspective aspires to build power by taking local and regional structures of popular organization as its point of departure and action (Fajardo, 2005).

The Active Political Subject Who Constitutes Resistance: Migrant Exodus

As we have observed, 2018 produced a milestone in migrant flows called exoduses or migrant caravans, which marked a historical trend as a collective survival strategy in the search for a safe territory where migrants and their families can fulfill their dreams and ensure their day-to-day survival.

This form of mass mobility is capable of disputing borders as national security technologies. It seeks to challenge migration and refugee policies in Mexico and the United States, revealing the collapse of the U.S., Mexican, and Guatemalan asylum systems, as well as government simulation of attending to and protecting migrants in transit and people seeking international protection and in conditions of extreme vulnerability.

³ This is one of the pillars of the Zapatista uprising. The Zapatistas insist that dignity compels them to rebel. See Holloway (1998).

Everything this mass forced mobility and the challenges facing each state have produced and continue to produce confirms that there is a social movement challenging a hegemonic power through the construction of a collective political subject. This mass forced mobility, which is much more than a simple social and demographic phenomenon, is a subject made up of thousands of people, with different individual and family plans and aspirations, united in the common cause of safeguarding their lives and building a better life in Mexico and the United States. It is a political subject because it breaks from the conventional migratory pattern of disperse and invisible human mobility, individual or in small groups, reshaping it into a collective, public form capable of exercising a social force that allows it to dialogue with actors in government and civil society (COMDHSM, 2019).

It is a political subject aware of its ability to exercise power through resistance. This does not mean that the active political subject seeks hegemonic power; in fact, they have no interest in it. What does interest them is the search for a place where living is possible, which they are denied by global anti-migration policies, by the xenophobia and aporophobia they may encounter in transit territories, which are often the minimum expressions remaining from the legacy of neocolonialism and the capitalist system also manifested in forms of human interaction.

The individuals who make up the active political subject have been shaped by resistance, by nonconformism; they appear in everyday life, but are not aware of it, because the system has not allowed the self to believe that it can have power over its own life, over its body, and that such power is shared and experienced collectively. It is discovered through resistance and survival and is placed at the service of survival instead of legitimizing the power that is violating human integrity. This is where indignation, anger, rage, fear, pain, and hunger lead people to organize with others who share their plight, to transform their conditions, without realizing that, when they seek to transform conditions they are challenging the system, they are challenging the entrenched hegemonic power, they are challenging themselves, but they are challenging a system that has made them believe that they have no chance of aspiring to power. That is where what has been historically denied, the ability to claim what one is entitled to, to demand well-being and dignity, comes to life.

Thus, what we discern is individual movement, generated from resistance to oppressive systems, that leads to collective organization, based on a

firmly held belief in putting down roots in a land of opportunity. People are denied a livelihood and nevertheless they live because they resist individually and collectively.

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MANAGING THE BORDER IN THE TWENTY-FIRST CENTURY AND COVID-19 (2017-2020)

*José María Ramos García**

Introduction

This chapter analyzes the role and impact of binational border policy in the Twenty-First Century Border Management Initiative from its beginnings, questioning whether its lessons were taken into account for managing COVID-19 by using a policy to strengthen sanitary protocols along the binational border instead of closing the U.S. border to Mexican border residents with a U.S. visa. While the restrictive policy would in principle be only two months long, it was actually put in place permanently for regulating the risks of contagion along the world's most dynamic border.

I analyze here U.S. border security policy, its main strategies and impacts vis-à-vis border and binational relations with Mexico, honing in on the administration of President Donald Trump (2017-2021). I add the COVID-19 context, considering its global impact and its effect on border relations under the U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic, which strengthens the notion of border security from the perspective of the United States, and is considered to marginalize effective border cooperation in the area of sanitary prevention, according to the corresponding protocols.

A Redefinition of Border Security with COVID-19?

Since the 2001 terrorist attacks, U.S. policies on national security, border security, public security, border management, drug trafficking, money laundering, and arms trafficking have been increasingly interdependent. The

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COVID-19 period has strengthened the notion of national security, leaving to one side the trans-border cooperation that traditionally characterized it in the framework of the Twenty-First Century Border Management Initiative for the last nineteen years.

The COVID-19 period is bringing with it a reconfiguration of borders, in which most countries have opted to close their borders, leaving to one side transborder or international cooperation good practices regarding health. This could heighten transborder asymmetries and social inequalities in less developed countries.

This is why I propose the following hypothesis: the COVID-19 context will change international relations, impacting bilateral relations regarding health risks, which will strengthen U.S. border security policy. This is why it is fundamental that the Mexican state promote effective multi-level governance in terms of improving security, competitiveness, well-being, and health. These impacts would translate into greater U.S. control of border security with regard to irregular migration and drug trafficking, which would, in principle, not affect the legal circulation of automobiles, persons, and cross-border trade.

Challenges to the U.S. with a Diverse Border Security Agenda

The advent of a new U.S. federal administration under President Donald Trump represented an opportunity to manage a complex relationship with different problems. This was particularly the case because a management experience already existed under the Twenty-First Century Border Management Initiative, signed in 2001 and institutionalized as such in 2011. Promoted by the Mexican and U.S. governments due to the terrorist attacks, this agreement has formed the basis for an effective security cooperation model against threats of terrorism and to make automobile, traveler, and trade-linked crossings more agile. It could be stated that this governance model for border crossings was one of the best management practices of one of the most dynamic borders internationally due to the number of crossings and their diverse impacts. This has met with the challenge of a partial closing due to COVID-19, which questions the model in effect for the last twenty years. For this reason, it is necessary to argue for strengthening this effective border security governance model on the U.S.-Mexico border during the

COVID-19 period, based on which health, competitiveness, economic growth, and migratory flow priorities have been effectively managed.

This implies that the Mexican government must focus on strengthening a binational, trans-border, and border management of this agenda with the United States according to its national priorities on a multi-level agenda. The period and effects of COVID-19 will force more binational coordination; however, the United States has set aside this agenda.

Mexico is one of the main countries whose relations with the United States on migratory issues have been affected. Mexico, however, has opted to co-operate with the United States, as can be seen in the June 2019 Binational Migration Agreement. Among Trump's main electoral campaign proposals and administration goals were the following: the construction of a big wall all along the southwestern border between Mexico and the United States; zero tolerance for immigrants who commit crimes in the United States; blocking federal funds for communities that do not report the presence of irregular immigrants; the reversal of Barack Obama's executive orders on immigration issues; and an immigration reform that would benefit U.S. citizens, particularly those with low wages.

A fundamental trait of border security under the Trump administration (2017) was strengthening control using the notion of national security. From this perspective, the security border policy focus is as follows: "Border security is critically important to the national security of the United States. Aliens who illegally enter the United States without inspection or admission pose a significant threat to national and public security. These foreigners have not been identified or inspected by federal immigration officials to determine their admissibility to the United States" (White House, 2017).

Insecurity and Risks on the Mexico-U.S. Border

Mexico's northern border has experienced increased insecurity and violence and a rise in organized crime since 2008, which has brought into question the institutional legitimacy of Mexico's local, state, and federal governments. This gave rise to the United States strengthening its security policy under the Obama administration with the idea of avoiding both Mexican and Central American immigration and the penetration of terrorism through its southern border.

Under President Trump, this policy was strengthened, using the argument of Mexican migrants' criminal records and drug traffic from Mexico. The difference between the two administrations was the new administration's emphasis on the idea that migrants were the root of the problems in U.S. security and economy.

Trump's U.S. border security policy was to strengthen the focus on border control and the criminalization of migrants. The legal basis for this policy is the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (INA), the Secure Fence Act of 2006 (Public Law 109367) (Secure Fence Act), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Division C of Pub.L. 104–208), all aimed at guaranteeing U.S. security and territorial integrity.

President Trump's administration associated the building of the wall, one of his main proposals, with an alternative for reducing drug trafficking from Mexico, particularly that of cocaine, methamphetamines, and heroin. The consumption of these drugs has increased over the last five years given deficient U.S. prevention and prosecution policies. This context may make it possible for the Mexican government to redefine a more strategic policy on its military and naval agendas with the United States, in accordance with national and border security priorities under a multidimensional Mexican agenda.

It should be pointed out that, given the growing insecurity and violence along Mexico's northern border—almost 30 percent of federal crimes committed are perpetrated in Mexico's northern border states—transborder trade, tourism and economic activity with the United States have not diminished; particularly the growth of Mexico's maquiladora industry. This situation is due to the fact that most of those flows are promoted by the population of Mexican origin, plus the comparative advantages of industrial location.

Another factor that contributes to the insecurity of Mexico's northern border not affecting transborder dynamics is that U.S. border cities have radically reduced their crime rates in recent years. In 2015, while the average number of homicides in Mexican border cities was 208 per 100,000 residents, in U.S. border counties, the rate was 3.2, even lower than the U.S. national average of 5.3 (Centro de Estudios Internacionales Gilberto Bosques, 2017).

From NAFTA to the USMCA (2020)

The renovation of the North American Free Trade Agreement (NAFTA) and its replacement with the United States-Mexico-Canada Trade Agreement (USMCA) reflects a protectionist, nationalist vision in a framework in which the U.S. economy has been undergoing globalization processes that have made its economic growth possible.

In the last twenty-five years, NAFTA created a modern, competitive export sector, generated foreign investment, established the rule of law at least for foreign investors and companies, and contributed in part to Mexico's belated democratization (Castañeda, 2020). In this context, the trade, financial, and investment integration process between the two countries seems to be marginalized. From there, one can state that almost fourteen million jobs have been generated as a result of the NAFTA trade and productive integration.

The U.S. business sector linked to NAFTA would presumably not favor industrial relocation given the comparative advantages offered by the northern border and, in general, the trade and productive relationship with Mexico.

President Trump's positions reflected his interest in fulfilling the demands of his electorate and those of the political establishment, particularly those associated with his national security agenda. The management of those contexts and of the identification of key actors makes it possible to define national strategies with the United States.

Therein lies the importance of linking the binational terrorism agenda to NAFTA, considering the growing military influence on the U.S. national security agenda (DHS, Pentagon, and cabinet coordination). This context may make possible a more strategic dialogue among the national priorities regarding national security and the border, which could diminish the polarization around the rest of the agenda.

Current State, Origin, and Development of the Twenty-First Century Border Management Initiative

The Twenty-First Century Border Management Initiative emerged in the framework of the need to strengthen border security in 2001, but also to promote agile border crossings for cars, travelers, and goods. It is an effective

example of multi-level coordination between Mexico and the United States, rooted in a security, competitiveness, and well-being agenda.

It has been backed by the California, Arizona, New Mexico, and Texas state governments, considering the trade integration processes derived from NAFTA and the advantages of taxes paid by Mexican tourists and buyers.

One indicator of the impact of border crossings is that in 2001, only fifteen border-crossing points existed from Tijuana to San Diego. At the time of this writing (2017), twenty-five crossings and eight smart card crossings exist. This reflects the importance of trade and transborder tourism integration and of the effectiveness of multi-level management of binational border crossings in the framework of the management initiative.

The first phase of the initiative lasted from 2001 to 2006. The institutional framework was the Smart Border: 22 Point Agreement-U.S.-Mexico Border Partnership Action Plan, signed in Monterrey on March 22, 2002, which put forward the creation of an “efficient border for the twenty-first century” that would make it possible to deal with migratory problems, facilitate trade, and increase security in the area. This mechanism gave rise to the creation of the Security and Prosperity Partnership of North America (SPP) in 2005. From 2006 to 2012, the border security agenda generated more tensions and conflicts due to increased violence, insecurity, and criminality along the border with the United States.

The main areas of binational intervention established in the SPP were to undermine organized crime’s operational capabilities; institutionalize the ability to maintain the rule of law; create a structure oriented to the Twenty-First Century Border Initiative; professionalize and develop institutions; and promote the culture of legality. In April 2009, the U.S. government proposed that the border be a priority issue on the competitiveness agenda. To do that, it was proposed that the border be modernized through an agreement to coordinate actions on a federal and state level and based on a comprehensive vision of the border. Later, both governments proposed in a joint statement (May 19, 2010) the Competitiveness Agenda of North America, which stipulated as one of its priorities the creation of the border for the twenty-first century.

As is clear, the intention to jointly manage the border was put in black and white for the first time here through the following institutional frameworks: the mandate to create the Twenty-First Century Border Bilateral Exec-

utive Steering Committee (ESC) Executive Steering Committee and the design of a Plan of Action at the end of 2010. Border management in the Twenty-First Century Initiative has three dimensions: economic competitiveness, the mobility of people, and security.

The first dimension includes the following objectives: the harmonization of customs regulations; the expansion of cargo precertification programs (FAST [Free and Secure Trade Program], C-TPAT [Customs-Trade Partnership against Terrorism]); joint risk management; identifying new sources of funding for the construction and operation of ports of entry; promoting public-private partnerships; and seeking solutions to prevailing trade disputes. The second dimension, traveler mobility, has the following aims: safe, legal, orderly management of people; expanding precertification programs for persons (SENTRI [Secure Electronic Network for Traveler's Rapid Inspection]); pre-clearance for passengers in Cancún; the incorporation of Mexico into the Global Entry Program; and developing a safe travelers program in Mexico); improving security practices in airport passenger reviews; and information exchange regarding foreigners of special interest. The third dimension, involving security, proposes the following objectives: joint analysis of border vulnerabilities; the inter-institutional coordination of monitoring and reactions; expansion and improvement of information exchange mechanisms; the coordination of strategies and operations to fight organized crime; the establishment of protocols for dealing with emergencies; the fight against the trafficking of persons, drugs, arms, and money; and the involvement of transversal border communities (SRE, 2013). These three dimensions reflect the institutionalization process of a cooperation policy on border security issues in the framework of merging the anti-terrorist agenda with making the border crossings of travelers, cars, and goods more agile.

During a High-Level Economic Dialogue meeting in February 2016, Mexico and the United States recognized their common border's strategic importance as an essential part of the bilateral relationship. From there springs the importance of strengthening binational coordination processes to collaborate on priority projects and policy issues in order to make significant headway in this area.

Initiatives for Strengthening the Twenty-First Century Border (2017-2020)

The importance of this initiative is that it is an already institutionalized mechanism, regardless of the changes in federal administrations or bilateral political differences or tensions. The challenge is how this kind of mechanism, which has been very effective, has not had an impact on a better management of bilateral anti-drug and migration policies. One of the reasons is the urgency or priority of the border crossings agenda, which involve processes of competitiveness, investment, and generally have an impact on the well-being of border communities.

A technical meeting of the Bilateral Executive Steering Committee on November 17, 2017 agreed on the importance of the bilateral cooperation mechanism for improving border security and promoting economic competitiveness. Mexico's then Vice-Minister Sada said, "This has made it possible to identify and advance in a coordinated way on priority matters for the sustainable development of the border region" (SRE, 2013). This priority could have fit into the U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic of March 21, 2020.

At that meeting, both parties also reviewed the results of the 2017 Action Plan regarding infrastructure, safe flows, and the administration of justice. Finally, they committed to continue working to establish a plan to guide their actions in 2018.

By contrast, however, on May 23, 2018, the Ninth Meeting of the Mexico-United States Bilateral Executive Steering Committee was held in Washington, D.C. This meeting was important because it took place in the context of the polarization of bilateral relations due to President Donald Trump's policies. This political context did not limit the processes of bi-national and transborder strategic planning associated with the initiative. On the contrary, the institutionalization of the mechanism and its different initiatives that benefited competitiveness and border security continued to be strengthened.

On security issues, the High-Level Economic Dialogue reiterated the parties' interest in maintaining close coordination for information exchange in order to deal with the border's common challenges. This means that the mechanism is one of the most important for strengthening planning and

transborder coordination that make it possible to promote competitiveness and well-being.

In May 2019, the Tenth Meeting of the Mexico-United States Bilateral Executive Steering Committee took place in Mexico's Foreign Relations Ministry headquarters. The central aim was to promote the development of the Mexico-U.S. border, understanding that region as fundamental to North America's competitiveness and development (SRE, 2019).

Most recently, the Steering Committee held its twelfth meeting in Mexico City's Foreign Relations Ministry with the aim of strengthening bilateral collaboration on priority issues along the common border. Both countries committed to continuing the close coordination on the most important bilateral issues such as fostering the legitimate flow of goods and travelers, promoting public security, and fighting translational crime (SRE, 2020).

The delegations approved the "Twenty-First Century Border Management Initiative Strategy," which provides a framework to collaborate more closely on promoting the shared border as a safe and competitive region, while also highlighting the key role it plays in the economic development and well-being of its communities (SRE, 2020).

It should be pointed out that the last meeting took place in the midst of the beginning of the world COVID-19 pandemic crisis, which has brought into question the whole initiative, given that on March 21, 2020, the border to the United States was closed to Mexican residents with U.S. tourist visas. The closure was then renewed for a second month because of the effects of the pandemic. This was unprecedented in the binational border relationship, considering that the binational sanitary protocols were not strengthened for crossings from the U.S. side, where a much larger number of people were detected with the virus (almost 70,000) compared to about 3,000 on the Mexican side in April 2020.

U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic

This initiative strengthens U.S. border security policy because it puts forward a model for a partial closure of the border, which strengthens a notion of national security promoted today by a binational health body that includes

the U.S. Center for Disease Control and Prevention (CDC), which operates quarantine stations in El Paso and San Diego. The option for similar functioning to that of the Twenty-first Century Border was not pursued, which had made it possible to control and reduce the terrorist risk at the time of the 2001 terrorist attacks. In addition, this management model did not prevent the reduction of the flows of cars, travelers, and goods across the border. That is, for nineteen years, both governments achieved the institutionalization of an effective model of multi-level governance, which made it possible to strengthen the growth of both economies based on Mexico-U.S. border crossings.

In this framework, the joint initiative could have planned a similar model that could have reduced the vulnerability to COVID-19 contagion based on a basic sanitary protocol to be used in crossings and effective cooperation and coordination on issues of binational health, which together would have had the effect of a less stringent closure of the border for Mexican border residents with U.S. tourist visas. That would have created fewer negative effects on the local and transborder economy.

Among the actions included in the joint initiative and in the framework of the COVID-19 pandemic, all non-essential trips were temporarily restricted starting on March 21, 2020. Therefore, journeys considered essential continued without obstacles from then on. This restriction applies solely to Mexican border residents with U.S. visas. It does not apply to U.S. residents and citizens who live in Mexican border cities. Thus, the balance between effective control of terrorism and making border crossings more agile that had characterized the Twenty-first Century Border Initiative for the last nineteen years was set aside.

From the binational perspective, “this collaborative and reciprocal initiative is an extension of our nations’ prudent approach that values the health and safety of our citizens in the joint decisions made by our respective leaders regarding cross-border operations” (SRE, 2020). However, the joint initiative did not establish sanitary protocols for the crossing of automobiles from the United States to Mexico at most border crossings. This reflects the scant importance given to the health of border communities on both sides, but particularly the Mexican side. This would be one of the reasons that the number of cases rose in Tijuana, one of the most dynamic cities nationally and bi-nationally.

Another contradiction of the joint initiative is that, despite recognizing the solid trade links between Mexico and the United States, “in response

to the ongoing global and regional health situation, [both countries] require particular measures both to protect bilateral trade and our countries' economies and ensure the health of our nations' citizens" (SRE, 2020).

The initiative "prevent[s] spread of the COVID-19 virus and address the economic effects resulting from reduced mobility along our shared border" (SRE, 2020). However, it does not establish the sanitary strategies for border crossings to prevent that spread. In addition, the strategy for dealing with the economic effects of the partial border closure on border residents with U.S. visas is not clear.

Both border communities will, indeed, be affected by the drop in tourism on both sides. For example, in the framework of the initiative, almost 65 percent of northern border residents, approximately six million Mexican inhabitants, could not cross for a month into the United States; that period was extended due to the advance of the pandemic.

In addition, the initiative recognizes that "critical services such as food, fuel, healthcare, and life-saving medicines must reach people on both sides of the border every day" (SRE, 2020). One of the problems is that Mexican border residents with U.S. visas cannot cross to the neighboring country to purchase those products, which are habitually part of their purchases; this will affect U.S. southern border businesses.

By contrast, no restrictions exist for U.S. residents, transmigrants, or U.S. citizens living in Mexican border cities making those purchases. This could generate scarcity in Mexican businesses if panic buying begins. In addition, these flows will be a higher risk, considering the greater number of COVID-19 cases on the U.S. side of the border compared to the Mexican side.

The determining factors for the possibilities of the spread of the virus include the following: by May 2, 2020, the United States nationwide had seen 1,132,512 cases and 66,368 deaths (CSSE, 2020). Along the border, on that same date, there had been 92,007 cases on the U.S. side: California (50,442); New Mexico (3,513); Arizona (8,364); and Texas (29,688) (CSSE, 2020), compared to the 3,401 persons diagnosed in Mexico's northern border states: Baja California (1,557), Sonora (300), Chihuahua (400), Coahuila (420), Nuevo León (338), and Tamaulipas (366) (OMS, 2020).

The differences in the number of cases for U.S. and Mexican border states can be attributed to both countries' different capabilities, comprehensive management, and mechanisms for inter-institutional coordination in terms

of the application of the model for managing the identification of cases and their later care and recovery.

What are the risks to human security of the lack of sanitary protocols for border crossings from the United States to Mexico? The answer involves the following transborder flows from the United States:

- a) Mexican and U.S. transmigrants who live in Mexico and habitually cross over to work in the United States and then return to Mexico. They number approximately 120,000, but they could normally be around 350,000.
- b) Population of Mexican origin that lives in the United States and visits their families during vacations using the Paisano Program (March 17-April 17, 2020). This population comes to almost 30,000 Mexicans who could cross into Mexico during the program.
- c) Tourists of U.S. and Mexican origin who could visit Mexican border cities; on average, 15,000 tourists a day cross the border to purchase basic products in Mexico.
- d) Irregular migrants detained and deported to Mexico by U.S. authorities; an estimated 7,000 a week without any sanitary protocols by authorities on either side of the border.
- e) Migrants awaiting a response to their asylum application hearing. An estimated 30,000 Central American migrants reside in Mexican border cities.

In the framework of COVID-19, the new measures established by the U.S. government in the USDHHS Accord include migratory restrictions and the immediate expulsion of those who arrive in an irregular fashion, without even contemplating a period of detention or due process for asylum-seekers.

The implications of COVID-19 in U.S. border security policy reflect a strengthening of border control in accordance with its national security priorities. On the Mexican side, there is no strategic COVID-19 border strategy agenda with a proposal of a sanitary protocol for border crossings from the United States and the adaptation of certain COVID-19 good practices in the cities of Los Angeles, San Diego, and the state of California in general.

One option that could have been included is the role of the U.S. Centers for Disease Control and Prevention (CDC). They could have played an im-

portant role in this joint initiative, particularly in the application of a minimal sanitary protocol in automobile border crossings from the United States to Mexican border cities. However, the CDC's argument is biased against crossings from the Mexican side, disregarding the potential spread of cases from flows from the U.S. side, particularly considering the almost 92,000 cases in U.S. southern border states by May 2, 2020.

Conclusions

The tensions in U.S. relations with Mexico under President Trump cannot be generalized to the entire bilateral agenda. That is, the level of cooperation achieved under the Twenty-first Border Initiative over the last 19 years with regard to cooperation to stem terrorism is not the same as that regarding immigration and drug trafficking policies. Nevertheless, in matters of migration, protocols have been promoted for the safe, orderly deportation of Central Americans, which reflect a level of binational coordination in the framework of the June 2019 Mexico-U.S. Joint Statement.

In the case of border cities, the U.S. Centers for Disease Control and Prevention (CDC) located in southern U.S. border states could have played an important role in the U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic (March 20, 2020), particularly in the application of a minimal sanitary protocol in automobile border crossings from the United States to Mexican border cities.

Unfortunately, this protocol was not created, and it is a noteworthy absence in a context of a worldwide and binational pandemic, detracting from the lessons learned from the Twenty-first Century Border Initiative. One option could have been the strengthening of sanitary protocols, which would not have implied a substantial decrease in border flows. The agenda balancing sanitary management and border flows will have to be a permanent priority considering the risks and transborder effects of COVID-19.

The U.S. government's border security initiatives imply the integration of the agendas in matters of national security, public safety, terrorism, drug trafficking, human rights, criminalization, health, and development (USDHHS, 2020). Therefore, the Mexican government's responses must include a model of strategic, transversal governance with inter-institutional policies.

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**Cultural Representations
through Cinema and Narratives**

MEXICAN MIGRANTS IN THREE CANADIAN FILMS: A MINIMUM FILMOGRAPHY

Graciela Martínez-Zalce*

This chapter studies two documentaries and a fictional short subject produced by Canada's National Film Board (NFB) in the late twentieth and the early twenty-first centuries. In all three, Mexican immigrants are leading characters in different ways relating to their immigration status. These films are examples of the determination to critically analyze certain government policies, both in Mexico and in Canada, and certain de facto situations in which filmmakers who represent one of the most respected Canadian institutions, the NFB, find themselves. Their productions offer us their personal interpretations based on an explicit commitment to the films' protagonists. Today, the National Film Board's mission is to ensure that films reflect Canada and the issues important to Canadians both at home and abroad, through the creation and distribution of innovative, distinctive audiovisual works based on Canadian points of view and values. In the catalogue, of the films dealing with Mexico (in addition to those I will analyze here), we basically find productions that analyze the economy and its social and political consequences.¹

In their book *Candid Eyes. Essays on Canadian Documentaries*, Jim Leach and Jeannette Sloniowski underline how important it is when evaluating filmmakers' strategies to realize that very different factors are at play.

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¹ Among them are *The Emperor's New Clothes* (Magnus Isaacson, 1995), about the consequences of signing NAFTA for workers in the auto industry in both Canada and Mexico; *Democracy à la Maude* (Patricia Kearns, 1998), which documents the life of activist Maude Barlow, the leader of Canada's largest citizens' rights group, which, at the time, opposed Canada's signing NAFTA; *Les oubliés du XXI^e siècle ou la fin du travail* (Jean-Claude Bürger, 2000), about the consequences of the technology age in the workplace; and *View from the Summit* (Magnus Isaacson, 2002), about the meeting of heads of state in Quebec to deal with creating a free trade area in the Americas and the simultaneous Peoples' Summit. The other two categories that bring up Mexico in an online search involve the migration of monarch butterflies and culture and art; but this is a short list.

These include their own personal interests, institutional policies and ways of accepting or challenging them, budgetary restrictions, the fact that documentaries depend on an audience perspective, and a willingness to disseminate them among a well-informed citizenry.²

Canadian documentaries' interest in social and political issues is nothing new. And the interest sparked by the analysis of documentaries depicting migration around the world is very broad and reflects how important they are as a source of information. They include the issues unfolding along the Mexico-U.S. border, migration to Western Europe, the Latin American diaspora, and the consequences of the feminization of migration, among others. The case of Canadian documentaries is particularly representative in that they combine documentary-making with social activism. It should be mentioned that, from the earliest productions until today, many of these documentaries have been financed by the National Film Board (NFB), a governmental cultural institution whose main objective has been to promote a Canadian point of view about the country, on a provincial, national, and international level.

Despite the illusion of contextual reality that documentaries offer us, we must not forget that audience members receive what the filmmakers have decided to document or narrate. In this case, we are dealing with events situated in a sociopolitical and economic context of the region of North America after NAFTA was signed, which made Mexico more visible in Canada and vice versa. And, given that they are funded by the NFB to that end, we must not forget that they do so from the vantage point of Canadian values.

The Political Refugee: Mexico Dead or Alive/ Mexique mort ou vif

Mexico Dead or Alive (1996) is a fifty-two-minute documentary by filmmaker Mary Ellen Davis.³ The credits sequence reveals that the subject of her

² See the introduction to their book (Leach and Sloniowski, 2003: 3-12), in which each chapter is dedicated to analyzing a specific documentary.

³ Born in Montreal in 1954, Ms. Davis has lived in Paris and Latin America. In the 1990s, she filmed *The Devil's Dream*, and *Tierra madre* in Guatemala, and, in 2001, *Haunted Land*, to denounce the injustices afflicting that country and to honor both its citizens and their traditions. In that same spirit, she filmed the movie analyzed here and, later, *Los músicos* (The Musicians)

research is political refugee Mario Rojas Alba living in Montreal as the film unfolds. Putting his name immediately after the title with the word “*con*” (with) turns him into the protagonist of his own story.

Although the film’s title could be interpreted as a question, it has no question mark, so, the viewer reads it as a declarative sentence, but, in addition, the word uniting the adjectives in both languages is a disjunctive conjunction, and it can denote either equivalence or difference.⁴ The title in green, white, and red words stamped on a nopal cactus leaf invites us to consider the paradox: Is Mexico alive or dead? Does it live through death? Or does it die to live? The nostalgic original background music is played on guitars.

At the start of the movie, the filmmaker uses archival clips and her voice in narration to situate the viewer in the historic political context of 1994, when NAFTA came into effect and the Zapatista uprising began in Chiapas. The transition to Canada with a fade to maple leaves will lead to the introduction of the characters, the Canadian filmmaker and the Mexican refugee. We see them in a full shot, sitting on a park bench talking together as equals. She interviews him so we can situate him.

Mario Rojas Alba (1954) is a doctor and politician from the state of Michoacán; he was an activist in different left parties and, at the time of the film, after being a senator, he was a member of the Party of the Democratic Revolution (PRD) in the state of Morelos.⁵ The film, however, gives no details of his life before he was exiled. We see him in a Montreal park, surrounded by young people, who we assume are his children. We know—because he tells us—that he left Mexico because his life and family had been threatened by a repressive government.

The documentary does not cover the process of Rojas and his family requesting and being granted asylum; he is already exiled in Canada, and we do not know if he has residence status or if he is a citizen. However, clearly, he is a migrant who enjoys refugee status for political reasons.

Throughout the film, the filmmaker’s voice (speaking in Spanish with interviewees and providing some historical/contextual data in English) alter-

(2007), about Mexico’s musical traditions. She has taught at Concordia University and is the owner of B’Alba cinema and video production company, which produces independent autochthonous films. See maryellendavis.net, accessed September 25, 2020.

⁴ “Expressing an alternative, contrast, or opposition between the meaning of the words or word groups that it connects” (Gove and Merriam-Webster Staff, 2002).

⁵ In the recent elections, the Humanist Party ran him as their candidate for governor of Morelos.

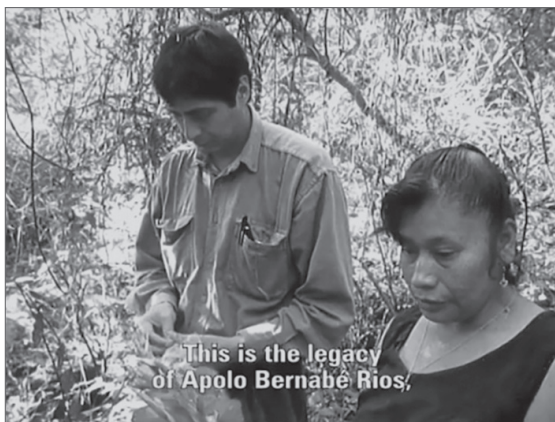
nates with—to the point of almost dissolving into—that of Rojas. This makes their speech take on a personal tone.

The film has two thematic threads: one is the Day of the Dead tradition in Mexico; the other is Rojas's temporary return to investigate the deaths of some of his party comrades at the hands of a Morelos political policeman, Apolo Bernabé Ríos.

By using traditional documentary film techniques (photo inserts, both of the victims and their murderers; archival footage from different eras, both from the Mexican Revolution and from clashes between demonstrators and police contemporary with the development of the film; and interviews), the film narrates Rojas's return to Mexico accompanied by Davis and a Canadian film crew to discover the dark side of violence in Mexico, specifically Morelos, and the political murders of opposition members.

The film shows us a rough Mexico, plagued with ancestral violence, a country of killings and dead bodies, depicting a succession of struggles against repression.

The Day of the Dead is an ancestral tradition not portrayed here merely as folklore, but precisely because one of the documentary's objectives is to commemorate the dead, to give back names and faces to victims of political repression. For example, the wives and children of the murdered men not only place offerings at the cemetery, but also in the places where Apolo took their husbands; that is, where their road to torture and death began.



Mexico Dead or Alive/Mexique mort ou vif. Dir. Mary Ellen Davis.

This is how the text of the film oscillates between denunciation and a personal log. While the filmmaker interviews academics, pro- and anti-government Institutional Revolutionary Party (PRI) politicians, the main character, Rojas, talks to his friends (in many cases, opposition politicians, and in others, activists), narrates the events in first person off camera, recites poems by Nezahualcōyotl, and wanders through a street market with his family purchasing little traditional candy skulls. Basically, whether through interviews or some of the voiceover fragments, the background of it all is the great allegory of Mexico's past and present interpreted in Diego Rivera's mural, *Dream of a Sunday Afternoon in the Alameda Central Park*, and several local music groups singing history from the point of view of its protagonists-cum-legend, with the Morelos hills as backdrop.

The question of whether the demand for justice is valid from the other side of the border is presented twice during the film, with two different intentions. On the one hand, then-Governor Carrillo Olea states that Dr. Rojas is a voluntary self-exile, a frivolous person who is only taking advantage of the Canadian government's generous refugee policy. On the other hand, Antolín, Rojas's lawyer friend gets him to reflect on his situation as a migrant and on the conditions he would require to return to continue his struggle for democracy in Morelos and the country.

No editorial comments are made; the viewer must come to his/her own conclusions. However, the fact of making Rojas the protagonist, of giving the murdered men first and last names, of presenting their families and paying them the same homage that is paid in so many homes to the dead everyone weeps over, and the fact that the filmmaker appears not as an authority figure but as a fellow traveler allow us to deduce where the text's commitment lies: in the denunciation of injustice, in the presentation of the context, and in showing the state of things with respectful involvement from a vantage point of equality.

The Regulated Migrant: *El Contrato* (The Contract)

El Contrato (2003) is a medium-length production by Korean-Canadian filmmaker Min Sook Lee.⁶ The original Spanish-language title alerts us from

⁶ *El Contrato*, which means The Contract, is purposefully titled in Spanish, although the film is produced in English.

the start that the predominant view is that of the Mexicans who, as we see from the initial sequence, enrolled in the Seasonal Agricultural Worker Program for Mexicans wishing to work temporarily in Canada.

In the tradition of social activism productions from the National Film Board, the documentary follows the school of thought that empowers individuals through their participation in the production, while, through its distribution, the filmmaker gives voice to the workers, who, as this film makes clear, are only apparently privileged, even though they have been hired and are traveling and working with a visa.⁷

The film documents a complete season; it begins and ends following the main character, Teodoro Bello Martínez, from the poor neighborhoods in Mexico City's outskirts, and who, along with another 4,000 of his countrymen, moves for eight months to Leamington, Ontario, the largest greenhouse-tomato-producing region in North America. In this work, Lee benefits from the contradictions inherent to filming with the NFB as the main producer: with public money, she fiercely criticizes a program that is one of the success stories of bilateral relations between the governments of Mexico and Canada. When the documentary was filmed, women were not eligible for this program. Today, almost 24,000 Mexicans work through it in several Canadian provinces, but only 700 of them are women.

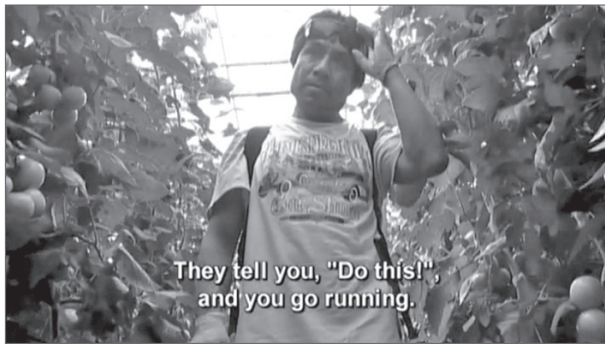


El Contrato. Dir.: Min Sook Lee.

⁷ The documentaries from the Challenge for Change/*Société Nouvelle* program share “the common aim of community empowerment through media, which together test a wide variety of technological and aesthetic approaches to activism” (Baker, Waugh, and Winton, 2010: 6).

Although an apparently obvious symbol, the Monarch butterflies, the metaphor for migration from Canada to Mexico and back, are used as a transition in several parts of the journey and in the sequences of the film. However, the metaphor—in a sense—is ironic, given that butterflies travel freely without borders and workers do not because, on arrival at their destination, they are enclosed in “las farmas,” the farms,⁸ in their dilapidated, insecure rooms, with permission to visit the local village only one afternoon a week, thus being inexorably tied to the farm owners who signed the contract with them through an international agreement. And for eight months, the filmmaker documents how they work and live in a secluded, exclusively male Mexican community, similar to a prison.

Min Sook Lee explains that workers are segregated by gender and nationality so that the farm owners can apply the politics of divide and conquer. If men believe that women can have more privileges, or if Mexicans hear that people from Central America and the Caribbean will get their jobs if they are seen as troublemakers, they will be suspicious of one another; they won't gather or talk or get to know their shared rights and expectations. They will never become a community, despite activists' efforts in their favor.



El Contrato. Dir.: Min Sook Lee.

⁸ “In 1974, the governments of Mexico and Canada signed a Memorandum of Understanding through which Mexico commits itself to provide agricultural workers to small and medium-sized Canadian farms, due to the lack of labor within this Canadian sector. The program began by providing 203 workers in 1974; since then, the numbers have increased year to year until, in the 2013 season, the total reached 18,499 workers. This means that since its introduction, no fewer than 261,301 Mexican workers have gone through this program, benefitting nine Canadian provinces: Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, and Saskatchewan. This proves its success over the last four decades” (Consulate General of Mexico in Toronto, 2017).

A female voiceover representing Lee explains the details of the temporary workers program to the audience, along with the conditions entailed in the program in Ontario, a province where agricultural unions are prohibited and where the migrants, despite having paid their taxes and contributed to their pension funds (some of them for more than twenty years), receive neither the medical nor social benefits to which they are entitled.

And something that comes to mind while seeing the film is that, even though it is called *El Contrato*, no one—not the subjects documented, nor the spectators—ever see the full contract. In the narrative, this is quite significant because it is the object that ties one side to the other, which, on paper, forces both signers into obligations that must be met; the reason these migrants move to another country is left out of the narration.

The film documents the daily lives of Mexicans not only on the farm, but also at church, in stores, and their houses, and their difficult, tough meetings with the consul general.

Even though this is not the general tone of the film, as an irony, utilizing fragments with archive images of the Tomato Festival, with only white attendees, one of the sequences in the documentary is scored by Stompin' Tom Connors's "The Ketchup Song" (1970), giving it a certain temporal ambiguity: the spectator is never sure if these are scenes from the past, when tomatoes were harvested by Ontarians, or if the festivity is contemporary to the film narrative and Mexican workers are not welcome to join in, even though it would be impossible without their active participation.



El Contrato. Dir.: Min Sook Lee.

The film includes a very wide range of interviews: with bosses and supervisors; with a masked character who denounces the bad treatment workers receive; and with migrant workers who speak directly to the camera about their experiences in these distant lands, taking the opportunity to send greetings to their families. Since the documentary was filmed before cellular phones became ubiquitous, these greetings replace the postcards in which travelers tell their loved ones their adventures on the road and are all personal and nostalgic.⁹

From every point of view, the time the Mexicans stay in Canada is narrated in the film by all the characters involved as a necessary evil. The narrator states that the program seeks employees, a cheap temporary workforce, not probable future citizens, agreeing with what NGOs involved with temporary migrants say. She makes the audience aware of the program's rules: to be accepted, applicants must be married with children—that is, they must have someone they miss who is a reason not to stay—and have little education, meaning that they would not be able to look for another kind of job in Canada. Some scenes portray this necessary evil. In the village where the documentary was filmed, shots are taken of the people looking askance at the river of male workers crowding the streets and stores. And the Mexican agricultural workers underline to the voice behind the camera that twelve-hour shifts, seven days a week, plus insults and bad treatment are too much to sacrifice for such low wages, though they are, of course, much higher than they could get in Mexico.

The documentary follows three interwoven stories, whose participants are mostly male, providing the audience with a multifaceted vision of the program and its realities: the story of the protagonists, Teodoro and his colleagues; of the bosses and Mexican government authorities, portrayed as a single team; and the story of M., a Mexican who denounces the injustices that he and his compatriots experience during their stay.

The film's context is the economic crises that expel the Mexicans from their homes and force them to emigrate far from home to do the jobs Canadians themselves refuse to do. The narrator is very clear when she explains,

⁹ It is very important to note that, when this documentary was filmed, cellular phones were not a part of these characters' lives. In *Migrant Dreams* (2016), communication between the migrant workers and their families takes place via video-chats, which makes the yearning even worse, although the fantasy of nearness is part of each call.

as we see the temporary workers laboring in the greenhouses, that they work twelve-hour shifts, seven days a week, for Can\$7 an hour.

The interviews with the bosses, who signed waivers so that the filmmaker could shoot on their farms, reveal the naiveté of a certain latent discrimination due to race and class. We become aware of the wealth they amass from the 100-percent male Mexican workforce who they hire “because there’s no other choice.” Local storekeepers are happy, because every Friday afternoon their sales shoot up. However, the Leamingtonians feel they are being invaded; one of the owners talks about problems rooted in nostalgia and alcohol: “The policemen call their owners and they come to pick them up.” She refers to them as “things” and to their bosses as if they “owned” the workers, bringing to mind the days of slavery. Lee has written:

Upon [the film’s] release, the growers in Leamington who appeared in the documentary launched a million-dollar libel suit against me. In the libel suit I was named, as were the producers of the National Film Board of Canada, and any venue that attempted to screen the documentary was served with a libel notice. The growers alleged I had defamed them. And they were using a tried and true tactic of corporations to muzzle media—a strategic lawsuit against public participation, a SLAPP suit. SLAPP suits are used to intimidate and censor critics by burdening them with costly legal expenses that drain resources and ultimately silence the public debate. For a year, *El Contrato* sat on the shelf while lawyers hashed it out. No broadcaster would touch the film, despite initial interest from the provincial broadcaster TVO. The legal threat embargoed the release. Eventually, after a year, the NFB lawyers agreed to release the film with the proviso that I include cards at the front of the film that clarified that the footage had been shot with permission from the participants in the film. There was no hidden-camera footage and the growers had signed off on participant waivers during production. (2018: 170-171)

In one of the most violent scenes, the Mexican diplomats visit a farm and, instead of attending to workers’ needs, tell them that anyone not satisfied with the work can return to Mexico, thus signaling that they are unwilling to start a fight with the owners since, contrary to arguing with them, they want to invite them to invest in Mexico, as we are shown in a later scene.

Because *El Contrato* is committed to the reality it is documenting, Lee has chosen to focus on an individual protagonist who represents the whole group of men, someone who is the face of a collective that is valuable only commercially.

In Mexico, at the Ministry of Labor, as Teodoro applies for the program, in the background are stands full of thousands of folders, a metaphor for all the men whose lives are only numbers and statistics for the agroindustry that is a very successful bi-national achievement.

In Canada, as Teodoro and his fellows talk about everything they had to leave behind in Mexico, in their bunkhouse, they reproduce the practices and intimacy of sharing a home: they cook, they clean, they cut each other's hair, they sing, they confide in each other, they attend Catholic church together. Because the contract forces them to be secluded, because it segregates them in conditions similar to a prison, but because they don't want to define themselves by these circumstances, they choose the concept of family to name their isolated, same-sex community, where their Mexican-ness and their condition as wife-less, childless fathers is involuntary and compulsory, due to the fact that neither their wives nor their children are eligible for tourist visas to Canada—another restriction enforced by the program.

Interwoven throughout the plot, the masked Mexican man, M., testifies to the mistreatment at some farms and the paradox in which the workers must live: anonymity is the only way to make a complaint, because opinions or grievances are considered signs of rebellion. Therefore, they lead directly to expulsion from the program, a luxury these men cannot afford if they want to continue participating in it in order to make a living earning their wages in dollars.



El Contrato. Dir.: Min Sook Lee.

Life in the Ontarian agricultural region does not include the Mexican immigrants; instead, it marginalizes them. We must keep in mind that the “construction of the regions” always implies normative components, given that institutional structures are constructed with rules, power, and confidence, and that these limitations, symbols, and institutions converge by way of the material practice in the Leamington tomato-producing region, under the institutional structure of the Seasonal Agricultural Worker Program. This program obliges the Mexican workers to live like recluses within the confines of the farm that employs them, under strict rules regulating their movement, amid symbols such as the language and the local religion that differentiate them from the community of local residents.

On screen, the viewer sees the full sequence of time the workers experience: we see the beginning of a frozen spring, a summer full of intense activity, a short autumn that gives way to a snowy winter. We see the harvest cycle and the distribution of the packed tomatoes. We witness the short homecoming and the sad deliberations with the families about travelling back up North.

The Economic Migrant: *Taxi Libre*

Taxi Libre (2011), directed by Kaveh Nabatian,¹⁰ is a fictional short subject that exploits the urban myth—based on reality—that all over-qualified migrants end up driving taxis.

Here, the initial sequence is also accompanied by extra-narrative Mexican music, this time a bolero. José García, dressed in a suit and tie, is exiting a job interview. The interviewer congratulates him for his high academic achievement; in a chair, another young man dressed in a T-shirt and jeans follows along. García, now graying, goes to the parking lot and transforms himself: tie and jacket go into the trunk and the PhD becomes a taxi driver.

Aside from the music, the car shows other signs of his Mexican-ness: hanging from the rearview mirror is a little Our Lady of Guadalupe and the photo of his girlfriend, plus a foul-mouthed guardian angel dressed as a

¹⁰ Kaveh Nabatian is a Canadian-Iranian filmmaker and musician who lives in Montreal. One of his film scores, *Bell Orchestra*, won a Juno Award. His work can be seen on his Vimeo channel, where he explains that it is an attempt to explore the gap between music and video.

northern Mexican, who tells him what's going on at home in Mexico and reminds him why he mustn't drift away from his loved ones, since those left behind get on with their lives and, sooner or later, forget.

The taxi is a micro-universe of Quebec.

Given that the short has a farcical tone, it uses stereotypes to underline the drama of the protagonist's situation. Both the colloquial language used and the conversation with the guardian angel make references to the violent Mexico of the second decade of the twenty-first century.



Taxi Libre. Dir.: Kaveh Nabatian.

In a scene in which a woman gets into the cab and remarks on the “beauty” of the driver’s accent in French—that is, she refers to his being a foreigner—the mention of Mexico invokes several stereotypes: that our country is a beach paradise for tourists, crawling with gallant macho-men, but also that the tourists who travel to Mexico are banal and ignorant and have no interest in or capability of understanding that Mexico is much more than an enormous beach resort where the natives are willing to play at seduction in exchange for a hefty tip. The film subtly points out how, beneath that friendliness is a trace of class prejudice and racism. All of this is underlined with a score of that mariachi music imagined by U.S. productions like *Speedy González*: a mariachi that sounds completely false to us Mexicans.

The most serious case of disdain toward the immigrant is that of the principal of the school where the protagonist was interviewed. This involves not only the position of power of making the decision of who to hire, but also of having cultural codes and conventions alien to the interviewee. In the scene, José’s taxi breaks down in the school parking lot and the principal comes over to help him and actually gets the car to start. By way of thanks,

José offers to drive him home. On the way, the principal is trying to figure out who José is, and when José identifies himself, the principal is surprised that someone with a doctorate is driving a cab and that they had not notified him that he had not gotten the job. The principal tells him that his teaching style is nothing like what they need in a high school, that he's overqualified for the job, and that he was dressed too elegantly for the interview and the test.

"Don't you see how I'm dressed?" he asks him, and then says, "The next time, it would be better if you looked more like us." Sarcastically, José asks him if he should look like a white Quebecois...



Taxi Libre. Dir.: Kaveh Nabatian.

Once again, from another perspective and in another tone, the issue is whether everything comes down to "them" and "us." Even though the film gives us no direct background about why and how José came to Canada, by inference, it lets us see that José García is an economic immigrant. A PhD who can't get a job in his own country, he goes after the possibility of teaching in a high school in Quebec. With the idea that his studies will give him the chance for social mobility and financial improvement, his girlfriend must not see him working as a cab driver because that will lower her opinion of him. His idea is that outside Mexico, the world of work could be what he wants. However, the reality is that, for a Mexican immigrant, both his studies and his appearance are too much, and, therefore, they put him back in the place where he belongs, which is not precisely the profession he specialized in.

Paradoxically, says Camelia Tigau, the skilled migrant is part of "a minority within minorities":

On the one hand, professionals are exceptional minorities, who enjoy privileges of social and economic status but, on the other, when they emigrate, they also become ethnic minorities, susceptible to being compared or confused with migrants with less education and economic resources. (2020: 33)

Mexican migrant professionals, then, in addition to experiencing discrimination due to overqualification, as happens to the main character here, never cease to be marginalized by ethnic and racial discrimination. Minorities, as is well known, “tend to [have to] fight more than natives against aspects related to perception, such as stereotypes, especially when they try to position themselves in leadership positions” (Tigau, 2020: 50).

The short’s farcical tone may be irritating when you see the film for the first time; but, if you analyze it carefully, the little subtleties give meaning both to the exaggeration needed for a farce and the presence of the foul-mouthed angel, who represents the attachment to the sending country, the language, and family.

The circle closes with the bolero “Cuando estemos juntos” (When We’re Together Again), sung by the Tecos trio, interrupted by the taxi dispatcher. We see García’s tired, frustrated face and, flying beneath the rear-view mirror, the Our Lady of Guadalupe that accompanies him, to the tune of the nostalgic voices that sing, “I feel so lost / loneliness frightens me / I’d like to be with you / that’s what I like.” The decision to stay in Quebec, to remain alone, is his alone.

A Minute Epilogue

Migrating is every individual’s right. Migration narratives are often disturbing. Here we have three versions whose commitment to that right as a first premise shows us that those narratives will always be disturbing.

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CIVILIZATION ENDS WHERE GRILLED STEAK BEGINS: CULTURAL REPRESENTATIONS OF THE SONORA-ARIZONA BORDER IN FILM

*Luis Coronado Guel**

To my three muses: Seidy, Clío, and Alondra.



Saguaro National Monument in southern Arizona. 1935. Arizona, Southwestern, and Borderlands Photograph Collection. Special Collection, University of Arizona Libraries. (Permission being processed).

Introduction: Cultural Mythologies of Arizona and Sonora in Film

U.S.-Mexico border areas have often been portrayed historically by the mainstream media as peripheral and dangerous, where human interaction is described negatively as violent and conflictive. The border between Arizona and Sonora is no exception, specifically Yuma, Pima, Santa Cruz, and Cochise Counties, which border with Mexico's municipalities of San Luis Río Colorado, Plutarco Elías Calles, Caborca, Altar, Saric, Nogales, Santa

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Cruz, Naco, and Agua Prieta. The diversity of these desert lands and their representation in film is almost always the same, and for a very long time, they have been described consistently. For example, José Vasconcelos, the Mexican intellectual considered the designer and promotor of the revolutionary cultural project that formed twentieth-century Mexico, lived part of his childhood in Sasabe, Arizona. In his memoirs, *Ulises Criollo* (Criollo Ulysses), Vasconcelos described the area as very unsafe, primitive, and extremely far from Mexico's cultural center, where, in his view, Spanish "civilization" established the Catholic religion and put down the roots of the "authentic" Mexican identity (Vasconcelos, 2014).

This negative rhetoric about the Sonora-Arizona border region has persisted from colonial times, when the expanding Spanish empire first came to these far-flung, inhospitable lands as warrior-explorers and Catholic missionaries who introduced not only the language and the religion, but the technologies existing at the time, as well as products of the European diet that are today consumed in this geographical area, such as citrus fruits and grapes. One of these missionaries, Eusebio Kino, probably the most legendary of them, set up a distinctive system of missions that line the area that today divides the United States and Mexico (Polzer, 1998). The missionary settlement system actually adapted to the isolated, precarious conditions in the region that made the expansion of Spanish control difficult. In short, these characteristics of the dangerous, isolated, primitive constantly-disputed periphery have distinguished the cultural representations of this border area. This has created mistaken, over-simplified, adverse perceptions about them both nationally and internationally in both countries, perceptions which persist even today. Naturally, this external characterization has been projected by cinema and the media, and has an influence on the imposition of adverse measures that have affected border communities at certain times in history, measures that do not take into account local reality and the fact that the inhabitants have lived harmoniously together for centuries.

On January 25, 2017, for example, Donald Trump's new administration announced the construction of the border wall between Mexico and the United States. Only a few days later, Edward D. Manuel, the president of the Tohono O'odham indigenous nation—erroneously dubbed the Papagos in Mexico—declared that his community would not tolerate the construction of a wall that would divide their ancestral territories, since they consider

the international border to be an unnatural line that divides their indigenous lands (Innes, 2017). The cultural representations of the Sonora-Arizona border feed simplistic conceptions of the region and exclude voices like those of the binational indigenous communities. They reflect ideas of the past that have been taken up by movie production and which, despite having been constructed at different historical moments, project a constant: a dynamic that has been described as negative, marginal, and in permanent conflict. This article explores some examples of the way in which this huge culturally, socially, naturally, geographically, and economically symbiotic desert region has been represented in film. In many ways, this representation corresponds to a national imaginary imposed from outside, from a centralist, negative, distant perspective, very different from local harmonious dynamics.

It should be pointed out that the image we have today of Mexico and the United States is the product of a complex historical construction, in which the stamp of the twentieth century created, changed, and solidified many of the myths, stereotypes, idealizations, and historical traumas that subsist in literature and cinema even today. The method Carlos Ginzburg proposed (1986) for analyzing the morphology of representations and reinterpretations of a particular discourse in a specific context makes it possible to approach these cultural constructs and better understand society.

Beyond superficial conjectures, this work analyzes scenes of film productions that portray or represent the dynamics, landscapes, or characters of the Sonora-Arizona border, taking into consideration their singularities in what has been called "border cinema." These cultural representations constitute literary and cinematographic tropes with profound narrative roots and dynamics that reflect fears, aspirations, world views, imaginaries, phobias, and ideologies that often do not accurately reflect the reality of life on the border, but which film was the main promotor of until they became conventions like those reflected in American Westerns. In principle, Ginzburg's method is very useful for understanding, deciphering, deconstructing, and tracing a cultural representation found in the films that portray the Sonora-Arizona border.

In his work *Historia nocturna* (Nocturnal History) (1992), Ginzburg describes all the elements he finds in descriptions of witches' covens in different eras. He sees them as a committed cultural formation, that is, the hybrid result of a conflict between folk culture and learned culture. Using files from the

Inquisition, Ginzburg argues that both prosecutors and prosecuted find themselves at the center of the investigation. He systematically analyzes the narrative parts of a stereotype created throughout time and due to the exchange, reception, and resignification of those parts of the stereotype by specific individuals at certain moments in history. First of all, his aspiration is to reconstruct the ideological mechanisms that facilitated the persecution of witches in Europe and also the beliefs of the women and men accused of witchcraft. Based on that aim, he opposes all the theses that have pointed to the idea that the image of the witches' coven was developed by prosecutors or inquisitors. He therefore draws a distinction between reality and construction,¹ between a description of a myth and a rite, since for him, the former is a coherent system of beliefs and the latter, an organized group of individuals that practiced these acts (Ginzburg, 1992).

Ginzburg is ideal for examining cinema, since he unravels narrative elements similar in form to what he finds in the documents. He uses the Inquisition trials, treatises on demonology, sermons, iconographic documents, and folk materials as his sources. He identifies their anomalies and then confronts them with other sources that can indicate the origin of these narrative elements. In that, it is very similar to what he does in *The Cheese and the Worms* (1980), with his main character Menocchio, a miller. First, he identifies in Menocchio's statements to the inquisitors elements of his world view and then compares them with the possible cultural, religious, or literary influences the miller had at hand. In this way, Ginzburg establishes the differences that he identifies as anomalies or narrative variants, and thus is able to perform the personal resignification and reinterpretation of the historic subject, and prove the process whereby an image or a myth is created.

Similarly, but much more broadly, he works and interprets the sources in his book *Nocturnal History*. He uses the comparative method, applying it on the different roots of the image of the coven that identifies it in both folk culture and the treatises of "high" culture. This is why its periodization and space

¹ "The judges almost always saw the coven as the log of real physical events. For a very long time, the only dissenting voices were those that, basing themselves on the Canon Episcopi, saw in witches and warlocks the victims of demonic illusions. In the sixteenth century, men of science like Cardano or Dalla Porta formulated a different opinion: the transformation into animal form, flying, apparitions of the Devil were the effect of malnutrition or of the use of hallucinatory substances contained in vegetable potions or salves. . . . Against all biological determinism, we should insist that the key to this codified repetition cannot be anything but cultural" (Ginzburg, 1992: 222).

for study are subject to the cases in which he identifies the elements mentioned, allowing him to go from one side to another, very distant one, and from a place in the distant past to a more recent one. The same happens when films that portray a stereotype or stereotypical cultural representation in cinematic tropes are analyzed, since, even if a long time passed between the first movies of the "Old West" in the 1920s and those produced in the 1960s or 1970s, the same mechanical representations or stereotypes can be found on the screen. Thus, the reconstruction of the history of myths reproduced in cinema is extremely coherent and cohesive (morphologically), and on the other hand, is documented in a fragmented way, implying a renunciation of some of the essential postulates of traditional historical research, which attempts to reconstruct continuous periods of change. In cultural analysis of cinema, it is uncommon to find immediate continuity of the representations of ideas or stereotypes on the screen. Rather, they are noteworthy when they become film conventionalisms. A typical case of this is the representation of the isolated, desert-like, primitive, marginal, dangerous border, which became a convention in U.S. Westerns and has been reaffirmed in the cinema that portrays Mexico's Sonoran North.

In the case of Ginzburg, this technique, which prioritizes the morphology of the cases studied, although asynchronous, allows him to take it as the basis for the diachrony of its periodization. Thus, Ginzburg's method can be applied to the cultural analysis of cinematographic productions, since it makes it possible to take into consideration the isomorphic series that it analyzes belonging to a sphere that moves between the abstract depths of structure and the superficial concretion of the event or ambiance produced in the films (Ginzburg, 1992: 33). In this play of convergences that Ginzburg identifies in the narrative elements and the contrasts, he uses anthropological and at the same time historical concepts and techniques. Using this methodology of historic analysis of myths like the coven or an individual's world view, it is possible to come to the conclusion that the tropes about the Sonora-Arizona border are cultural constructions reproduced on the screen. With regard to audiences' reception of these movie images, using Ginzburg as a reference, we can argue that the representations of ideas or stereotypes on the screen crystallized in a film are transmitted and act in concrete social situations through flesh-and-blood individuals (Ginzburg, 1992: 34). In addition, they act independently of the awareness individuals may have of them. Ginzburg justifies his micro-historical method in the case of the coven myth, arguing,

Local and supra-local circumstances sometimes explain the sharpening of the witch-hunts: certainly, the stereotypical immutable coven, beyond the superficial variants, contributed powerfully to intensifying them (Ginzburg, 1992: 34).

For the case of Sonora-Arizona border cinema, the supralocal circumstances of increased drug and people trafficking in recent decades due to the construction of border walls that left migrants with the sole option of crossing the desert contributed to building a somber legend about the area as a place of death, crime, and insecurity that feeds the political coffers of nationally-known figures who are not even familiar with the border region. So, in the image of the coven that Ginzburg analyzes, two cultural strains that emerge from different visions can be distinguished: in the first place, the theme or narrative developed by the inquisitors and lay judges about a plot hatched by a sect or a hostile social group; and in the second place, elements of shaman origin already rooted in folk culture. Ginzburg considers that the merger of these two cultural strains was very solid and long-lasting because they both had a substantial, subterranean affinity (Ginzburg, 1992: 219). In the case of the border, although local border community dynamics are very harmonious, we can see the stubborn persistence in different films from very different eras of a stereotyped, negative image of the place as somewhere isolated, dangerous, and in permanent dispute because of the crossing of migrants and people alien to the area.

This representation becomes a cinematographic myth that influences the negative perception of the border, even fostering the imposition of policies alien to the locales for reasons of national security. Here, I am referring concretely to the border wall that has become a political banner and Donald Trump's campaign promise that has become very attractive to national U.S. voters in the 2016 election, and was at the same time rejected by the border communities themselves because it had no correlation to their reality. This image of the urgency of the wall has been constructed by the Trump administration in recent years, to the degree of his having sent National Guard troops and attempting to declare a national security crisis several times. However, although reinforced by film and the media, this representation did not correspond completely to the reality of Arizona-Sonora border inhabitants, who had restrictions imposed on their local space from outside based on ignorance of their circumstances, something like the somber legend that levied

legal punishments on witches in the Middle Ages, as Ginzburg narrates. In this sense, the Sonora-Arizona border has been built through negative images and tropes that instill fear in national public opinion, most of whose proponents have never been to the border. That's how powerful an artificial negative perception created by film cultural representations can be, since they impose national policies about a local dynamic.

Beyond the Border: Cultural Representation of a Para-National Region

The border, seen generically by specialists in film analysis, is an example of binational cultural construction present in diverse representations, often defined counterposed to the idea of the national in their archetypal scope. The protagonist of so-called border cinema is a being in a constant identity crisis on the screen. Nothing could be further from the truth. The inhabitants of different border regions, including the one between Sonora and Arizona, have their own identities and have lived together in a specific space and landscape for centuries; they are families whose brotherhood/sisterhood goes beyond the border. People from Nogales, for example, feel that they live in the same city on both side of the border and that they are merely separated by a wall. The most usual representations found in border cinema, speaking generically, stereotype the border as a place of constant transit, often without its own identity, where all its inhabitants seem to be atemporal migrants, constantly coming and going, with no roots. However, until very recently, this cinema and its producers and critics have neglected to create a more faithful construction of border identities. Very often this is because the gaze found in their productions is launched from distant places, which fulfill—or purport to fulfill—the characteristics of the genre more than even stopping to check the verisimilitude of the representation. I will expound on this with examples further down.

It is fair to say that the representation of Sonora-Arizona border residents, often because they have been invisible in film until very recently, has not been negatively standardized to the degree that is set out in the pejorative adjectives Octavio Paz wrote about when dealing with the pachucos of Los Angeles in his memorable *Laberinto de la soledad* (Labyrinth of Solitude). In

another volume of Vasconcelos's memoirs, *La tormenta* (The Storm), the author referred with certain disdain to the culture of the North, when he writes the famous phrase, "Where prepared dishes end and people begin eating grilled steak, that's where barbarism begins" (Vasconcelos, 2000). So, the images created in literature and cinema and implanted in the collective imaginary or the national culture of the nineteenth and twentieth centuries have reflected the ideas, prejudices, fears, aspirations, and realities constructed beyond the Sonoran Desert border.² I have already mentioned José Vasconcelos's *Ulises criollo* and *La tormenta*, where he describes the first years of his childhood in Sasabe, Arizona. These cultural representations include an image that has become a stereotype of the distant Sonora-Arizona border as seen from Central Mexico.

It is important to point out, as Graciela Martínez-Zalce does, that border crossings have been labeled as a kind of limbo on the silver screen and in North American media. She maintains that, since the national space is confined by its borders, it is only logical that borders automatically refer us to multiple symbolic meanings: otherness, hybridization, separation, meeting points (Martínez-Zalce, 2016). I agree wholeheartedly with this reflection, and would add that many so-called border-cinema productions lack depth: the border cannot be reduced to merely the limits of a country. Border representations limited to the level of otherness, meeting, being hybrid, and separation are incomplete, since, even though the border is hybrid, this doesn't mean that it doesn't have its own identity. The opposite would be to assume that pure cultural identities actually exist.

Mexican cinema has been a portrait of the country's society and culture. In over 100 years, it has overcome crises and enjoyed successes, but undoubtedly, its achievements as a visual art have been more sociological than artis-

² I agree with Claudio Lomnitz-Adler when he questions the existence of a national culture or imaginary, since these are the product of a hegemonic discourse that arbitrarily integrates regional cultural practices in a kind of matrix that includes or excludes them according to the hegemonic tendency of those who control and legitimize the representation of the national. When he theorizes the bases of the historiographic current of regional history, the historian Luis González y González also suggests that the events reputed to be national processes, like the Mexican Revolution, were not actually that on a regional level, since in many cases for towns or cities distant from the epicenter of the war or Mexico City, the revolution does not even play a part in local memory. In many senses, the same thing occurs in cinema, since it reproduces imaginaries recognized as national, constructing representations with stereotypes of the nation or of the national that are alien to inhabitants of the different regions (Lomnitz-Adler, 1992; González y González, 1968).

tic, as Carlos Monsiváis said (1993). It has fulfilled critical roles in creating Mexico's modern identity. It has been like an alternative-education school-room, meaning that cinema has produced accessible representations of Mexican society's life found in dress, history, and traditions, which have greatly influenced education and people's mentality. However, film has also been a powerful medium for creating mythologies that act as sorts of meta-narratives about popular culture, class realities, and social and cultural identities, above all on a national level, but also about concrete regions. In that sense, it has also jibed with specific national agendas, both of the state and of specific interest groups.

For the case of northwestern Mexico and the U.S. Southwest,³ both countries' cinema has constructed a few examples of cultural representations that one way or another have fostered and perpetuated generalizing stereotyped visions of their characteristics. However, beyond what has one-sidedly been called border cinema, the reality of the Arizona-Sonora border shows us that the vast dividing line between Mexico and the United States is so complex that it must be understood and represented by dividing it into specific regions and locations. In this sense, it is simple to identify natural and identity-based sections of the binational border. Examples are the Tijuana-San Diego and Ciudad Juárez-El Paso metropolitan areas; the areas adjacent to the banks of the Rio Bravo, where the border line is the river itself; the semiarid and humid areas between Tamaulipas and Coahuila and Texas, far from large human settlements; and, of course, the desert areas between Chihuahua and New Mexico, which are fundamentally different from the landscapes and vegetation found in the Sonora-Arizona region. In terms of biodiversity, the latter two are very different because they belong to two distinct natural systems, the Deserts of Chihuahua and Sonora. The two vast landscapes are dissimilar in their flora and fauna, but in addition, their migratory flows are also culturally and ethnically different. It would be fully justified for there to be specific filmographies of each of these regions, even though until today, they have all been jumbled together under what academics call border cinema.

According to Norma Iglesias Prieto's study *Entre yerba, polvo y plomo* (Amidst Grass, Dust, and Lead) (1991), a border film is one that fits into one of the following categories: one whose plot unfolds in a Mexico-U.S. border

³ Jennifer Jenkins (2016) recently published an innovative study about the construction of the U.S. Southwest that also includes a vision of Mexico's Northwest.

city; whose main character is from the border, without specifying where the story takes place—in this sense, the films starring German “Tin Tan” Valdez and Eulalio “Piporro” González are border films; those that are about the Mexican-origin population living in the United States—here, she is surely referring to a cultural border; and one shot in a border city in which a central part of the plot refers to the U.S.-Mexican border.

On the other hand, even though it's not called border cinema, U.S. film has also produced a series of cultural representations that could fit into this genre since they allude to Mexico, the population of Mexican origin, and the border region the U.S. shares with Mexico—or that corresponds to the territory Mexico lost in the mid-nineteenth century. In general, according to Emilio García Riera's classic study *México visto por el cine extranjero* (Mexico as Seen by Foreign Film), Hollywood has made its representations of “what is Mexican” in different genres more complex, but they have been preponderantly stereotypical—and often unfavorable—images of Mexican identity and people, above all in Westerns (García Riera, 1987). In his exhaustive research, García Riera takes the reader through different eras of movies from Hollywood and other places that portray Mexico from outside. The relationship between Mexico and the United States in film is extremely complex, and his work documents that. He admits that in U.S. films about the Southwest, Mexico or Mexicans received very little attention in Texas, Arizona, and New Mexico until well into the twentieth century, which is why the stereotype of the southern border and about its inhabitants is very different from the film construction of “The West.” In U.S. Westerns, the border is presented according to the concept of “The Old Mexico,” while in Mexican cinema, the desert Arizona-Sonora border was a forgotten area, scantily populated, where people could wander freely and come upon mining hamlets with violent cowboys and down-and-out saloons; nothing like a metropolis or an urban area is represented in it. This to-a-certain-point innocuous representation prevailed until the 1970s, that is, before the migratory crisis of the 1980s.

This is why this article puts forward the need to reformulate the cinematic point of view, sketching out an approach to films that portray in some way the complex Arizona-Sonora region. Although they allude to a cultural representation that should be continuous and coherent, their references are lost and dispersed in the generalization of what the border is in the so-called border cinema. In the case of U.S. film, the Western has been the

genre that has most continuously represented the space that is most similar to the real geographical area between Sonora and Arizona. These generic representations of the border in the Desert of Sonora cause a disconnected, artificial, peripheral image of a region where for centuries two modern nations, Mexico and the United States, have converged symbiotically and to a certain extent harmoniously, as have many thousands-of-years-old nations such as the Yaqui and Tohono O'odham indigenous peoples. This relationship of disconnected cultural representations in film blurs the coherence and unity of the region, feeding into the old stereotypical image of the inhospitable, dangerous, isolated land of irreconcilable struggle between the Hispanic and Anglo-Saxon and the Catholic and Protestant, "civilizations" that Vasconcelos described in his memoirs. Attempting to create a filmography that would recover—or at least notice—disperse films about the region of Sonora and Arizona on both sides of the border would make it possible to reconstruct and recover the common history the border communities in the Sonora Desert share. It would also allow us to identify the stereotypes and tropes about the Sonora-Arizona border that have misinformed and deformed the perception of the region from a centralist vision, constructed from the standpoint of places alien to local reality

IMAGE 2
 BETWEEN THE BARBARISM OF GRILLED STEAK
 AND THE U.S. AMERICAN WILD WEST



Poster for the film *Arizona* (1984). Collection of Film Posters, San Luis College Documentation Center (permit pending).

What makes the analysis of cinematic images that have represented the Sonora-Arizona border interesting is the constant of three stereotypes that do not jibe with local reality and are descriptions by outside observers. The border region and the desert surrounding it have been constructed through the cultural representation of the place where Mexican nationality is lost, diluted, and corrupted. The first is the idea that this region is a no-man's land disputed by two "civilizations," one Protestant and Anglo-Saxon and the other, criollo Catholic. This idea always excludes or caricaturizes the inhabitants who belong to indigenous first peoples, seen mostly as Westerns have presented them, always hostile and primitive, but also grouping them all together as Apaches, although the Apache were not the only first people to inhabit this binational area. The second constant stereotypical representation that does not reflect reality is the desert itself. This is because many productions about the region have been filmed in any desert except that of the region itself, which has characteristic endemic flora and fauna, but that an uninitiated audience does not distinguish. And, the third recurring representation is that of the mestizo Sonoran, who is constructed on the screen with a complete absence of references specific to his/her culture, such as the accent and vocabulary of his/her region, which are almost never portrayed faithfully, above all in twentieth-century films. For this last representation, Hollywood films created the concept of "Old Mexico," which, while it idealizes the Spanish and Mexican elites of the area, continues to represent them as peripheral and technologically backward.

This analysis is not exhaustive nor does it examine a considerable number of films about the Sonora-Arizona border, since, in addition, those that do not explicitly represent this region on the screen outnumber the others, even if they were shot in it. Above all, in U.S. film, more than representing Arizona and Sonora, they are merely included generically in the atemporal, placeless cinematographic trope that is the "Wild West." The films I will mention represent this region and contain at least the three stereotypical representations mentioned in the preceding paragraph. This kind of film has contributed to creating an unreal image of the region. It is also important to point out that, to the extent that local communities all over the world, and specifically border communities, have gradually obtained access to producing their own films beyond the metropolises or meccas of world cinema, local spaces have begun to be represented more faithfully.

However, representations of the border prevail that are far-fetched, but nevertheless have been the only reference point for many people from far away who have never been there directly. Some of these superficial representations are remembered by global audiences. One example of this is the award-winning film *Babel* (2006), by Alejandro González Iñárritu, specifically the final sequence dedicated to the nanny played by actress Adriana Barraza. In that sequence, the protagonist has just escaped over the Tijuana-San Diego border and is suddenly seen running from immigration agents through desert scrubland and cacti. Anyone familiar with the landscape around one of the world's most highly travelled border crossings like the one between Tijuana and San Diego knows that it is not desert-like at all, and that it is difficult to even find an unpopulated area like the one portrayed in the film. It looks more like the Arizona desert, but there is a noteworthy disconnect that few perceive in the moment. Let's look, then, at a few other fictitious, biased representations of the Sonora-Arizona border in twentieth-century and contemporary film.

One of the internationally known figures who has represented not only Sonora and Arizona on screen, but also the border crossing between these two states, is Mario Moreno, or Cantinflas. In the 1968 film *Por mis pistolas* (With My Guns), Cantinflas brings us a particular Mexican adaptation of the U.S. American Western, in which he constructs his cinematographic space naming Sonoran locales and roads apparently in the second half of the nineteenth century. While the film does not aspire in any way to realism, it does use a specific space to develop its plot: the desert and the roads on both sides of the Sonora-Arizona border. These historic regional relationships, proper names of towns and places, as well as certain idiosyncrasies of the characters, attempt to make the story plausible, but immediately fall into stereotype. Cantinflas's fame and force in Latin America's art and film mean that the impact of his movies leaves a deep mark on the collective memory in many parts of the world. According to Jeffrey Pilcher (2001), Cantinflas's country bumpkin character is charged with historical, social, and cultural traits that in the last analysis condense into the national identity. This seems to be what he attempts in *Por mis pistolas*: vindicating the Sonoran Mexico, connecting it with its regional past in the lost lands of Arizona.

According to Pilcher, as a universal comic figure, Cantinflas acquired a Mexican face in the colonial period as a member of the urban mestizo sub-

class, who were excluded both from the elites of Spanish society and from Native American communities. In the 1960s, Cantinflas wanted to continue to represent that mixed heritage, and in this film represents the mestizo criollo, heir to that lineage Vasconcelos talked about and that was disdained by the Anglo-Saxon prospectors who dominated the Old West. In this sense, *Por mis pistolas* is the classic, conventional cowboy-and-Indians story, in which Cantinflas attempts to insert the Sonora-born criollo with dignity in that dynamic of the U.S. Southwest. Nevertheless, he also inserts the first nations in a negatively stereotypical way: while they are presented as equal humans by being represented as allies of the main protagonist, they are also portrayed without presenting their cultural specificity, since the region where the plot unfolds was not Apache land, but that of Papagos and Yaquis. The Sonora accent—or at least a northern accent—that at least in some of the actors—but not Cantinflas—attempt to make realistic has no relation to reality. The landscape by no means depicts southern Arizona either, as it lacks the endemic flora, such as the enormous saguaro tree-like cactus, the blue palo verde plants, or the ocotillo or coachwhip. Other characteristics of the landscape are also absent, which is only logical since the movie was filmed in the state of Durango and a location in the Chihuahua desert.

The same circumstance can be found in the film *La cárcel de Cananea* (Cananea Jail), by Gilberto Gazcón (1960), starring Pedro Armendáriz, Andrés Soler, and Carlos López Moctezuma. These actors, shining lights of the Golden Age of Mexican cinema, already in decline when this movie was made, don't even bother to try to imitate a Sonoran tone or include the accordions and bajo sextos (or sixth bass) that one of the characters plays. Despite the fact that the corrido alludes to a story connected with the famous Cananea miners' strike considered the direct precursor of the Mexican Revolution, the film's plot has nothing to do with that event, so important in local and regional memory. The location's landscape is also unrealistic, since it was filmed in the Órganos Mountains in the state of Zacatecas, where neither the towns nor the desert nor the hills are anything like what is presented on screen as Cananea, Sonora.

In 1984, the film *Arizona* (Durán Rojas, n.d.), starring Roberto "Flaco" Guzmán, Juan Valentín, and Ana de Sade, came out. The story takes place on the border in the desert, a life-threatening place for anyone who tries to cross over illegally. It is interesting to understand that this film was produced at a time of great economic crisis in Mexico, which began an era of expulsion of

victims of unemployment and hunger, who began to seek better opportunities in *El Norte*, coming up against extreme adversity, discrimination, rejection, and persecution. Here, just like in the two 1960s films mentioned, the Sonora-Arizona region and its inhabitants are not depicted realistically. This is also the case of the last film I'll use as an example: *Desierto* (Desert), starring Gael García Bernal, directed by Jonás Cuarón (2016). Here, we see the same stereotypical representational elements as in the other films cited: the plot unfolds in another desert (Baja California Sur). It includes no spatial or local cultural reference point; and it constructs a feeling of isolation and extreme danger for the audience. Obviously, it was not the producers' intention to portray border life in Sonora and Arizona, since it is understood that what they are trying to denounce is the danger of migrating in the region. Both films, however, although they do denounce the danger of migrating through the desert, fall into the fictitious stereotypical representation that is common on screen when representing Sonora and Arizona.

In sum, the cultural representations of the border I have referred to in these films reflect ideas from previous eras about a region whose dynamic has been described as negative, marginal, isolated, and in constant conflict. On the one hand, the filmography that portrays the Sonora-Arizona border has been generically classified as border cinema, despite the existence of many different regions on the Mexico-U.S. border. On the other hand, this region has mainly been represented in the national imaginary from the outside, from a centralist perspective, distant from its local harmonious dynamics. These films and many others show us a fictitious view of this border region and the desert surrounding it.

Conclusion

As we have seen, the Sonora-Arizona border is a region with its own characteristics and identity and is not the result of peripheral relations to national culture. Nevertheless, it has frequently been represented in cinema based on prejudices and erroneous ideas reproduced for centuries. Cinema, understood as a complex, multidimensional social experience projected into different spheres of life in local communities, has not managed to portray or provide a preponderant space to regional visions of those representations.

Attempting a review and identification of those cinematic representations about a specific region of the Mexico-U.S. border could contribute by shedding light not only on daily life, collective imaginaries, popular culture, customs, and habits, but also on ideologies, mentalities, and forms of social organization in specific places, instead of feeding imaginaries that define a negative perception of the region. Thus, a task that remains to be completed is a sketch of a history based on local memories, representations, and experiences, and to reconcile those with what is disseminated by media like cinema.

The reconciliation of representations and histories of the regional communities themselves through cinema would reaffirm their importance in the collective memory, since, when they are not reflected on the screen, these local communities cannot see themselves reflected in the mirror that is cinema.

The border communities of Sonora and Arizona are constantly affected by policies imposed from outside that regulate markets or restrict people's movement. The construction of a wall, arguing that the border is in a non-existent security crisis, is only one sample of this phenomenon. A faithful representation of their daily life could give these people positive visibility in centralist political debates that time and again label the Arizona-Sonora border and the desert around it as the cultural representation of the place where both Mexican and U.S. American nationalities are lost, diluted, and corrupted. This phenomenon does not really occur, and the existence of the myth labels the region negatively and makes audiences in other places fear it.

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FROM NARRATIVE TO PRACTICE: CONTRADICTIONS OF AN AMBIGUOUS MIGRATION POLICY IN CONTEMPORARY MEXICO

*Juan Carlos Narváz Gutiérrez**
*Alethia Fernández de la Reguera***
*Luciana Gandini****

Introduction

Irregular transit migration through Mexico has long been a distinctive component of the Meso-American migratory system, and today we cannot discuss the region of Mexico and Central and North America without examining what is happening with regional migration and mobility (Heredia, 2016).

In the last twenty years, Mexico's agenda on migration turned its focus inward on what was happening in its own territory, given that, while irregular transit migration has been a constant for at least forty years, it was not until the early twenty-first century that it gained prominence as a problem for public policy. This is regardless of the behavior and volume of the broader migratory flow, which has consistently and systematically been made up of Central Americans, primarily from Guatemala, Honduras, and El Salvador. These three countries have been the origin of heterogeneous and diverse streams of irregular transit migration through Mexico to the United States, as can be seen in different available estimates that reflect varying behavior over time in terms of fluctuations in volume from each country. In turn, these help identify and characterize stages of the overall tendency in migration over the first two decades of the twenty-first century (Rodríguez, 2016; Berumen, Ramos, and Ureta, 2011; Martínez, Cobo, and Narváz, 2015; Narváz, 2015, 2019).

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Undeniably, today we are witnessing a new reshaping of irregular transit of persons, as an expression of endemic, internally-driven mobility and migration—given the conditions—in the region. This is expressed not only in shifting volumes of migrants but also in their sociodemographic composition, with a prominent and growing presence of women, children, unaccompanied adolescents, families, elderly adults, and the differently abled. They also have different origins, with a strong influx of extracontinental migrants; they are a different type of migration, with more need for international protection; and they have distinct levels of access to the means of planning and executing their journeys.

Caravans represent the newest migration strategy and provide a new opportunity to understand the mobility of people who enter and pass through Mexico irregularly. Migration in caravans, certainly, is not inherently novel: there are examples dating from before 2018. However, whether due to their size or level of organization, and in view of the social reverberations they produced, we can speak of a turning point in international mobility that puts at the top of the agenda a two-fold dimension that adds to the complexity of irregular migration. On the one hand, this strategy is widely embraced as a means of escaping from various forms of violence, persecution, poverty, and hunger in migrants' places of origin; and, on the other, caravans offer a means of confronting the growing risks and minimizing the cost of crossing Mexican territory: kidnapping, extortion, rape, etc. (COLEF, 2018).

In response to the arrival of the first migrant caravans in late 2018 and through 2020, the Mexican government implemented various strategies to address the visible entry of thousands in need of humanitarian protection. Its response to this phenomenon is characterized by a contradiction between emphasizing a human-rights-based approach in official discourse, on the one hand, and criminalizing migrants by means of migration policies that prioritize detention and deportation over mechanisms of humanitarian protection, on the other.

This chapter offers a reflection on the construction of narratives and the normative and institutional responses implemented. Our discussion seeks to propose answers to the questions: Are caravans a new or unprecedented public problem? Is the formation of these groups a sign of shifting patterns in migratory flows? Is current migration policy appropriate given the social complexity of the phenomenon that begins with the caravans?

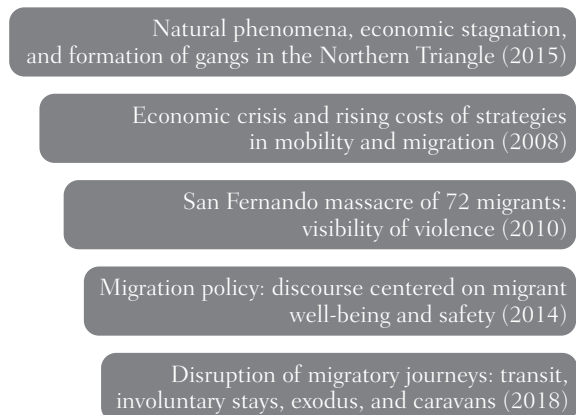
This article draws substantially on the field work the authors have undertaken at various points along the migratory corridor between Central America and the United States, through several individual and collective research projects, and in particular one that started in October 2018, titled “Caravanas y éxodos de personas migrantes centroamericanas en México 2018/2019: Trayectorias, marcos institucionales-normativos e impacto social en México” (Caravans and Exoduses of Central American Migrants in Mexico 2018/2019: Trajectories, Institutional and Normative Frameworks, and Social Impact in Mexico). This study examines three analytical dimensions: migratory routes, institutional and normative frameworks, and the institutional architecture in place to manage migration; it also seeks to add to our understanding of the development of the “old” and “new” Mexican migration policy and the effects and impacts migrant caravans have had on society at large, in both transit areas and those of probable settlement.

The methodological design that supports our findings combines strategies of document review and analysis, through constant monitoring and systematization of official actions and communications on migration policy and the leading media organizations. The fieldwork conducted by the authors between October 2018 and January 2020 examined primarily the cities of Tapachula, Mexico City, and Tijuana. We conducted participant observation and interviews with migrants who entered Mexico in caravans or joined caravans when already in Mexico; we also interviewed officers of the National Institute of Migration (INM) and the Mexican Refugee Aid Commission (COMAR); international organizations, primarily the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM); and various civil society organizations that provide legal and psychological aid for migrants and hostels in the aforementioned three cities. Our aim was to document experiences of migrants crossing Mexico in caravans, as well as institutional reactions and discourse generated as a result of heightened visibility due to exposure in the media and social networks. In the course of our fieldwork, we distinguished three stages in caravans, which we refer to as “waves,” each characterized by the implementation of different strategies and mechanisms of international protection and/or regulation of migration.

Part One: Are caravans a new or unprecedented public problem?

To mark a before and after in the present-day history of irregular transit migration through Mexico, we need to take a step back in time and analyze events associated with migrations that have occurred in the last twenty years. This approach is not meant to disregard events that transpired in previous stages, in the second half of the twentieth century (Berumen, Ramos, and Ureta, 2011; Narváez, 2015 and 2019). And, while it is not the purpose of this chapter, it is important to at least list them, as a short mnemonic exercise that helps us recognize migration and mobility as an organic, living process, in which effects in turn act as causes and are superimposed and integrated in a logic of accretion of difficulties and constraints —structural and situational. This gives shape to what Narváez (2015, 2019) has called the stage of transit migration and complexity, which defines the explicit nature of the public problem of irregular transit migration on the migration policy agenda for government, academia, civil society, media, and international organizations.

FIGURE 1
CHRONOLOGY OF THE PUBLIC PROBLEM
OF IRREGULAR TRANSIT MIGRATION IN MEXICO



SOURCE: Narváez (2019).

To know where we are starting from in our attempt to understand contemporary migration policy and its dimensions as a public problem, we can

begin by reflecting on where we are now, where we have been, and where we aim to go. In this sense, the chronology we present allows us to identify at least six moments that mark the before and after for an approach to migration in Mexico. And while we may have discussed the importance of the first moment defined by the securitization of borders, especially in the context of the Mexico-U.S. border, we have not examined the effects it had on the institutional architecture of migration design and management systems for the region. The approach known as “crimmigration,” consolidated in the early twenty-first century, was not only embodied in the creation of the Immigration and Customs Enforcement (ICE), but expanded along borders and permeated the institutions and authorities responsible for implementing migration policy in Mexico and Central America. This had intended and unintended effects for migration policy and management, among them increased sophistication of human trafficking networks and the relentless efforts of organized crime groups to undermine border security, with parallel and overlapping activities of drug smuggling and migrant trafficking into the United States.

And although the period 2001 to 2010 saw important processes unfold in Mexico and North and Central America that greatly magnified the complexity of transit migration and triggered a kind of risk cycles for mobility, they became expressly visible, or tangible, in the killing of seventy-two migrants in San Fernando, which, ten years later, is still mired in the Mexican justice system. Ironically, this tragedy was what put irregular migration on the agenda as an issue the Mexican state was obliged to address, even with prior evidence of events that had become commonplace on migratory routes since 2006. “As far back as late 2009, the Special Report by the National Human Rights Commission (CNDH, 2009) revealed a series of hazards and risks to which migrants were exposed, the most serious of which included kidnapping and extortion. In this report, the CNDH found that, between September 2008 and February 2009, there were almost 10,000 kidnappings. In 2010, the CNDH reported that the figure had risen to around 11,000 migrants kidnapped, an estimate based on the testimony of 214 kidnapping victims” (Gandini, Fernández, and Narváez, 2020: 59).

Without a doubt, the San Fernando massacre reactivated and strengthened agendas around the public problem of migration and triggered and accelerated work to design a legislative and normative framework to address migration and related issues with a comprehensive vision and a human rights

approach. In this sense, succinctly, the publication of the Migration Law in 2011, the subsequent publication of its regulatory legislation, the Law on Refugees and Complementary Protection in 2014, and a series of new related ordinances and institutions marked a watershed for public management and policy on migration. However, beyond normative dictates, the treatment or narrative of migration policy has recurrently shifted between what we have called the “schizophrenia of migration policy,” defined by an official discourse centered on the well-being of people in contexts of migration, human safety, and a human rights approach, and at the same time a policy that in practice prioritizes detention and incarceration of migrants who enter and remain in Mexico irregularly.

Although the 2014-2018 Special Migration Program (PEM) set a precedent for the Mexican state’s migration policy, we have no way to know for certain what its results would have been, given that, parallel to its publication in 2014, the Mexican government found itself embroiled in the so-called migrant crisis, to which it responded with reactive and situational measures. It created the Southern Border Program, overseen directly by the Office of the President, and, in so doing, obscured the advances of the process of constructing the 2014-2018 PEM, which was defined by extensive outreach to, and participation by, the various sectors involved in the different dimensions of migration, and materialized in various consultations and collaborative efforts to design the program’s objectives, lines, strategies, and indicators. And although the PEM was never truly implemented, it marked a before and after for the Mexican government’s migration policy, as the first policy instrument derived from the National Development Plan, putting the phenomenon of migration and human mobility on the public policy agenda and drawing attention to an effort that, with the stated purpose of building synergies, saw the collaboration of various sectors that work for, around, and with migrants (Narvárez and Gandini, 2021).

In this context and with two federal programs operating in parallel in opposite directions from the National Institute of Migration, a migration control strategy took shape and solidified on Mexico’s southern border, producing a migration policy based on detention, incarceration, and repatriation as the axes of Commissioner Ardelio Vargas’s administration at the National Institute of Migration. In short, the institution moved from a discourse and a narrative based on human rights and migrant safety to an institutional prac-

tice centered on migration control and national security, achieved largely through de facto criminalization of irregular migration and mobility. One of the first changes that became apparent—as yet with scant empirical evidence—as early as 2016 and 2017 is the permanency (settlement) in Mexico of migrants who are even forming small communities and enclaves of irregular (im)migration (Narváez and Gandini, 2021).

Such developments unequivocally stand out as moments in the design of a form of migration management that emerged—and that today is a fixture—in the context for the new migratory patterns that became expressly manifest in 2018. That year marked a new pattern in irregular transit migration, when migrant caravans broke from the paradigm of invisibility. Now, the conversation is about the migrants' social and political agency, collectivity and social mobility, and a host of other categories inspired by the images of thousands of people walking together across the border between two countries and sending shockwaves through the entire region and across all of Mexico, north, central, and south.

In this sense, we can speak of a last stage characterized by disruptive tendencies, not only in terms of reshaping trajectories, transit, permanence, exodus, and caravans, but what those things mean before and after migrants embark on their journey or at the start of their international mobility. Taken together, the individual and collective considerations that influence the decision to migrate or flee one's place of origin are factors and elements that completely reshape—or should reshape—our approach to the public problem of irregular migration, which is defined by its forced nature.

In other words, “to speak today of transit, permanence, and exodus among migrants leads us necessarily to consider events from their origin to their destination, with a highly detailed examination of how transit is accomplished by those who are forced against their will to cross through Mexico” (Narváez, 2019). Therefore, in addition to continued observation and analysis of objective phenomena such as organized crime, trafficking networks, and structural violence, we need to focus closely on the motivations, emotions, and other subjective elements that contribute to the disruption of migrants' trajectories and plans for life and migration, as well as institutional actions that affect the construction of their futures and non-futures.

The present situation suggests a renewal of our approach to the study and analysis of migratory phenomena. Mexico has ceased to be only a country of

origin, transit, and return and has become one presenting a far more complex panorama for mobility that includes an influx of people who have been forced to migrate and need international protection, in a context of stiffening control, closing of borders, and the dismantling of the U.S. asylum system.

Without doubt, the expressions these more recent population movements have developed represent a landmark in contemporary strategies for human mobility, highlighting the increasingly urgent need for dialogue on current and/or future migration policies in Mexico and North and Central America (IOM, 2014; Selee, Amson, and Olson, 2013; Papademetriou, 2015; Narváez, 2015).

Mexico's geostrategic position, marked by its southern and northern borders, make it a hub for regional movement where various inter- and extra-regional flows converge, forcing it to confront the urgency, intensity, and heterogeneity inherent in a migratory process, defined by its complexity and its nature as a public problem. This in turn raises the question of whether the current situation represents a new or unprecedented public problem. Although it may not be entirely new, it has acquired other dimensions and expressions and posed new, never before seen challenges for migration management: dispersion across the entire territory, greatly protracted wait times, and voluntary and involuntary irregular immigration. These issues unquestionably pose challenges for a migration policy that goes beyond managing entry, transit, and departure. In this sense, we may be dealing with a public problem of integrating migrants at the local level.

Part Two: Does the formation of caravans in waves constitute a novelty in migratory flows?

We understand migration as a total social fact (Sayad, 2010), an analytical and methodological postulate that simultaneously accounts for the social conditions immigrants live in and that transform them into emigrants, an experience that cannot be divided rigidly in a before and an after, between an origin and a destination. From this perspective, our focus is drawn not only to the point of departure, but to the relationship between factors driving migration in other contexts (transit, destination, return), an analytical and methodological option that seeks to minimize possible bias due to ethno-

centrism in our research (Wimmer, 2007), to the extent that the migrant experience is conceived as a complex, multifaceted event. In this analytical approach, contexts are neither interpreted nor do they act as separate units, but are seen as interconnected parts of a broader spectrum or social field.

As we have remarked, in recent months we have witnessed the reshaping of a component within migration unique to the dynamic of mobility between Central America, Mexico, and the United States: irregular transit migration through Mexico in the form of migrant caravans, which can be defined as groups of people (hundreds and even thousands) who assemble at a point, usually before crossing Mexico's southern border, and decide to migrate together through Mexico. In this process, we can identify at least three distinctive features:

- a) Visibility: as opposed to the clandestine and invisible nature of migration in small groups, making the need to transit through a territory even without travel documents explicit is part of an effort to obtain greater protection;
- b) Mitigating the financial and non-financial costs of migration: in recent years, hiring a human smuggler (*coyote*) has placed migrants in a position of heightened vulnerability, not only due to the cost of crossing, but by giving broad consent to the people who transport them. It has been documented how, as part of the reshaping and migration routes, at times overlapping with drug smuggling routes, *coyotes* and traffickers move and exchange people along the way.
- c) Organization: unlike individual migration or migration in small groups, the implementation of differentiated strategies for organizing routes and times for migrants to enter and cross Mexico has made it possible for more people with limited means to migrate.

The First Wave

Estimated at around 7,000 people, the first wave had a powerful media and social impact due in part to the novelty of its appeal and organization through social networks like Facebook and WhatsApp. The caravan was noteworthy for its high concentration of Honduran nationals, on the one hand,

and its more balanced gender composition compared with past transit migration flows, and a notable presence of women, children, elderly adults, and entire families, on the other. Although information on their impending arrival was known and spread rapidly in national, regional, and international media, the Mexican government under then-President Enrique Peña Nieto appeared to be caught off guard. The immediate response was to increase migratory control at the border, with the INM operating under the Southern Border Program (PFS) to stem the flow of migrants at the international bridge in Ciudad Hidalgo. As described by migration authorities, the stated aim was to ensure orderly entry, prioritizing women and children. However, in the absence of protocols for such operations, migrants and others described them resorting to containment efforts that included gas and other dissuasive measures. After consulting different agencies and organizations that witnessed the events on site (UNHCR, IOM, and the Fray Matías de Cordova Center for Human Rights, among others) to ascertain what the purpose had been, they concurred that it was unclear and that the authorities were not sure what to do. The circumstances could not have been less auspicious, in the midst of Mexico's presidential transition. Andrés Manuel López Obrador, after campaigning on promises to take a proactive approach to the issue of Central American migration, had won the election but had not taken office, and Enrique Peña Nieto was in the final days of his mandate.

The Second Wave

In the second month of the López Obrador administration, Mexico was faced with a second wave of caravans. Unlike the first wave, from the beginning of January the federal government formed a series of commissions to attend to those intending to join the caravan and the National Civil Protection Council took charge of coordinating different agencies' efforts to that effect. This caravan was clearly different, and all the actors involved (civil society, government agencies, and international organizations) described it that way. From the outset, the greatest difference was the decision to receive the caravan openly, without containment or rejection operations, with an open-door policy and welcoming rhetoric shaping the discourse and narrative behind the new administration's migration policy. At the Rodolfo Robles

Bridge, Mexico created what some described as a “humanitarian carousel,” which included canopies for representatives of government agencies (INM, COMAR, DIF), international organizations (UNHCR, IOM), civil society groups, representatives of Central American consulates, and others. The caravan was made up of some 13,000 people from different Central American countries, with a highly diverse mix of nationalities, ages, and even motives.

In this context and with Tonatiuh Guillén López as commissioner of the National Institute of Migration (INM), on January 18 Mexico issued the first humanitarian cards and visas, and five days later Minister of the Interior Olga Sánchez Cordero visited the southern border and announced the expansion of the visa program and the option for migrants to apply for visas in their countries of origin. As a result of this second wave of caravans, in an unprecedented turn of events, countless humanitarian cards and visas were issued and some 2,000 applications for refugee status were received. However, as described by some UNHCR officials, the strategy of fast-tracking issuance of humanitarian visas was undermined by the time it took for applications to move through the bureaucracy of the Mexican Refugee Aid Commission (COMAR), overrun by the exponential increase in applications for refugee status, especially in the last two years (2018 and 2019), discouraging those in need of international protection from pursuing that option.

Third and Subsequent Waves

The doors slammed shut, the open arms tired, and finally, after producing a pull effect and saturating local migrant services, Mexico faced what we have identified as a third wave of caravans. The migrant movement continued to reshape itself, and in this stage the formation of two groups of caravans comprising some 3,000 people between them combined with smaller groups numbering around 50, 150, and 300 in a constant influx of people, which, although less massive, did not cease. In the official version, they were “small caravans” made up by groups of three or four people who came to the border to “explore” a possible crossing. The distinctive feature of this third wave was that the caravans did not assemble before crossing the border, but rather after entering Mexican territory, in the city of Tapachula. One of them, with around 1,500 members, left Tapachula on March 30, 2019, and, according

to several migrants' human rights defenders, was "diverted," as federal law enforcement authorities later explained to the municipality of Mapastepec; this third wave, in an unusual twist, included a significant number of Cubans who, in the words of *El Abuelo* (Grandad), one of the caravan's spokespersons, supported the formation of this third movement.

Unlike the second wave, the official response, by the same government that had issued Visitor Cards for Humanitarian Reasons (TVRH), was to grant the Central American migrants Regional Visitor Cards (TVR), a migrant regulatory instrument historically used to encourage orderly cross-border movement. It bears mentioning that these permits did not give beneficiaries legal residency or permission to work in Mexico. Although the guidelines and procedures were amended on April 23, 2019, to grant such TVRs more widely, they proved unhelpful for recipients because they allowed them only to enter and remain in Southern Mexico without their stay exceeding seven days and without permission to earn money in Mexico. Previously, such visas had benefited only people from Guatemala and Belize, and the amendments extended their use for migrants from El Salvador and Honduras. And although the area they were allowed to stay and move about in was now expanded to include the states of Campeche, Chiapas, Tabasco, Quintana Roo, and Yucatan, from a legal standpoint, TVRs failed to meet migrants' need for international protection or offer them a pathway to regularization.

In a more prolonged period of expulsions, caravans of migrants from Honduras, Guatemala, El Salvador, Nicaragua, Cuba, Haiti, Sri Lanka, and other nations are the manifestation of a convergence of factors that contribute to mixed flows (IOM, 2014), where migrants with varied motivations may coexist within a group, and an individual may act on different kinds of motivation simultaneously (Posada, 2009).

Part Three: Is existing migration policy appropriate given the social complexity of the emerging migratory phenomenon embodied in caravans?

An analysis of each of the three waves shows that, in effect, each strategy the Mexican government has implemented in response to the caravans had unintended and unforeseen consequences, both for migrants and for the various

actors (those who implement mechanisms to regulate migration and protect migrants; those who perform acts of control, verification, and detention of migrants; and those who provide shelter for migrants and offer legal aid and psychological services).

Although prior examples exist of migrant caravans crossing Mexico from northern Central America, whether those demanding justice as in the case of caravans formed by mothers of disappeared children or other, less visible migrant caravans that have tried to cross into the United States, our analysis covers a highly specific period. In a climate of forced migration and growing structural and community violence in their countries of origin and along the migratory route crossing Mexico northward, starting in late 2018, caravans became increasingly visible and frequent, especially since they provided a strategy that enabled poorer, more vulnerable people to migrate visibly and offered somewhat better protection against the risks inherent to their undocumented status.

The caravan that marked the start of this period appeared in October 2018 and had tremendous impact, with images in domestic and international media showing thousands of people amassed on the border bridge joining Ciudad Hidalgo, Chiapas, and Tecun Uman, Guatemala. After the assembled migrants, among them elderly persons, women, and infants and young children, had waited for three days at the Rodolfo Robles Bridge to cross into Mexico, the Enrique Peña Nieto administration sent federal law enforcement forces to contain them. The flow of information caused confusion, given that, on the one hand, the deployment of law enforcement suggested a kind of “invasion” to which the government was reacting with repression, contrary to the human-rights-based approach the Mexican government itself had negotiated through the Global Compact for Migration, which would be officially signed weeks later (December 2018). On the other hand, the media was broadcasting images of families and elderly people in need of humanitarian protection, focusing on a crisis caused not only by forced migration, but by the enormous risks of continuing to enter and cross Mexican territory irregularly.

Migrants who crossed by the bridge were taken to a temporary shelter on the site of the Meso-American Fair, which was actually an extension of Twenty-First Century Immigration Station, to then be processed for deportation or, when appropriate, to prepare and file applications for refugee status with the Mexican Refugee Aid Commission (COMAR). Those who did not

enter Mexico by the bridge crossed by the river and followed the route northward to Tijuana. This first caravan moved quickly, in part due to the assistance its members received along the way, including provisions and even rides on their journey north. In this first wave the perception among the general population, and quite possibly in the federal government, was that the caravan was “passing through,” given that, unlike the events of 2019, a year that saw a considerable weakening of mechanisms for humanitarian protection, in the first wave migrants’ preferred option was to apply for refugee status, with applications rising from 14,619 in 2017 to 29,630 in 2018 (COMAR, 2017; 2019).

An analysis of the different waves of caravans starting in late 2018 and through all of 2019 reveals that, under pressure from the U.S. government to slow the arrival of migrants on Mexico’s northern border, on the one hand, and given the complexity of forced migration from northern Central America, on the other, Mexico has rapidly transformed into a receiver of forced migrants seeking international protection. In this context, 2019 was marked by a series of contradictions in the area of migration policy, which were exacerbated with the arrival of the new federal administration under President Andrés Manuel López Obrador, who announced a humanitarian migration policy and mere months later ordered the National Guard to conduct operations of migrant control and verification.

The first wave was distinguished by the division between two contingents. First, migrants who continued their journey to the northern border, a majority of whom became the first groups to be processed under the Migrant Protection Protocols (MPP). This meant that they were unable to request asylum promptly on arriving at ports-of-entry into the United States and instead were forced to wait on the Mexican side pending both their application for asylum and a legal process involving a series of hearings before U.S. immigration judges, which can drag on for as long as ten months. Others were forced to stay in Mexico, most of them in the southern states pending deportation or, in the best of cases, awaiting a chance to apply for refugee status.

Like the earlier stages, the main obstacle migrants faced was timely access to information on their regularization proceedings and/or application for refugee status. In Mexico, the Law on Refugees, Complementary Protection, and Political Asylum requires applicants to remain in the state where they initiate the proceeding, subject to having their application processed as “abandoned” if they change their place of residency. Many people were

not informed of this requisite opportunistically, an omission that, added to lengthy processing times for applications (mainly in Tapachula), resulted in many migrants losing hope and continuing the journey north, thereby forfeiting the chance to continue their paperwork in the COMAR.

In the early days of January 2019, a new caravan arrived, greater in number than the previous one and in a climate of renewed optimism encouraged by the largely favorable reception the first caravan had received from society at large, while those not seeking refugee status had advanced rapidly to Northern Mexico. Also, the incoming administration had announced a humanitarian migration policy with a human-rights-based approach. This time, the images from the bridge joining Mexico and Guatemala were very different from those taken months before, showing orderly scenes with canopies for representatives of the various government agencies and international organizations to inform migrants on mechanisms to regularize their status. Mere weeks after signing the Global Compact for Migration, the new administration's discourse was promoting orderly, safe, and regular migration.

This time, the rapid and (temporarily) effective response was to issue Visitor Cards for Humanitarian Reasons, which were granted in under a week and allowed recipients to leave the state of Chiapas (unlike the group that arrived in October 2018) and advance northward more rapidly. This caravan reached Mexico City and was received in a shelter that the local government under Mayor Claudia Sheinbaum set up in the Magdalena Mixhuca Athletics Center. This time, their reception was dominated by a climate of hostility and rejection toward the migrant population. In February 2019, the Mexico City police launched an operation that resulted in attacks on migrant defenders, and weeks later the federal government arbitrarily terminated the emergency humanitarian guest card program. An unforeseen consequence of this second wave was a strong pull effect that led many migrants to make the journey in hopes of benefiting from the program announced by the Mexican government. In this context, in addition to the fact that there were already people who had been waiting since October for a response to their applications for refugee status, in an unforeseen turn of events migrants started planning a new caravan, but this time not from Honduras or Guatemala, but from downtown Tapachula, Chiapas.

The third wave of caravans was characterized by heightened criminalization in migration policy and the limits of humanitarian protection. Starting

in April 2019, Mexico restricted access to humanitarian guest cards and stepped up detention of migrants as growing use of clandestine points of entry to the country increased the risk of crossing. The caravan that formed in this third wave was distinguished by the various nationalities represented, with substantial numbers of Cuban citizens alongside migrants from Honduras and El Salvador. It also was distinguished by the different paths its members had taken, bringing together those who had arrived more recently in smaller groups and been absorbed into larger groups once in Tapachula and others who had been rebuffed in their efforts to qualify for humanitarian protection and/or regularization of their immigration status. Also, a new problem began to emerge, one that would become increasingly prominent in the second half of the year, with the presence of migrants from African countries who were stuck in Tapachula having found their usual means of passing through Mexico blocked.

The balance sheet of this third wave is complex, given that it started a short time before, and may have been a contributing factor in, the U.S. government's threat to raise tariffs on Mexican exports in late May 2019. People who used this strategy either to enter Mexico or to attempt to regularize their legal status and/or continue their journey north faced several complications. Many who traveled with the first group and reached the "temporary shelter" in Mapastepec, which actually operated as an extension of the Twenty-First Century Migration Station, succeeded in obtaining humanitarian guest cards. However, most of those who arrived with a second group days later were denied access to the cards.

The Mexican government's response to Donald Trump's threats was to increase detentions, and, as a result, by late May and in subsequent months migration stations and provisional shelters operated by the National Institute of Migration were overrun. When we visited the Twenty-First Century Migration Station in May, it was operating at double its capacity, with nearly 1,800 people held in overcrowded, unsanitary conditions. Also, even before Trump's tariff threat, the National Guard had made its presence felt at several migration checkpoints, both on highways and near the Guatemalan border.

Beyond the overcrowded, unsanitary conditions, we observed that the evident strategy of detention and criminalization resulted in various human rights violations against migrants in detention. In May we participated in a human rights mission to observe the humanitarian crisis affecting refugees

and migrants in southeastern Mexico and found that many detainees at the Twenty-First Century Migration Station had not been informed of the reason for their detention and had been denied access to telephone calls, medical care, or legal aid. Many detainees had proof of pending applications before the COMAR and nevertheless remained in custody.

By this point, caravans appeared to have ceased to represent a strategy to gain protection and visibility and to have become a source of leverage for Mexico in negotiations seeking to persuade the United States to dial back its threatened 5% tariff increase on imports from Mexico. In June 2019, Mexico agreed to implement two measures that define its current migration policy, in stark contrast with the now clichéd discourse on migrant human rights. The first was to reinforce security on the southern border by deploying at least 6,000 National Guard troops, whose impact was immediately visible in the media with a late January 2020 National Guard operation to block entry by 2,000 migrants at the border along the Suchiate River. The second was Mexico's acceptance of the Migrant Protection Protocols (which the U.S. had started to implement unilaterally in January 2019), under which migrants who crossed its southern border to seek asylum were returned to Mexico to await processing of their requests.¹ Both actions have given rise to complex, highly adverse scenarios for migrants at the two borders, with a convergence along the northern border of domestic migrants and people arriving in caravans, many in hopes of filing a request for asylum in the United States. In the North, they wait in uncertain and precarious conditions in cities like Tijuana, Ciudad Juárez, and Matamoros which, despite networks of shelters run by civil society organizations and the existence of Integrating Centers for participants in the MPP program, are seeing their capacity overrun, as migrants are expelled by poverty and unemployment. And at Mexico's southern border, especially in Tapachula and Tenosique, which concentrate a large percentage of migrants seeking refugee status and where detentions continue, they face a climate of growing xenophobia and nativist hostility.

¹ Between February 2019 and July 2020, around 65,877 people have participated in this program, of whom 49.5 percent have been deported; 32.7 percent are awaiting processing (a situation that during the pandemic has left almost 22,000 people waiting in highly precarious circumstances); 14 percent have been processed and are awaiting deportation; and only 0.85 percent have achieved favorable resolutions (Syracuse University, n.d.).

Conclusions

Central American migration in periods of crisis is an expression of the Latin American region that challenges a context like Mexico, which has historically been a migrant-sending country and more recently has seen emigrants returning, and, although historically a transit country, today that component has grown in parallel to the (potential) growth of its role as a receiving country (planned or acquired). This situation constitutes a stress test for the relatively lax normative frameworks on migration typical of the Latin American region, to which Mexico belongs (Ceriani, 2018; Ferier and Parent, 2019). Responses seeking to manage flows of Central American migrants have been diverse and varied and shift between two non-mutually exclusive planes of (i) a complex and stable institutional matrix, predating today's mass flows from Central America, and (ii) another, adaptive matrix, distinguished by the emergence of exceptional instruments designed to regularize and order the settlement and transit (and eventual destination) of Central American migrants (Betts, 2014). In other words, migratory governance includes a relatively stable, legal framework for migration (with the Migration Law, a human rights approach and international and domestic legal instruments to manage asylum) while simultaneously designing extraordinary, emergency measures. While this migratory flow has its own unique features, this raises the question of whether it can be managed effectively with the options offered by the complex, stable matrix.

In the period analyzed (late 2018 to early 2020), Mexico's migration policy has gone from relying on actions favoring free transit to the imposition of measures designed based on a military logic of criminalization and detention of migrants. In this light, the obligatory questions, from academic debate to family conversation and the institutional context, are, "Is it right or wrong?" or "Do they want to stay?" The answers are as varied as the contingents and collectives that form migrant caravans.

Despite the political pressures facing the Mexican government, current circumstances should allow it to craft a migration policy fully aligned with human rights, honoring the commitment Mexico negotiated and assumed with several fellow nations in December 2018, through the Global Compact for Migration, to respect the legal frameworks and basic principles of humanitarian law while ensuring full protection for migrant rights. Also, Mexico

has the capacity to offer decent living conditions for those who seek to remain here as refugees. Regrettably, the different actions the government has taken in the last two years prove the lack of true political will to honor the commitments assumed and show how poor planning of migration policy has unintended effects, adding to a host of contradictions fueling a context of greater violence and contributing to an increase in criminalization of migrants currently in the custody of the National Guard. This, in turn, increases the risks and costs of passing through Mexico and the operational ineffectiveness of migration policy under a human rights approach.

What we can be sure of is that, either step by step or in diffuse, durable increments, Mexico is facing something unique in its contemporary history, which is unquestionably reshaping how we conceive external and internal borders, national and local identities, and our concept of community. It will have results: positive and negative, expected and unexpected, and good and bad, but all transformative.

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History as an Epilogue

THE LEGAL INNOVATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE IN THE U.S.-MEXICO BORDERLANDS, 1917-1946*

*S. Deborah Kang***

In 1928, Grover C. Wilmoth, the El Paso district director of the Bureau of Immigration, instructed Border Patrol officers to suspend their operations in the border town of Nogales, Arizona. In issuing this order, Wilmoth responded to the demands of the Nogales Chamber of Commerce, which for nearly a decade had opposed the passage of federal immigration restriction laws, alleging that they resulted in the loss of trade and commerce in the region and threatened cross-border social ties. Border towns from Texas to California echoed these claims and called for the modification and even elimination of the nation's most prominent immigration restrictions, including the Chinese Exclusion Act of 1882, the Literacy Test of 1917, and the national origins quota system of 1924, among others (*U.S. Stat*, 1882, 1917, 1924). As their frustrations mounted, local residents went so far as to call for the relocation of the international boundary, a move that would have created a zone free from any federal economic and social regulations (Bristol, 1928a; 1928b; Hunt, 1927; Hull, 1926). While Wilmoth scoffed at these proposals to redraw the map of the U.S.-Mexico border, he used his administrative discretion to address the needs of Nogales residents and temporarily exempted the town from Border Patrol surveillance.

Wilmoth's directive constituted one of many moments in which he re-fashioned federal immigration restrictions in response to the transnational economy, society, and even geography of the U.S.-Mexico borderlands. Even though these legal innovations often departed from the exclusionary outlook that inspired the passage of early twentieth-century immigration laws, they reflected his view that the borderlands were different. Wilmoth recognized

* Portions of this chapter have been reproduced from Kang (2017).

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that the region presented a unique set of enforcement challenges that would render his officers unable to replicate the achievements and approaches of their peers at Angel Island and Ellis Island, the most restrictive immigration stations in the country prior to World War I (Schneider, 2011: 79, 102). He subsequently explained the need for a distinctive approach to immigration law enforcement in a 1934 training manual: “While the Immigration Service of the Mexican border, of course, conforms to general practice, the wide differences in physical conditions, in the local situations, and in the nature of our contacts with various foreign peoples make imperative noticeable departure from the general practice in several material respects” (Wilmoth, 1934). For much of the twentieth century, immigration officials in the Southwest followed Wilmoth’s example by creating numerous local departures from federal immigration laws.

This essay traces the ways in which the Immigration and Naturalization Service (INS) on the U.S.-Mexico border made and re-made the nation’s immigration laws. In so doing, I argue that the INS in the borderlands functioned not only as a law enforcement agency but also as a lawmaking body: the agency not only implemented the nation’s immigration laws, it also made them. These lawmaking endeavors furnished local agency officials with the means to endure the numerous challenges surrounding immigration law enforcement on the U.S.-Mexico border. These included a lack of support from policymakers in Washington, D.C.; intra-agency conflicts and debates; tremendous opposition from border residents, including Asian, European, Mexican, and U.S. American nationals living on both sides of the line; and the seemingly unachievable task of policing the rugged terrain of the 2,000-mile international boundary. In the face of these obstacles, southwestern agency officials amended, nullified, and even drafted the nation’s immigration legislation, producing new laws and policies for the border region. As early as 1920, the agency’s resort to legal innovations was so extensive that one local immigration leader observed that a “sectional” immigration policy existed in the borderlands (Bureau of Immigration, 1920).

Since the mid-twentieth century, scholars have highlighted the long history of the abuse of power by the nation’s immigration bureaucracies (Calavita, 1992; Balderrama and Rodriguez, 1995; Goodman, 2020; Gutiérrez, 1995; Lytle Hernández, 2010; Ngai, 2004; Sanchez, 1993). Yet, while their work provides essential insights into how immigration officials often violated

the law in the service of their border enforcement mission, I argue here that the INS also played a key role in defining immigration law and policy in the first place.¹ In some cases, the agency's lawmaking activities promoted the social and economic interests of border communities. In others, its legal innovations enabled the INS, particularly the Border Patrol, to obfuscate, legitimize, and, ultimately, perpetuate its longstanding reliance on highly aggressive and even violent policing tactics on the U.S.-Mexico border. This account of INS history reveals that the source of the agency's authority rested not only in the frequency with which it violated legal and constitutional norms, but also in its ability to define and redefine its own regulations, policies, and laws to its own advantage.

Although the scope of the agency's lawmaking activities was broad, they were not conducted in a vacuum. Instead, these legal innovations responded to the unique environmental, social, and economic conditions in the U.S.-Mexico borderlands and resulted in the creation of an immigration policy tailored for the region. Despite their own attempts to defend the nation-building enterprise of immigration restrictionists, INS officials stationed in the Southwest came to realize that the region's multiracial population, transnational social world, and global economic forces defied the literal implementation of federal immigration laws.² In this complex world, INS border enforcement efforts were characterized not by strength but by struggle.³ Exasperated by the difficulties of exerting any control over the border, some immigration inspectors simply gave up and neglected their enforcement responsibilities altogether. Dissatisfied with their lack of autonomy and political legitimacy, members of the Border Patrol vented their frustrations in acts of racial violence, whereby Mexican immigrants and Mexican-Americans became the focus of the unit's aggressive enforcement campaigns (Lytle Hernández, 2010:

¹ On the origins and scope of the lawmaking functions of state bureaucracies such as the INS, see Kang (2017: 5-7).

² For an account of the nativist attitudes of early Bureau of Immigration officials see Lee (2003: 47-74). On the multiracial and multinational character of the borderlands in the early twentieth century, see Lim (2017); St. John (2011); Benton-Cohen (2011); Romo (2005); and Truett (2008).

³ Many of these efforts were so haphazard that the INS in the Southwest came to resemble a Rube Goldberg agency. In using this term, I am referring loosely to Elisabeth S. Clemens' notion of the Rube Goldberg state in which complexity and disorder, rather than expertise and rationality, characterize the state-building process. Clemens specifically focuses on power-sharing arrangements between federal and state officials as well as public and private entities in the arena of public subsidies to illustrate the messiness of U.S. governance (Clemens, 2006: 187-215).

5, 21, 45, 67, 126, 129, 132, 145). Meanwhile, other INS officials resorted to the law to address the challenges of border enforcement. This essay focuses on these agency administrators, describing how they created a multifaceted set of immigration policies that closed the line to unwanted immigrants, opened it for the sake of the regional economy and society, and redefined it for the benefit of the Border Patrol.

Prior to 1917, geography, institutional weaknesses, and local custom all contributed to the lax enforcement of immigration laws on the U.S.-Mexico border. Few appeared troubled by the unfettered crossing and re-crossing of thousands of Mexicans at points all along the border each day. Indeed, the opposite attitude seemed to prevail, as recounted by an El Paso community leader and lifetime resident in the early 1900s: “There were no restrictions as to crossing the bridge, or passports or anything like that. Everyone was happy, coming and going without any customs restrictions, any immigration restrictions, any health department restrictions” (Martínez, 1972). Those crossing the border not only included ethnic Mexicans who lived and worked on both sides of the line but also Armenians, Syrians, Japanese, Spaniards, Italians, and Chinese who had established their own businesses in the United States and Mexico.⁴ Anglo-Americans also contributed to the bidirectional flow of traffic at the border as residents of Mexico who worked in the United States, service providers based in the U.S. with clients in Mexico, and, most commonly, as casual visitors to border towns south of the line (Harris, 1918a; Wallace, 1918; Romo, 2005: 145; St. John, 2011: 151). Taken together, these cross-border demographic, economic, and social ties led local residents to construe the border as an “imaginary line” (Calexico Chamber of Commerce, n.d.).

World War I transformed this orientation toward the border, raising concerns about a foreign invasion along the southern line and compelling southwestern Bureau of Immigration officials to take their jobs more seriously. In response to this wartime threat Congress passed a set of laws, specifically the Immigration Act of 1917 and the Entry and Departures Control Act of

⁴ For an account of these mercantile establishments see Romo (2005: 198-200) and Vanderwood (2004: 105). For an account of Chinese migrants in the borderlands, see Delgado (2004 and 2013); Camacho (2012: 23-25); Walz (1997); Fong (1980); Du-Hart (1980); Estes (1978); Romero (2010); and Burnett (1920). For an account of Japanese-owned farms in the outskirts of El Paso and San Diego County, see Estes (1978); Romo (2005: 201-02); and Bureau of Immigration (1917: 230, 408). For an account of Middle Eastern immigrants in the borderlands, see Alfaro-Velcamp (2007).

1918 (also known as the Passport Act), which created a new tapestry of regulations along the U.S.-Mexico border (*U.S. Stat.*, 1917, 1918; hereinafter referred to as the Passport Act of 1918 or the Act of May 22, 1918). Initially, the new immigration restrictions had a significant impact on immigration, specifically on individuals seeking entry for permanent admission across the U.S.-Mexico border. The literacy test and an increased head tax mandated by the Immigration Act of 1917 created serious obstacles for Mexican immigrants, particularly agricultural workers who, for the most part, were poor and illiterate (Cardoso, 1980: 46). For the first few months that the new law was in operation, Mexican immigration declined sharply from the same period the previous year. Historian Lawrence Cardoso reports that only 31,000 Mexicans emigrated to the United States in 1917 whereas 56,000 had entered the year before (Cardoso, 1980: 46). By 1918, 1,771 Mexicans decided against emigrating due to the literacy test, and the Immigration Service rejected the applications of 5,745 for failure to pay the head tax (Reisler, 1976: 24).

While the new immigration and passport laws closed the border for some, other border residents refused to accept the new restrictions. Some expressed their discontent by crossing and re-crossing the line without an official inspection. As a result, the bureau reported that the undocumented entry of Mexican nationals, an issue the agency had mostly ignored prior to 1917, had become one of its greatest concerns; as the supervising inspector for the Mexican Border District wrote in his annual report, "The suppression of attempted illegal entry of countless aliens of the Mexican race, excluded or excludable, under what they deem to be the harsh provisions of the immigration act of 1917, has constituted one of the most difficult problems with which this district has had to contend in the past year" (Bureau of Immigration, 1918). At the same time, thousands of local residents, as both the State Department and Bureau of Immigration reported, protested repeatedly and vehemently about the ways in which the Immigration Act of 1917 and the Passport Act of 1918 disrupted the transnational character of their daily lives.

Locals complained about the new laws in a variety of ways: writing letters to state and federal politicians; sending telegrams, letters, and petitions to local and federal Bureau of Immigration and State Department officials; publishing editorials in opposition to the new regulations; and arguing with immigration inspectors at the gates. The sheer volume of these protests led one local immigration official to observe in 1917:

No regulatory measures could possibly be devised on this border in any way affecting the freedom of movement of the people living on the border or touching their financial interests which would not be the object of attack and criticism. Every innovation of such a character, of which the Public Health Quarantine measures, head tax, and illiteracy provisions are notable examples, have evoked similar protests. (Harris, 1917; Johnson, 2003: 72)

In the Southwest, those industries reliant on Mexican labor were the most vocal and politically powerful opponents of the restrictions imposed by the immigration and passport acts.⁵ Southwestern farmers, for example, repeatedly called for exemptions to the new laws, knowing that they would bar the entry of Mexican workers (Totten, 1918:17).

In addition to southwestern industries, ordinary individuals—including those traveling from Mexico to shop, work, patronize entertainment venues, or socialize with friends and family—all protested, either in writing or in person (Blocker, 1917; Unsigned memorandum, 1918; Ruiz, 2008: 12). Among the protesters were U.S. citizens who lived in Mexico but worked in the United States as well as Asian nationals, Asian-Mexicans, and Asian-Americans, domiciled in Mexico, who sought a relaxation of the immigration and passport laws for business reasons (Adee, 1918a, regarding Japanese merchants living on Mexican side of border wishing to cross border to purchase goods; Adee, 1918b, on U.S. American border crossers; Berkshire, 1918; Burnett, 1920, on Chinese, with U.S. support, seeking crossing privileges between Calexico and Mexicali). The bureau's detractors also included those domiciled in the United States with business and personal interests in Mexico. Despite the bureau officials' authority, many border residents, as one inspector reported, did not hesitate to criticize the new laws and even verbally abuse immigrant inspectors at the gates (Wilmoth, 1923). Long accustomed to crossing the border in relative freedom, locals construed the new border control measures of the 1910s and 1920s in highly negative terms. Indeed, even though many may have subscribed to the nativist tenets that informed the passage of these laws, they also thought about their pocketbooks, arguing that such border controls damaged a flourishing binational economy.

Border residents' concerns compelled local INS officials to grapple with the question of how to simultaneously close the nation's borders to the en-

⁵ On the supporters and opponents of immigration restriction in the Southwest, see Montejano (1987: 182-86).

try of undocumented immigrants and security threats and open them to the free flow of tourists and trade. Local immigration inspectors addressed this dilemma by resorting to the law or by exercising their administrative discretion to create an immigration policy for the borderlands. In shaping an immigration policy for the Mexican border, the Bureau of Immigration relied on the language of the Immigration Act of 1917, specifically the Ninth Proviso of its third section. This proviso stated that the “Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission” (Husband, 1923). In other words, the Ninth Proviso authorized the Secretary of Labor to waive the immigration laws for migrants who would not pass an immigration inspection (and thereby qualify for permanent residence in the United States), but who demonstrated a need to be in the country for short periods of time. Thus, while nativism inspired its drafting and passage, the Immigration Act of 1917 afforded Bureau of Immigration officials the administrative discretion to suspend the restriction laws and sustain the transnational economy and society of the borderlands.

The most famous invocation of the Ninth Proviso occurred during World War I when the secretary of the labor created the nation’s first Mexican agricultural labor program. Due to enormous pressure from southwestern growers who claimed wartime labor shortages, between 1917 and 1921, the secretary of labor temporarily admitted Mexican farm workers, exempting them from a formal immigration inspection and, more specifically, waiving the literacy test, head tax, and contract labor clauses. Since immigration officials in the Southwest administered the farm labor program, they also deployed the Ninth Proviso to suspend the literacy test for the benefit of local residents. Between 1917 and 1924, what I refer to as the literacy test waiver enabled thousands of Mexican nationals domiciled south of the border to cross the line to meet their subsistence needs or, as one immigration inspector explained, so that they could purchase a “loaf of bread, a cake of soap, a pound of starch, a quart of kerosene, a pound of sugar, a pound of flour, a pound of lard, etc.” (Harris, 1923). To further assist border residents, local immigration officials developed an exemption to the Passport Act of 1918.⁶ In

⁶ For an account of these interagency disputes see Kang (2005: 44-45).

lieu of a passport, U.S. citizens and foreigners who lived in close proximity to either side of the border and who frequently crossed the border for “legitimate pursuits” could receive a temporary pass or border crossing card (Confidential Instructions..., 1918).

Although southwestern immigration officials created new policies for the benefit of border communities, they were not beholden to local interests. They had their own administrative reasons for pursuing alternative policies, believing that these would spare inspectors from hearing on a case-by-case basis the thousands of daily pleas for exemptions to the new laws. But instead of making things easier, the literacy test waiver, border crossing card, and farm labor program only made things worse. The border crossing card and temporary admissions program placed a huge new population under the administrative supervision of the Bureau of Immigration. Migrants, including agricultural laborers, border crossers, and U.S. citizens, among others, that the bureau once ignored, now had to be processed, surveyed, and policed (Berkshire, 1920). Under the farm labor program 72,862 Mexican farmworkers were admitted (Reisler, 1976, 38).⁷ Upon the inception of the Passport Act, one State Department official estimated that 100,000 to 200,000 border crossers would need to obtain appropriate border crossing identification, be it in the form of passports or border crossing cards, among other documents (Totten, 1918: 12). Bureau figures further attest to the heavy workload created by the Passport Act. Between September 15, 1918 and June 30, 1919 alone, the El Paso district office issued 65,515 border crossing cards to U.S. and Mexican nationals living on both sides of the border (Harris, 1919a, 1919b).

While the bureau undertook extensive efforts to implement the Immigration Act of 1917, the Passport Act of 1918, and the exemptions to both statutes, it conceded that those efforts could not succeed without more money, manpower, and materiel.⁸ This is not to say, however, that southwestern immigration officials gave up (Kang, 2005: 45). Instead, those who administered the passport laws and the border crossing cards, inspectors who issued literacy test waivers, and inspectors who tried to enforce the provisions of

⁷ The bureau, however, doubted the accuracy of these figures. Lacking the personnel to keep track of agricultural admissions, the bureau relied on the accounting of employers who were believed to be lax in their administration of agricultural laborers (Bureau of Immigration, 1920: 427).

⁸ For an account of the Bureau of Immigration’s efforts to enforce the Passport Act, see Kang (2005: 35-38).

the agricultural labor program independently concluded that a roving patrol unit—a border patrol—was necessary for effective immigration law enforcement. The U.S. Department of Labor (USDOL, 1918) reported the need for more manpower to track farmworkers once they have been admitted to the United States; Assistant Supervisor Harris (1918b) proposed a mobile immigration force in response to problems created by passport law enforcement; the Bureau of Immigration (1918: 319) issued a general call for border patrol; the Bureau of Immigration (1919: 26) called for a “patrol service” in response to illegal Chinese and Japanese immigration; and the Bureau of Immigration (1921: 12) called for a border patrol to assist in enforcement of the Act of May 19, 1921 (popularly known as the Quota Act of 1921). This consensus reflected their shared understanding that taken literally, the task of closing the nation’s borders to unwanted immigrants was not feasible. As a result, in the minds of these immigration officials, immigration law enforcement needed to take place at the border itself and beyond it.

Created in 1924, the Border Patrol would assume a major role in the enforcement of the immigration laws along the U.S.-Mexico border. As the agency’s inspection force manned the ports of entry, the Border Patrol would monitor the spaces between and beyond them. Yet, like their counterparts in the immigration inspection force, patrol officers faced numerous challenges to achieving their law enforcement mission. The sheer expanse and harsh environmental conditions of the southwestern borderlands, as well as a persistent lack of money and manpower, rendered the mobile surveillance of the borderlands a daunting task. The new unit also faced tremendous opposition from border residents who, as they had during World War I, continued to protest the passage of new immigration laws, including the Immigration Act of 1924, which created the national origins quota system; the Appropriations Act of May 28, 1924, which created the Border Patrol; and the Act of March 4, 1929, which created the first criminal penalties for undocumented immigration (*U.S. Stat.*, 1924a and 1924b; 1929). These measures, border residents argued, threatened a regional economic boom that resulted from the emergence of leisure industries in Mexican border towns that catered to thirsty U.S. Americans escaping the strictures of Prohibition.⁹ In

⁹ On the economic impact of Prohibition on the borderlands, see St. John (2009, 2011); Langston (1974); Klein (1990); Martínez (1978); Kearney and Knopp (1995); Buffington (1994); and Kang (2017: 37-44).

response, immigration inspectors at the gate, once again exempted border residents from these measures and helped to transform the border into a binational socioeconomic zone demanded by local residents (Kang, 2017: 41-44). Faced with these enduring obstacles, the Border Patrol recognized that it would have to assert its own vision of the border. Through the exercise of its administrative discretion and legislative reform, the unit redefined the border in its own terms as a vast policing jurisdiction in which it could exercise sweeping powers to pursue, apprehend, and expel immigrants.

For much of its history, Border Patrol officials from the Southwest actively participated in national debates regarding the scope of the unit's authority and, on occasion, its very existence. In the process, the patrol, as well as its supervisors within the INS, lobbied federal policymakers to modify the nation's immigration laws to the unit's advantage. Indeed, shortly after its creation in 1924, the Bureau of Immigration discovered that the statute creating the Border Patrol, the Appropriations Act of May 28, 1924, neglected to confer upon the unit the authority to enforce the laws regarding undocumented entry. On this problem, the commissioner general wrote, "If the Bureau is right in its understanding of the matter, the border patrols are now without the slightest authority to stop a vehicle crossing the border for the purpose of search, or otherwise, nor can they legally prevent the entry of an alien in violation of law" (Bureau of Immigration, 1924). In this context, rank-and-file officers in the borderlands devoted the bulk of their days to enforcing the nation's Prohibition laws vis-à-vis U.S. citizens. Alarmed by the possibility that overzealous officers might face lawsuits from U.S. citizens, bureau leaders worked with members of Congress to amend the statute in 1925 and thereby redirect the focus of the Border Patrol from citizens to immigrants (Kang, 2017: 46-51).

Yet, the 1925 statute raised more questions for the Border Patrol than it answered. For twenty years, policymakers and the patrol disputed the extent to which the new statute gave the unit the ability to enforce the immigration laws not only at the international boundaries but also in the nation's interior. The law's drafters conceived of the patrol's authority under the new statute in restricted terms. Recognizing that the 1925 law allowed the patrol to pursue, arrest, and detain undocumented immigrants without a warrant, they quelled apprehensions that the measure might enable officers to skirt the Fourth Amendment prohibition against arbitrary arrests, searches, and seizures,

a stipulation that protected all individuals, including immigrants, on U.S. soil. More specifically, they stressed that the patrol's new authority only applied to non-citizens detected as they crossed the international borders where the federal courts had justified the suspension of the Fourth Amendment in the interest of national security and national sovereignty (Kang, 2017: 51-52). This authority, however, would not apply to citizens or immigrants already present in the United States, as Senator Reed of Pennsylvania explained to the members of Congress:

It applies only to the arrest of aliens in the act of entering the country. There has been some doubt about the authority of those men to make arrests. We want to make it very clear that they have no right to make arrests except on sight of a violation of the immigration law as to illegal entry. They have no right to go into an interior city and pick up aliens in the street and arrest them, *but it is just at the border* where they are patrolling that we want them to have this authority. . . . It must be in sight of the officer himself; otherwise he has to get a warrant. We are all on the alert against granting too much power to these officials to act without warrant. (U.S. Congress, 1925: 3202) [Emphasis added.]

By defining the patrol's authority in this limited way, policymakers clearly aimed to deter the potential abuse of power by the mobile unit and protect the rights and well-being of immigrants and citizens.

For contemporaries, the idea that the Border Patrol's jurisdiction rested at the international boundaries would not have been novel. Indeed, as the Border Patrol interpreted the 1925 statute to its own advantage by engaging in warrantless pursuits, arrests, and detentions hundreds of miles north of the border, policymakers demanded restraint once again (Ngai, 2004: 290; Kang, 2017: 52). Concerned about the negative impacts of the patrol's operations on immigrants and citizens, congressional legislators proposed multiple bills that would drastically trim the boundaries of its turf and, in effect, eliminate the Border Patrol (Kang, 2017: 58-61). In the late 1920s and early 1930s, they specifically called for the transformation of the Border Patrol into a U.S. analogue of the Royal Canadian Mounted Guard or a police force that would enforce all federal laws—but only at the international borders (U.S. Congress, 1926: 12-13, 19-20). As one lawmaker explained, “You will not have a border patrol operating twenty miles inside the United States. You will have a border patrol where it belongs, and that is on the border” (U.S. Congress, 1930: 4-5).

Although none of these bills passed due to disagreements about their funding, the Immigration and Naturalization Service (INS) would revamp the Border Patrol in the 1930s. In response to the domestic and international outcry regarding the deportation drives conducted by the Hoover administration, the Roosevelt administration commissioned a series of external and internal investigations of the INS (Kang, 2017: 63-77). One internal study of Border Patrol operations in the Southwest concluded that these officers were “as a whole a different type than the immigration inspectors” (Coleman, 1933). They frequently resorted to aggressive interrogation tactics, including verbal and physical assault, to force migrants to confess that they had engaged in the act of illicit entry (Coleman, 1933). Meanwhile, the INS also requested an opinion regarding the legality of the unit’s interior enforcement operations. It concluded that while the Border Patrol could conduct warrantless arrests at the international borders, the same conclusion did not apply to the nation’s interior, where “there is no authority under existing law to arrest or detain an alien prior to the receipt of a proper warrant” (Winings, 1933).¹⁰ Taken as a whole, these investigations of the Border Patrol led the INS commissioner general to conclude that it often conducted apprehensions “without due regard for our constitutional procedure and that there is, in many of the cases, distinct lawlessness.” As part of his broader effort to reform the INS and protect agency employees from liability, the commissioner ordered the Border Patrol to end its practice of arresting immigrants without warrant (except in certain cases) and its vehicular stops beyond the border (Bureau of Immigration, 1933).

In the 1930s, local patrol officials paid lip service to the commissioner general’s reforms and curtailed their interior operations. But by the 1940s, these reforms gave way in the face of the unprecedented logistical demands of the Bracero Program. Initially conceived as an emergency guest worker program that would only last the duration of the war, at the urging of southwestern agribusiness, it lasted for twenty-two years and employed 4.5 million Mexican nationals. The program also provided the stimulus for the undocumented entry of another five million Mexican workers. Lacking the money and manpower to manage the sheer volume of new arrivals, local Border

¹⁰ Even the bureau’s internal procedures, published as the *Immigration Laws and Rules*, explicitly prohibited the detention of foreigners without an arrest warrant.

Patrol officials used this predicament to enhance their enforcement capacities once again.

Key to this campaign was Grover C. Wilmoth, the El Paso Immigration and Naturalization district director, who, in 1941, began pursuing legislative amendments on behalf of the Border Patrol. For several years, Wilmoth worked with the attorney general's office to plan and draft what would become Public Law 613, the first revision of the Border Patrol statute since 1925 (*U.S. Stat.*, 1946). While the measure was the subject of little debate in Congress, the INS correspondence files document the extensive role played by southwestern agency officials in shaping the law.

Through legislative reform, Wilmoth aimed to reverse the changes instituted by the INS in the 1930s. Indeed, by the 1940s, southwestern INS officials openly criticized the Depression-era attempts to make the Border Patrol follow the letter of the law; before the 1944 Annual Service Conference, a gathering of leaders from across the country, Wilmoth himself remarked, “[I do not] think there were as many inequities perpetrated under our system as they would have us believe” (Wilmoth, 1944). The warrant requirement was a particular focus of their attacks; since it cut Border Patrol apprehensions in half, local INS leaders argued that it reduced the effectiveness of the agency as a whole (Wixon, 1933; Berkshire, 1934; Wilmoth, 1934b, 1934c; Kelly, 1934; Bureau of Immigration, 1934). At the same time, Wilmoth fought for legislative amendments that would allow the Border Patrol to skirt the Fourth Amendment—specifically, its prohibitions against warrantless arrests and unreasonable searches and seizures—on private property and the nation's highways. In broader terms, Wilmoth aimed to settle the ambiguities of the 1925 law; if adopted by Congress, Wilmoth's proposed statutory language would clarify and enhance the legal authority of Border Patrol officers to enforce the immigration laws in the nation's interior.

Wilmoth pursued amendments to the 1925 Border Patrol statute not only to augment the legal authority of his agents but also to provide legal cover for what he and other Border Patrol officials had openly and repeatedly characterized as dubious legal practices. Although the patrol designed and initiated an aggressive interior enforcement strategy shortly after the passage of the 1925 law, in 1930 INS leaders testified before members of Congress that the legal authority for such operations was unclear (Hull, 1930; Harris, 1930). The internal and external investigations of the Border Patrol conducted in the 1930s

further underscored the questionable legal status of the unit's practices. Finally, by the 1940s, Border Patrol officials admitted that they ignored the law while conducting their vehicular stops and checks beyond the border. As Border Patrol Supervisor Kelly wrote to the INS leadership, "[patrol] officers' authority to stop vehicles promiscuously on the highways leading away from the border has been questioned innumerable times, yet we have continued to act without proper authority" (Kelly, 1941). He further observed that even though the Border Patrol statute stipulated minimal standards for car searches—Border Patrol officers had to have some reason to believe that the vehicle was transporting undocumented immigrants—in practice, Border Patrol officers stopped cars with little or no cause or suspicion in an area 100 miles north of the border: "As you are aware, our methods of operation have been such during the past ten years, and from the period between 1924 and 1931, that in no one case out of one hundred could our officers show reasonable cause to believe that the vehicles they stop contain aliens who are being brought into the United States" (Kelly, 1944). In response to this admission, Wilmoth and the Border Patrol could have chosen to train officers to abide by reasonable cause standards, but they did not. Instead, they sought a legislative amendment to legitimize standing procedures, despite their uncertain legality.

Southwestern INS officials took comfort in the fact that Public Law 613 restored the former status quo. It terminated the reforms of the 1930s and sanctioned practices that agency officials themselves once characterized as lawless. The new statute specifically authorized immigration officials to engage in the warrantless arrest of undocumented immigrants beyond the border. It also freed Border Patrol officers from determining probable cause or reasonable suspicion prior to a car stop. Instead, they were given broad authority to conduct stops and searches within a "reasonable distance from any external boundary of the United States." By the following year, INS officials used their administrative discretion to define this reasonable distance to be 100 air miles from the border (Kelly, 1947). Yet, this definition was negotiable rather than fixed. If southwestern immigration officials could establish the existence of "unusual circumstances" in their districts, INS leaders in Washington, D.C. would authorize the extension of the reasonable distance rule beyond 100 air miles. As a result, cities such as Austin, San Antonio, Phoenix, and Albuquerque, among others, were declared to fall within a reasonable distance of the U.S.-Mexico border.

Wilmoth had hoped that Public Law 613 would include language that secured the Border Patrol's ability to conduct warrantless searches of private property, particularly the farms and ranches next to the international boundary. But he withdrew this proposal due to concerns that it would trigger the opposition of southwestern farmers who, in turn, would block the passage of the measure in its entirety (Winings, 1945). A few years later, the INS continued to lobby for the amendment, and by 1951, it achieved the passage of a federal law authorizing immigration officials to search private land (but not dwellings) without a warrant in a 25-mile zone adjacent to the border and nested within the 100-mile zone (Kang, 2020: 144-150).

Over the course of the twentieth and twenty-first centuries, the Border Patrol's own vision of its jurisdiction and authority continued to face challenges. Legislators tried to check the agency's aggressive policing practices and defend the rights of immigrants and citizens by proposing bills that would shrink or even eliminate the 100-mile and 25-mile zones (Eddington, 2019). Meanwhile, from the time of the foundation of the Border Patrol in 1924, federal courts heard scores of lawsuits filed against it, reminding the public that, despite the language of the Border Patrol statutes, the Constitution still applied to immigrants and citizens at the international boundaries and beyond them (Kang, 2020). Yet, the 100-mile zone remained intact because the U.S. public came to take its existence for granted and often unwittingly adopted the Border Patrol's longstanding view that the zone as well as the agency's highly aggressive policing practices were the law of the land. Given that the Border Patrol's lawmaking activities often remained out of sight, many forgot or never even knew about the contested and troubling origins of Public Law 613. Policymakers created the 100-mile zone not to serve the will of the people or uphold a commitment to constitutional principles and the rule of law. Instead, they abided by the demands of Border Patrol officers in the Southwest who fought to ensure that the practices they had long recognized as illegal became law.

* * *

In the popular and scholarly imagination, the INS in the Southwest functioned as a law enforcement agency, implementing laws drafted by policymakers in Washington, D.C. This essay unsettles this conception, tracing

the ways in which the INS served as a lawmaking body as well as a law enforcement agency. While Congress and the courts provided the outlines of a federal immigration policy, local agency officials articulated that policy in more detail through the regular exercise of their administrative discretion and the preparation of legislative amendments to immigration statutes. Due to these lawmaking endeavors, INS officials in the Southwest generated a distinct and complex immigration policy for the borderlands that simultaneously closed the border to the entry of immigrants, opened it for the benefit of the border economy, and remapped the border as a jurisdiction for the policing of undocumented immigrants. For much of the twentieth century, the INS sustained all three approaches to immigration regulation along the U.S.-Mexico border despite their contradictory purposes. In so doing, agency officials continued to recognize that the economic and social realities of the borderlands rendered impossible the full application of the federal immigration restriction laws and the closing of the U.S.-Mexico border.

The administration of President Donald J. Trump reconstructed the border once again. Even though it recognized the complexities of immigration enforcement along the nation's southern line, particularly its impacts on the region's binational economy and society and U.S. foreign relations with Mexico, the administration chose to pursue a much simpler vision of the border and border enforcement due to its political appeal. Trump understood that the idea of securing the nation's borders in the name of nativism and national security wins votes. In a sharp break with the past, through more than 400 changes to the nation's immigration policies, his administration closed the nation's borders to both undocumented and legal immigrants (Pierce and Bolter, 2020). As a result of this fundamental transformation of the immigration system, the Trump administration dismantled the widespread notion that the United States constituted a nation of immigrants and extinguished the hopes of millions of immigrants, refugees, and asylum seekers that a better life was to be found there.

In response, immigrants, activists, and legal advocacy organizations challenged the administration's stand on U.S. immigration law. Perhaps most prominently, the American Civil Liberties Union (ACLU) filed hundreds of lawsuits, questioning the legality of the administration's policies and raising awareness of their dire humanitarian impacts on immigrants in the United States and abroad (Crary, 2020). In a less publicized but no less important

fashion, residents on both sides of the U.S.-Mexico border, in what has effectively become a local tradition, continued to oppose federal policies such as those issued by the Trump administration and assert their right to have a voice in the development of immigration and border laws (Sanchez, 2019). Their protests serve as powerful reminders that federal immigration laws and policies are neither legal nor just simply because the president says so. Instead, for over a century, the legitimacy and even existence of the nation's immigration laws and agencies have been matters of constant debate. Along the southern line, these debates enabled border residents, both past and present, to maintain the historical status of the U.S.-Mexico border as a borderland.

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