

Out of Sight and Out of Mind

An interpretative human rights report on
US-Mexico border violence under MPP and Title 42



Border Nativity Scene 2021. Artist: Sebastian Quinac. photo: Blake Gentry

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Dedication

We regret not being able to publicly report on one human rights case of an Indigenous family from Mexico given the extreme threat to their lives, their prolonged enslavement, and torture. As survivors of such violations, their survival inspired us to complete this report. We dedicate this report to them.

Executive Summary

Trade encourages the reallocation of resources to more efficient activities, and thus opens up opportunities and creates jobs.

Trading Away from Conflict , WBG 2015.

Conceptual Frameworks

The main research questions pursued in this study of violence at the US Mexico Border under the United States' Migrant Protection Program and Title 42 were: Does the data on violence demonstrate a pattern of purpose? Were certain acts of violence structured as a coherent business enterprise, or were they carried out randomly? What economic role (if any) did that violence play?

There exists a glaring contrast between the legal architecture created in the post WWII international order under the Bretton Woods Agreements and the legal architecture created by neo-liberal states, some forty years later. Though political liberalism promotes the later as an extension of the former, in the area of human rights, stark differences in the treatment of migrant rights under the two orders appear to indicate that one cost of the international shift to free trade neo-liberalism is the near abandonment by neo-liberal states of human rights standards for migrants.

Human Rights standards for migrants were initially established with the United Nation's Universal Declaration of Human Rights (UDHR) in 1948. It set out rights for refugees and immigrants in the aftermath of the displacement of millions of people in Europe from WWII. These agreements were underlined and backed up by states which had experienced an unprecedented international reordering of capital. However, within four decades of UDHR's acceptance by all UN member States, a neo-liberal economic and political order was launched in the Americas.

It then expanded globally, culminating in 1983 with states joining a new parallel global legal framework, the World Trade Organization. The new international model produced many social and economic benefits brought about by the deregulation of finance, the opening of markets, the enforcement of property ownership, and the securing of the money supply. For an example of neo-liberalism's successful flexibility as an economic system, we can note the substantial rise in China's middle class, but its political system can simultaneously repress political expression and minority rights without economic cost. Nevertheless, other states with neo-liberal economies were often deeply rooted in conflictual state policies that produced highly skewed and unevenly distributed economic benefits across social classes.

Since the violent birth of the neo-liberal model in Chile, in 1973¹, Neo-liberal states increasingly provoke but are then intolerant of higher levels of internal and international immigration. In parallel, an incessant pattern of human rights violations has been left by a trail of states, large and

¹ The democratically elected Chilean President Salvador Allende was overthrown in a coup d'état, after which Neo liberal economic policies were widely implemented, including the denationalization of industries.

small, engaging in the practice of free trade. These states persistently rationalize away the cost of ongoing violence to human life and well-being. In their view, markets redistribute labor as well as goods, to wherever they are more valued.² Migration, under this rationale, is seen as a means to level out the regional labor market through redistribution. This view is echoed in the words of a 2015 World Bank report³, quoted above.

Content

In Section I. Types and Counts of Violence, A comparative taxonomy of categories of quantified acts of violence (reported border wide by Human Rights First), and types of violence qualified by ILO provides in Table 1. To fill a reporting gap, ILO contrasted results from analysis of the quantified data with results of qualitative data ILO gathered in from Sonora, México. We then present ILO's summary of the frequency of each type of violence from disaggregated data for the entire border region. Finally, an Appendix of border wide violence based on Human Rights First data 2021-year end data, we detail seventeen types of unduplicated counts of violence.

In Section II. Violence as Investment Policy, we trace, across three US administrations, an arch of US immigration policies: metering, MPP and Title 42. We demonstrate that despite judicial challenges, the operational goal of those immigration policies was to expunge the right to asylum through border enforcement.

Our analysis of data collected under the policy period in question, points to violence fomented against immigrants in a broad swath along Mexico's northern border with the United States. We show how the policies of metering, MPP, and Title 42 violate US domestic and international law. In tandem, we explain how those official policies led to unprecedented violence carried out from Jan. 1, 2021 through June 30, 2022 through migrant expulsions by CBP and by multi-national criminal organizations, known in the borderlands as "Cartel". As non-state actors, we discuss Cartel adaptation to state actions and policy goals designed to repress migration.

In Section III. Vulnerable Social Groups, we looked beyond the general population of migrants whose human rights were violated and sought to understand four vulnerable social groups: LGBTQ communities, unaccompanied minors, Indigenous peoples in migration, and the Tohono O'odham Nation. ILO's analytical work was then refocused from a human rights framework to the economic function of violence carried out in the border region of Arizona and Sonora.

In Section IV. The Business of Human Smuggling, we focused on the major migration sending states in the Central American region where lucrative extractive industries and the commodification of five major agricultural crops for export markets operate under the Free Trade agreement of CAFTA. We briefly address the example of Guatemala's migration rate and trade gap rate with

² A corollary to markets producing and resolving labor force imbalances, is found in Trading Away from Conflict Using Trade to Increase Resilience in Fragile States, Massimiliano Cali, World Bank Group, 2015, p.1

³ Trading Away from Conflict Using Trade to Increase Resilience in Fragile States, Massimiliano Cali, World Bank Group, 2015, p.1.

<https://openknowledge.worldbank.org/bitstream/handle/10986/20713/931230PUB0Box30UBLIC009781464803086.pdf?sequence=1>

the United States. We compare Honduras's, El Salvador's, and Guatemala's growth rates, and the region's gap between new employment, the youth labor force, expected migration rates under the regional economic model. We analyze data on violence (both quantitative and qualitative) gathered in the border region and then explain a sustained and systemic production of that violence to inform this report.

To assess the economic value of violence produced by Cartel and the Border Patrol in combination, by examining their profits, their supply chain, shifts in demand, market access, adjustment, market making, market share, elasticity of demand, and losses. We looked at Cartel smuggling operations in light of applied Neo-liberal theory, examining inputs and outcomes for the human smuggling business to understand how human smuggling operations in Sonora, Mexico blossomed in the context of the neo-liberal model. We contrast the economic benefits and costs of legal commercial trade for Arizona under trade de-regulation as a feature of regional trade agreements, NAFTA and CAFTA.

Our main findings were that the most frequent acts of violence were used by Cartel directly for profiteering, while other acts of violence were less frequently used to secure and safeguard their supply chain and maintain their predominant market share. We substantiate claims that federal border policy in Arizona uses by design the Tohono O'odham Nation as a corridor for migrant death.

In the Conclusion, we return to the origins of the Neo-liberal framework, reflect on the role of violence, and identify strategies deployed in border militarization in the original context of Arizona Territory. We directly link Indian Boarding Schools, Japanese American internment camps, and the Indian Termination Policy as historical and institutional antecedents for current federal occupation of the Tohono O'odham Nation and the forced separation of immigrant families. Lastly, within neo-liberalism we identify the reproduction of violence at the border by State and non-state actors as an original process of Settler Colonialism.

Methodology

Our investigation was of violence that took place in the Northern Border Zone of Mexico under the United States' immigration policies of MPP and Title 42. MPP commenced under the Trump Administration in Dec. 2018 and ended June 1, 2021 under the Biden Administration. Title 42 We used two basic approaches, one quantitative, and the other qualitative. The Migrant Protection Program only briefly interviewed migrants allowed to enter US Land Ports of Entry to request an asylum interview in the future, while then immediately being forced back to wait in Northern Mexico border towns to be notified if it was granted many months or years later. Title 42 is a Federal US public health code that allows, by executive order, the President to selectively block along the entire border some migrants from some countries with the justification of preventing the spread of COVID⁴, while simultaneously allowing in those from other countries.

⁴ These policies, and their actual implementation, are discussed more in depth in Section II.

Human Rights First published reports of violence against migrants in Northern Mexican border towns which used mixed methods of data collection; data from mass surveys that aggregated types of violence and numbers of victims in a given time period, from accounts provided by immigration attorneys, by their own interviews with volunteers, from news accounts, and from workers at shelters. All their published reports include a large published publicly available database which list incidents and the source(s) for each incident. The mass survey data collected by Human Rights First aggregated categories of violence and those reporting victimization from any or all of those multiple categories of violence as a single incident report.

It was not possible to disaggregate the data on victims nor the categories of violence for all such incidents as publicly reported. In the first phase of our research ILO therefore eliminated all such entries of aggregated data. In the first phase of our research ILO therefore eliminated all such entries of aggregated data, and selected the disaggregated entries as a basis for quantitative analysis. ILO first confirmed with researcher and author Julie Neusner, the counting methodology used by Human Rights First in the October, 2021 for the report published by Human Rights First. In that report, less than 1% of incidents documented border wide were recorded for victims in Sonora, Mexico.

The Indigenous Languages Office (ILO)⁵ then carried out an independent quantitative analysis of data from the non-governmental organization, Human Rights First, which reported again in late December 2021. That report cataloged 8,735 acts of violence occurring under MPP and Title 42 in the border zone. Human Rights' First multivariate listings of violent acts required ILO to select only data representing *non-duplicated acts of violence*. Therefore, aggregated *counts of incidents* (n=6,290) and aggregated types of violence (n=22) from the Dec. 2021 report were not included in ILO analysis herein.

ILO then selected unduplicated incidents of violence producing a new base count (n¹= 7,294). From those counts, the Indigenous Languages Office (ILO) confirmed 20 categories of reported violence, which we consolidated into seventeen. The 17 types of violence consist of: kidnapping, extortion, sexual assault, rape, robbery, assault / beatings, threats, armed threats, murder, torture, labor exploitation/trafficking, unlawful deportation ("expulsion"), shooting, police assault, and police extortion. ILO found that the most frequent top ten acts of violence represented 99% of all such acts. ILO then focused on that dataset of 7,228 acts (n²=7,228)

ILO executed a lengthy quantitative analysis of over 7,228 victimizations border wide documented in the appendix. Therefore, our quantitative findings are limited to non-duplicated acts of violence, and not the number of victims given victims may have been subject to multiple types of violence in distinct incidents.

Together with conclusions drawn from associated qualitative interviews, the data analysis allowed us to contextualize border violence in a socio-economic system involving neoliberal

⁵ While located at the Casa Alitas Welcome Center in Tucson, Arizona, the Indigenous Languages Office (ILO) is a project administered independently by The Indigenous Alliance Without Borders. All writing herein is the sole responsibility of the Indigenous Languages Office, and the stated authors.

states and multi-national criminal enterprises. That theoretical approach is unique to the Indigenous Languages Office, was not discussed with interviewees, nor used by Human Rights First. All findings and any error reported herein are the sole responsibility of ILO authors.

Qualitative Interviews

In the second phase of our research, using the 17 discrete types, ILO created a survey instrument to interview immigrant shelter personnel in Sonora, Mexico. Definitions of each type can be found in the appendix. After carrying out interviews described below, with eight humanitarian aid workers and an attorney, plus fourteen individual migrants, a typology of the violence carried out border wide was prepared in Table 1 for comparison sake. Their reporting is noted throughout this report, and specifically in Sections II, III, and IV.

ILO staff interviewed in eight shelters and aid stations in Sonora, México, and in several near the border in Arizona. We spoke with volunteers, administrators, and shelter workers with knowledge of the social conditions facing immigrants under MPP and Title 42 from November, 2021 through late June, 2022. Interviews took place in: Agua Prieta Sonora /Douglas, AZ, San Luis Colorado, Sonora, and Yuma, Arizona; Sonoyta, Sonora, and Ajo, Arizona; Sásabe, Sonora; and Nogales, Sonora. Given security risks posed by ongoing criminality reported by interviewees, anonymity was requested by two sources interviewed while six others are publicly acknowledged.

Among four vulnerable social groups ILO examined, accounts of human rights violations looked at quantitative reports from Human Rights First to identify accounts of LGBTQ and Indigenous peoples with English and Spanish key word searches. Given some accounts include descriptions of spoken threats, common identifiers and pejorative terms were also search terms used. For unaccompanied minors and for the Tohono O’odham Nation we used public media sources, authors’ knowledge, interviews, and data analysis of Humane Borders’ data on migrant deaths.

Introduction

Come writers and critics
Who prophesize with your pen
And keep your eyes wide
The chance won't come again
And don't speak too soon
For the wheel's still in spin

(The times' they are a changing, Poet Nobel, Bob Dylan)

“thought corrupts language, language can also corrupt thought” (George Orwell)

Migration at the US-México Border

The US - Mexico border is the fulcrum of an economic pipeline (Elkins, 2005) created to extract wealth from Meso-America and then shipped to the United States. Natural resources and plantation agriculture are the products sent through that international pipeline. In other words, capital is converted into products, and products into profits.

The creation of that wealth is at the expense of workers who were physically displaced from Meso-American land-based cultures; workers often dispossessed of their own lands as a direct result of investment supported by free trade agreements. Those displaced workers, in due time, are forced to migrate in the same pipeline. The pipeline then is both the progenitor of capital flows (Grabel: 2003) and of migrant laborers (Green: 2011).⁶ The border is middle passage for migrants in the pipeline. It is here where their rights are stripped away (Gentry: 2014, 2020)⁷, where governments collude unofficially with Cartel on a large scale to punish migrants - with acts of violence.

Prior to 1994, Mexican immigrants typically came from Central Mexico's rural areas. After 1994 southern Mexico's smallholder and Indigenous communities experienced economic and social shocks (Reyes: 2015)⁸, as did Central Americans after 2005 (Harvey: 2005, Gibler: 2009, Chomsky:2021).⁹ Drastic reductions in agriculturally derived livelihoods incentivized workers to seek work abroad to maintain household income. This was an initial result of the regional free trade system enacted by states with the advent of the North American Free Trade Agreement of 1994.

It was preceded by US corporations shifting their loan liability for Mexico's debt dependency to the US Treasury along with the IMF and World Bank, and then demanding regulatory concessions on financial controls and finally, renegotiating the terms of trade (Roos: 2012).¹⁰ It later expanded in like fashion to economically envelop Central American trade in 2005 under the Central American Free Trade Agreement. The US-México border thereafter became a key juncture in the current regional multilateral trade system. The trilateral enactment of NAFTA/USMCA¹¹ and the seven-country agreement under CAFTA, legally bound states of North America and Central America to operate under its rules. At the US- México border, the neo-

⁶ International Private Capital Flows and Developing Countries, Ilene Grabel, 328, 330-326, Rethinking Development Economics, H-Joon Chang editor, Anthem Press, 2003; Op cit Green, L. (2011). [DOI: 10.1080/01459740.2011.576726](https://doi.org/10.1080/01459740.2011.576726).

⁷ Deprivation Not Deterrence, a report on human rights violations of immigrants held in the Department of Homeland Security' short term detention facilities in Southern Arizona, Blake Gentry et al, GUAMAP, 2014, https://www.academia.edu/16985511/Deprivation_not_Deterrence, O'odham Niok, In Indigenous Languages, U.S. "Jurisprudence" means nothing, Blake Gentry, Chicano-Latinx Law Review, Vol 37, No 1. 2020.

⁸ Zapatismo, other geographies circa "the end of the world", Alvaro Reyes, Environment and Planning D: Society and Space 2015, volume 33, 413-414.

⁹ A Brief History of Neo Liberalism, 2005, David Harvey, Oxford University Press, 2, Mexico, Unconquered, John Gibler, 2009, City Lights Books, 105-138; Central America's Forgotten History, Aviva Chomsky, 2021, Beacon Press, see: 190,197,206, 208-213.

¹⁰ Since the Mexican debt crisis, 30 years of neoliberalism, Jerome Roos, ROAR Magazine, Ag 22, 2012, 2-3.

¹¹ USMCA, or NAFTA, purports to support workers' rights to organize and it attempted to level wages, for example, A new rule requires, "companies . . .to produce 40-45 percent of their parts from factories paying an average wage of \$16 USD per hour. Issues not negotiated were the average worker wage to CEO pay ratio, ownership stakes of workers in the companies they produce for, and a viable complaint mechanism for environmental and labor disputes. See: USMCA: What Changed From NAFTA & What It Means for Industries, Travis Miler, Oct. 2, 2022. <https://www.assent.com/blog/what-is-usmca-explained/>.

liberal political economic model purports to favor deregulation of markets, promote smaller government, and lighten regulation of commerce, all mainstays of neo-liberal policy.

At the most economically dynamic and violent border in the world, we examine at some length, the origins of violence against immigrants and their relation to that economic pipeline. Under free trade, the hallmark of neoliberal economic order, while select workers experienced improved purchasing power due to manufacturing shifting from the global north to the global south and due to improved terms of trade favoring those locations, others were forced into migration. Beneficiaries of this global shift were generally not those compelled to migrate to escape rural and urban poverty, both conditions which advocates promised - free trade - would solve.

As a modern experimental zone for border militarization, as Todd Miler (2014) has often pointed out, Arizona since 2001 has served a greater purpose beyond local regulation of the migratory population at the international border.¹² For example, in September of 2021 during a period of crisis for DHS in Texas, in Arizona Customs and Border Protection (CBP) received 600 Haitian immigrants laterally transferred from Del Rio. The same DHS deportation strategy in 2014 led to systemic violations of human rights which brought about a class action lawsuit, *Doe v Jeh Johnson*¹³ against the Tucson Sector of the United States Border Patrol (BP). A final court decree ordered humanitarian protocols to be complied with by CBP and Border Patrol in short term detention facilities at the Arizona border only. Those protocols are designed to reduce violence against immigrants. Strategically, Arizona is used as a border containment area for transnational border crossers arriving from Sonora, México and for containing overflows of migrants shipped from other areas along the border.

To better understand transnational migration at the SW United States border, it is helpful to review the larger regional economic model it was planned under. Economic rationales favored by the neo-liberal model of governance and economy assume sustained economic growth and improved national economic performance. They claimed a more equitable distribution of income would occur as a result of implementing the neo-liberal model. Services once provided by States to their citizens, such as job retraining, health care, pensions, and childcare, could then be privatized and become the incumbent responsibility of workers - given an assumed rise in their income nationally.

Over time American consumers in the United States had little to cheer about, given their purchasing power was actually reduced by increases in inflation. The family economy is not measured nor generally considered when qualifying economic outcomes of pro-free trade policies, given as one author noted, "NAFTA displays the classic free-trade quandary: Diffuse benefits with concentrated costs."¹⁴ Neither is the faltered economy of migrating families considered as a result.

¹² Border Patrol Nation, Todd Miller, City Lights, 2014.

¹³ See: *Doe v Johnson*, <https://casetext.com/case/jane-doe-v-johnson>

¹⁴ David Floyd, NAFTA's Winners and Losers, David Floyd, June 23, 2022, Investopedia,

<https://www.investopedia.com/articles/economics/08/north-american-free-trade-agreement.asp#citation-22>

All other economic shocks aside, a large political cost for neo-liberal trade states is the increasingly expensive cost of NAFTA and CAFTA. For it has neither reduced Meso-American migration to the United States nor internal migration within Meso-America itself; again - as promised.¹⁵ It is expensive both economically and politically.

From 1900 to 1990, four years prior to NAFTA's passage, accumulative Mexican migration to the US reached 4.2 million. But then it more than doubled to 10.9 million from 1990 to 2019.¹⁶ This does not account for deaths but illustrates the general trend for all legal and illegal Mexican immigrants. For the five-year period of 2009 and 2014 in the aftermath of the 2008 world-wide recession, more Mexican immigrants left the US than entered.¹⁷ But thereafter, Mexican migration returned to the previous trend.

Capitalization of Human Mobility

Under this international model, economic outcomes improved for various sectors: international finance, offshore manufacturers, commercial agriculture, consumption markets, tourism, telecoms, and technology. They markedly benefitted from the deregulation of finance, the opening of markets, the enforcement of property ownership, and securing of the money supply. NAFTA and CAFTA also subjected states to arbitration when corporations claimed regulatory harm to their investments in national markets (Perez-Rocha: 2014, Sumner: 2010).¹⁸

Prior to NAFTA, free trade economists policy makers Jeffrey Sachs (1993¹⁹), and Larry Summers, and politicians such as Margaret Thatcher, Ronald Reagan²⁰, and George H.W. Bush²¹ promoted a kind of shock therapy for indebted countries, by converting sovereign debt financed by private

¹⁵ As an unnamed informant shared on social media after the fatal killing of 19 Guatemalan immigrants by a rival Cartel, the agreements between human smugglers from communities of origin started systematically paying Cartel operators at Mexico's northern border by 2006, one year after the passage of CAFTA. See: [La tragedia de Tamaulipas y las cada vez más crueles redes de tráfico de personas](https://www.prensalibre.com/guatemala/migrantes/la-tragedia-de-tamaulipas-y-las-cada-vez-mas-cruelles-redes-de-trafico-de-personas/), 3 Feb. 2021, Presa Libre, <https://www.prensalibre.com/guatemala/migrantes/la-tragedia-de-tamaulipas-y-las-cada-vez-mas-cruelles-redes-de-trafico-de-personas/>

¹⁶ Mexican-Born Population Over Time, 1850-Present, Migration Policy Institute (undated), <https://www.migrationpolicy.org/programs/data-hub/charts/mexican-born-population-over-time?width=900&height=850&iframe=true>

¹⁷ Pew Research Center, Hispanic Trends. "More Mexicans Leaving Than Coming to the U.S.," Nov. 19, 2015, Ana Gonzalez-Barrera <https://www.pewresearch.org/hispanic/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/>

¹⁸ Regarding corporate v state regulatory power under the Investor-State Dispute Settlement Mechanism, see: What "Free Trade" Has Done to Central America, Manuel Perez-Rocha, Julia Paley, Foreign Policy in Focus, 11/21/2014. ISSN: 1524-1939, 2-5; Unacknowledged Success of Neoliberalism, Scott Sumner, Econib articles, Jul. 5, 2010. <https://www.econlib.org/library/Columns/y2010/Sumnerneoliberalism.html>.

¹⁹ Jeffrey Sachs, A shocking answer to inflation: Jeffrey Sachs argues that the West must now back Yeltsin with real financial aid – Opinion, 11/10/1993, https://www.earth.columbia.edu/sitefiles/file/Sachs%20Writing/1994/Independent_1993_AShockingAnswertoInflation_10_11_93.pdf

²⁰ Reagan passed the Trade and Tariff Act in 1984, and the bilateral Canada-U.S. Free Trade Agreement in 1989.

²¹ George W. Bush architected the trilateral NAFTA framework but did not get it through the US Congress.

banks into a financial responsibility of the US treasury to refinance long term loans. Once freed from loans it assumed would not be paid and from sovereign regulation of finance, the new loans were made replete with conditions favoring private investors in the name of free trade with little state control of the private predatory behavior of international finance. Stated ever so briefly here, this was the so-called "Washington Consensus" forged and promoted internationally by President Bill Clinton, a founder of the World Trade Organization. Subsequent free trade agreements, while greatly benefiting investors, transnationally redistributed employment and wages, creating significant disruptions in national and regional labor markets.

That set of interlocking policies created a new norm. The underlying agreements held that the ongoing disruption of the labor markets' latter effects (e.g., regional migration) were but temporary – if not necessary - adjustments of the labor markets internationally. As international capital destroyed older sources of employment, it would equally create new employment and unprecedented wealth according to the orthodox recitation of its purported economic benefits. Other economists such as Joseph Stiglitz (Stiglitz: 2003)²², and Japanese economic planners (Chang: 2003)²³ however came to question the Washington Consensus.

Because this economic model delivered a broadly distributed consumption benefit, the *consumption benefit* became neo-liberalism's *leitmotif*. Its cachet was incessantly used to further promote the Neo-Liberal model - especially in the United States and the United Kingdom.²⁴

Concurrent to that positive interpretation of free trade as economic development, an underlying economic structure began to emerge regionally which commences in Meso-America and ends in the United States. Its coercive and repressive architecture draws from previous colonial and Settler Colonial practices which are addressed in the conclusion, but for our purposes now we will describe it as an economic *pipeline*. Passage along and the end goal of the *pipeline* is similar to the end goal of many colonizations: displacement, dispossession, capitalization of production, and forced proletarianization. Documented for the Kikuyu in Kenya at the hands of the British in the 1950's (Elkin: 2005), it's construction and operation provides us with an expanded explanatory framework.²⁵

Workers displaced from NAFTA and CAFTA in free trade states became unwitting human capital for economic exploitation by operators of the pipeline within the regional neo-liberal model. In the free trade countries, hollowed out governance structures were supportive of the military suppression of workers' access to employment and corporate capture of natural resources. This favored official corruption involving international economic interests in Honduras, el Salvador

²² Globalization and its Discontents, Joseph E. Stiglitz, W. W. Norton & Company, 2003.

²³ The East Asian Development Experience, Ha-Jong Chang, Rethinking Development Economics, 2003, Ha-Joon Chang, editor, Anthem Press, 109-114.

²⁴ Thomas Freidman, a widely followed columnist for the New York Times, for example, was once such free trade enthusiast.

²⁵ Imperial Reckoning, The Untold Story of Britain's Gulag in Kenya, Caroline Elkins, Hart Holt, and Company, 2005, 109. Note: Elkins reported on the British authorities' own description of their colonial enterprise as The Pipeline.

and Guatemala (Cupolo: 2014)²⁶. Migration, and its myriad of political and human costs, became a major tradeoff in the Meso-American regional economy. In parallel, a glaring pattern of human rights violations dotted major migration routes and borders.

Left unassessed at the other end of the pipeline are secondary negative economic impacts in the interior United States, beyond human migration. Headline grabbing narcotics seizures at the border aside, the US public rarely (if ever) hears about drug seizures of a comparable size in the US interior where the narcotics are sold. This is due to a very tight control on the retail end in the interior of wholesale trade at the border. Banking and money laundering of Cartel proceeds from narcotic sales are secondary impacts also studiously ignored. The border is where standardized regulation facilitates legal and illegal trade - simultaneously. The regional pipeline thus runs goods through the border and uses the border as a valve to control migration.

Capitalizing human migration in this scenario means forcing the distribution of labor from migration sender states to migration receiver states through the pipeline. But the human rights of immigrants and their loss of human life is not an economic cost born directly by national governments. Given migration is politically unpopular among United States voters, repressing migration is a cost increasingly burdensome to border states; border states that nevertheless profit from overland trade.

In this report, we address the four countries which are the top Meso-America migrant sender states; bound by common financial and political reforms required by treaty under NAFTA and CAFTA. For these states, their losses of population to immigration and the loss of services to those migrants under neo-liberal policies are not considered detrimental to social development. Out migration is treated as a release valve for internal conflicts over natural resources, employment, and poverty. In other words, the lack of national socio-economic development is to be solved by out migration to lessen social demands on governance. In Guatemala for example, the impacts of CAFTA have destroyed jobs, caused environmental damage, and displaced rural workers (Green: 2011)²⁷ who then migrate externally at a rate of 1% a year since 2009. Trade for the United States to Guatemala, as a result of CAFTA from 2005 to 2019 rose to 140% compared to pre-CAFTA years, but Guatemala's trade to the United States rose only by 27%.²⁸

Guatemala, Honduras, and El Salvador have experienced an anemic growth rate of 1.2 % annually since 1991.²⁹ For some 600,000-youth entering the Northern Triangle job market annually, there are only 250,000 jobs in the formal job sector. Twelve years after the passage of CAFTA, the violent victimization of Central American workers in their home countries continued. Of those

²⁶ We reap what we sow: the Link between Child Migrants and US Policy, August 1, 2014, Diego Cupolo, Upside Down World, <https://upside-downworld.org/archives/international/we-reap-what-we-sow-the-link-between-child-migrants-and-us-policy/>

²⁷ Op cit, Green, L. (2011)

²⁸ Central American stagnation drives migrant exodus, Jude Webber and Michael Stott, Financial Times, London, May 9 2021, <https://www.ft.com/content/9ea2d8e8-7d0d-480d-a868-f95e25d6a4cf>

²⁹ Ibid., Webber and Stott.

displaced workers, the percentages of those *who then intended to migrate in 2018 from Guatemala* was 37.3%, from El Salvador 54.2%, and from Honduras 58.5%.³⁰

For many such migrants, subsequent dispossession of their land puts them and their families at physical and then economic risk. Dispossession of property increases their exposure to further violence through migration. Dispossession demonstrates a lack of reliable institutions to enforce due process which could mitigate the injustice of having to leave where violence is first used, given they have no legal recourse.

By 2016, twenty-four years and twenty-one years after the end of the Salvadoran and Guatemalan Civil Wars respectively, and fifteen years after the Central American Free Trade Agreement was signed with the United States, US AID writer Williams concluded that,

“Honduras, El Salvador, and Guatemala, collectively known as the “Northern Triangle” of Central America have consistently been ranked in the top five most violent countries in the world as defined by the per-capita intentional homicide rate.” (Williams: 2016, USAID/BFS/ARP)³¹

In neo-liberal economies, it is not just the economic governance system that determines neo-liberal states, it is the deliberate weakening of the political state as economic arbiter for all social groups which identifies neo-liberal states. When the state’s economic role is subordinate to market mechanisms and investors, then unelected corporate boards, political hegemony, and oligarchs have unaccountable but deleterious and direct economic impacts on workers. Under neo-liberalism, human rights violations can therefore more easily occur because there is no economic value in reporting human rights violations, but they are treated as manageable secondary political cost. In the neo-liberal world, only if a country pays an economic price for human rights violations, would it necessarily create institutional safeguards for migrants. But because legal protections of human rights by signatory states are unaccountable under NAFTA and CAFTA, human rights are vulnerable to direct state violations and or state tolerance of non-state actors violating human rights. While UN standards do not tolerate such a disparate application of human rights, neo-liberal states are not legally bound to protect human rights under the terms of international trade. This policy breach between politically protected international human rights standards and economic imperatives created a burgeoning gap in assuring human rights for migrants internationally.

From a human rights framework perspective, this inquiry argues that violence carried out by both state and non-state actors exist in tandem in the US- México border zone; indeed, they flourish. Of interest to us was the economic function of violence created by neo-liberal states at the US

³⁰ De la contención al desarrollo: hacia una nueva estrategia migratoria entre México y el Triángulo Norte de Centroamérica, CEPAL, Hugo E. Beteta, 28/29 Oct. 2018.

³¹ Youth Violence and Citizen Security in Central America’s Northern Triangle, Rebecca J. Williams, August 2016, USAID/BFS/ARP-Funded Project, Innovation for Agricultural Training and Education. https://www.agrilinks.org/sites/default/files/resource/files/RJWilliams_violenceFINAL.pdf

Mexico border. We then identify the origins of federal human containment policies in Arizona (and elsewhere) by examining historical antecedents.

The glaring lack of a declared international crisis at humanitarian shelters housing Central American and Mexican nationals in Agua Prieta, Nogales, Altar, Sásabe, Sonoyta, and San Luis, Sonora is due to bi-national state government involvement in and tolerance for violence as a tool for migration suppression. Corruption of state migration bodies promotes a highly profitable market for human smugglers; a market that now requires violent social control.

However, human rights frameworks alone do not shed much light on what the enabling political and economic environments that produce the violence - look like. They are incapable of answering *why or how the violence is produced* in that environment. Therefore, we will step into the dominant global political economy of neo-liberalism to answer those questions. To do that, we will first imagine the scale of the economic pipeline.

The United Nations Department of Economic and Social Affairs reported in 2020 that:

Growth in the number of international migrants has been robust over the last two decades, reaching 281 million people living outside their country of origin in 2020, up from 173 million in 2000 and 221 million in 2010. Currently, international migrants represent about 3.6 per cent of the world's population.

International Migration 2020 Highlights,
https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/international_migration_2020_highlights_ten_key_messages.pdf

In this regard, the United States of America continued to play the role of the largest immigration destination, hosting 51 million international migrants from 2000 to 2020³², but also produces the largest real Gross Domestic Product of all countries³³. In other words, the United States dominates both the flow of immigrants and of capital. It is in this broader context that we explore present human rights violations of immigrants at the US Mexico- Border.

The lack of a declared international crisis in humanitarian shelters housing Central American and Mexican nationals in Agua Prieta, Nogales, Altar, Sásabe, Sonoyta, and San Luis, Sonora is due to bi-national state government involvement in and tolerance for violence as a tool for migration suppression. Corruption of state migration bodies by smugglers promote a highly profitable market; a market that now requires violent social control.

Section I: Types and Counts of Violence

³² International Migration 2020 Highlights, UN Department of Economic and Social Affairs, January 2021, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/international_migration_2020_highlights_ten_key_messages.pdf

³³ The United States globally leads both nominal and real Gross Domestic Product indexes. The World Bank. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

In addition to Table 1 below, an appendix to this report provides a comprehensive review of the counts of violence and distinct patterns of victimization. In the appendix, the Indigenous Languages Office (ILO) analyzed the quantitative compendium published by Human Rights First covering incidents from Jan. 2019 through Dec. 31, 2021. Their data was used to produce a quantitative interpretation of incidents reported. It also helped to guide our qualitative interpretation of interviews carried out at migrant aid shelters and stations which reported incidents of violence at the US – Mexico border.

Locations where staff and or volunteers worked who were interviewed, included: two shelters in Nogales, one in Tucson, and two aid stations (one in Sasabé, Son., Mexico, and the other in Yuma, Arizona), an anonymous aid station and shelter in the Southeast Arizona border area, and an anonymous aid station in Sonoita, Sonora.

Five major findings from the combined use of border-wide *quantitative data* and Sonora/ Arizona *qualitative data* were that:

1. Under MPP and Title 42 policies, *17 types of violence* were reported *border wide* from quantitative data, while 13 types of violence were documented from Sonora. This affirms that violence was not absent in Sonora, but was prevalent during the same period under MPP and Title 42 similar to adjacent and further border locations where violence occurred.
2. The ten most frequent types of violence in descending frequency were: Expulsions (2,695), Kidnapping/Extortion (2,541), Robbery (or armed robbery) (234), Mexican Police Assault (212), Threats / Armed (mob) Threats (161), Assault /Beatings (121), Disappearance (73), Mexican Police extortion (64), rape (62), Murder (18).
3. The four types of violence not reported for Sonora were: Mexican Police assault, Armed Break Ins, murder, and sexual assault (excluding rape).
4. The combined quantitative and qualitative documentation show *acts of violence committed border wide largely targeted immigrants from Central America and Mexico*, and were not carried out in random fashion against residents in Northern Mexico.
5. A fifth finding was that these acts of violence had two main economic functions:
 1. *Economic gain* and 2. *Control of market share*.

Table 1 below illustrates a taxonomy of a qualitative comparison of types of violence by combining types of violent incidents quantitatively reported border wide by Human Rights First, and qualitatively reported by ILO for Sonoran border towns in Mexico. A proportionality of the types of violence is discernable by comparing them qualitatively. We note that a few incidents

were consolidated in an existing category. For example, one account of electrocution was counted as torture³⁴.

Table 1. Comparative Taxonomy & Frequency For Types of Violence at the US-México Border ¹				
Quantitative data		Qualitative Data		
Border Wide Violence at US – México Border reported by Human Rights First in Jan. 2022, and disaggregated by ILO.	Frequency counts	Nogales, Sonora, México	Sásabe, Sonora, México	Yuma, Sonora, México
Disappearance	73	2 Mexican women seeking asylum in separate incidents-reported disappearances.	-	1. In June or July, 2020: Salvadoran father with wife and two children, a Guatemalan father with wife and two minors , and a female cousin of a male Honduran man also disappeared, 2. Yes, I heard in Yuma about members of a Salvadoran family in late spring or early summer, 2021 who were unaccounted for, whereabouts was unknown, and they were not in DHS custody.
Unlawful “expulsion” deportation/	2,695	1. 30 expulsions. “Yes, with Venezuelans being the exception. In March – August 2021 by way of extension program.” 2. One family unit at the border from El Salvador consisting of 5 nuclear family members. 1 Cuban family of 3. A single Mexican mother and her child. A Cuban single mother and her child were taken from the street after being expelled.	1	(Interviewee worked in Yuma away from POE at San Luis, AZ.)

³⁴ One count of Mexican police “harassment” was excluded.

<p>Kidnapping (2,346) and Extortion (195)</p>	<p>2,541</p>	<p>4-6 family members, most migrants from Oaxaca are extorted, and Indigenous from Guerrero.</p> <p>---</p> <p>12: One family unit at the border from El Salvador consisting of 5 nuclear family members, a Cuban family of 3, a single Mexican mother and her child. A Cuban single mother and her child were taken from the street after being expelled.</p> <p>-</p> <p>1 woman was assaulted and kidnapped for sex trafficking.</p> <p>-</p> <p>3-4. A Salvadoran family was taken to Sonoyta where they were going to force the father into forced labor. The family escaped in August 2021.</p>	<p>6 + 1</p>	<p>A Salvadoran brother and sister in late Spring, 2021 stated it is a common occurrence in the San Luis Rio Colorado , Sonora, México area.</p>
<p>Labor Exploitation / Trafficking</p>	<p>8</p>	<p>Mexicans, Hondurans, and Guatemalans; 1 Honduran in Hermosillo, Son. Mex.</p> <p>-</p> <p>1 woman was assaulted and kidnapped for sex trafficking.</p> <p>1 Attempted: A Salvadoran family was taken to Sonoyta where they were going to force the father into forced labor. The family escaped in August 2021.</p>	<p>1</p>	<p>-</p>
<p>Criminal persecution / pursued</p>		<p>In Guerrero, Cartel members criminally persecute Mexicans from the states of Michoacán, Guanajuato, and Hidalgo.</p> <p>-</p> <p>5 members of a Mixtec family fled after the poisoning death of one parent, and the assassination of the other; they fled to Nogales.</p> <p>3. Three Mexican Indigenous family members were tracked and pursued unsuccessfully in</p>	<p>-</p>	

		Nogales by three men from Cartel.		
Shootings	16		Three shootings In the area of the Buenos Aires Wildlife Refuge, Arizona: 1. In fall, 2021, a young male from Guatemala City, In late summer., 2021. 2. A Mexican male from Durango, Mexico, 30 yrs. old, shot in left hip, and 3. A female Maya K'iche of Guatemala 18 yrs. old shot in right shoulder. # 2 and # 3 were shot with fragmenting bullets from long rifle. (source: ILO).	-
Rape	62	Many Central Americans, especially young Honduran women. - All Mexican women, mostly from Guerrero. At a Sonoyta, [Sonora] makeshift shelter rapes occurred. 1 woman was	-	In San Luis Colorado, Sonora, México, Honduran and Salvadoran migrants reported witnessing women being raped. About 20% of migrant women who come through the POE at San Luis are pregnant.

		assaulted and kidnapped for sex trafficking.		
Sexual Assault <i>(rape is counted separately)</i>	9	-	-	-
Torture (13) + (1) Electrocutation =	14	One male Mexican Indigenous member of a family was kidnapped and tortured o way to border to reunite with family.	-	-
Assault / Beatings	121	3 Indigenous Guatemalans.	1+1	Several Haitians in June (2021) presented with cuts, scrapes, abrasions and one with a cast on his right leg.
Murder	18	-	-	-
Threats / Armed (mob) Threats / 151+15	161	In transit Hondurans on the “Bestia” train threatened by arms; assailants with knives*; A Cartel member wanted for homicide pursues his ex-girlfriend ad communicated a death threat to a border shelter*, Unidentified men searching for Mex. immigrant family at a pension*, Zapotec youth eludes his captors and death threat in N. Sonora*.	2 (armed) gun & Border Patrol using K-9 physically attacked an immigrant by Sásabe, AZ, on 12-30-2021	1.Salvadorans, Hondurans, Guatemalans, and Haitians were “threatened and intimidated so badly”. 2.A pair of Salvadoran siblings in their early 20’s in the summer (2021) expressed being followed while traveling north after being threatened originally by gang members in their country, Both believed they were in jeopardy.
Robbery (or armed robbery)	234	1 Haitian in border zone. [Not at the border, but many robberies for families in route from interior Mexico for Mexicans from Guerrero, Cubans, Haitians, Venezuelans, and Central Americans.]	1 serial robber of numerous immigrants	-
Armed Break Ins	2	-	-	-
Mexican Police Harassment:	1	Police Harassment in collaboration with the Jalisco New Generation Cartel.	-	In summer, 2021 Immigrants from Salvador, Honduras, and Guatemala reported frequent police

		[not at the border but at <i>military and police check points where coordination with criminal elements result.</i> Migrants are detained if documents are not in order.]		harassment in their home countries, and apprehensiveness about the presence of a security guard dressed in blue uniform was stationed at the reception area of the medical clinic’s parking lot, but no harassment by police in Yuma was reported. [ILO notes that Mex. National police were replaced by National Guard in Mexico in 2019, the former wore blue uniforms, the later, Khaki, while local Mexican police in border towns where blue uniforms.
Mexican Police assault	212	-	-	-
Mexican Police extortion	64	Many Guatemalans, Nicaraguans, and Hondurans.	-	Yes, migrants reported past extortions with police in Mexico, and between May and August, 2021 were apprehensive about police presence at Somerton Regional hospital in Yuma , Arizona where migrants were being seen for medical conditions.
17 categories of violence reported		11/ 17	7/17	9/17

Section II. Violence as Investment Policy

Those who abjure violence can do so only because others are committing violence on their behalf.

[George Orwell, Notes on Nationalism, 1945](#)

In the exercise of the right to seek asylum in a foreign country under United Nations standards there is no legal distinction between whether individuals or families present at official land Ports of Entry (POEs) or cross an international boundary in open terrain. Conservatives in the United States justified the politicization of that difference in migrants’ physical approach to the United States border, as part a perspective that opposes immigration in general, and asylum seekers entry into the United States in open terrain, in particular. Prior to the launching of MPP and Title 42, during the Trump electoral campaign, Trump openly characterized immigrants as “criminals”

in an effort to sway public opinion against immigration. This resounded with his electorate and then became a majoritarian position.

Once in office, the Trump administrations’ immigration policy architect, Stephan Miller, then launched subsequent policies of MPP and later- Title 42. The policies have faced numerous legal challenges, but they have operationally been upheld at the border in a three-step strategy to

exclude certain nationals from Meso-America from seeking legal asylum at the US-Mexico border.

The Trump Administration first declared border entry outside of official land ports as “illegal”, while labeling as immigration through land ports of entry, as “legal.” That position assumed by policy makers would then allow the Border Patrol to manage a slower drip of asylum seekers at Southwest United States land ports of entry. They also postulated that it would discourage those who migrated solely for economic opportunity, while allowing those with a *credible fear* of actions against their life to access a Port of Entry and legitimately seek asylum.

Secondly, they then selectively blocked migrants from the countries with the highest numbers of immigrants (Mexico, Guatemala, Honduras, and El Salvador).

Thirdly, once operationally in place, and in the face of numerous court challenges, President Trump diplomatically coerced the heads of those states to sign bilateral agreements to enforce their own common borders to prevent flows of immigrants arriving to Mexico’s northern border with the United States.

Graph 1. Expunging Asylum through Border Enforcement		
<u>Metering</u>	<u>MPP1*, MPP2**</u>	<u>Title 42 Trump Executive Order:</u>
Obama operational use: Oct. 2016	Trump E.O. to start MMP1*: Jan. 2019	March, 2020
Trump E. O. starts metering Apr. 2018	Biden EO to end MPP1: June 1, 2021	
Trump admin. restarts metering June 1 2018	Litigation reinstates MPP1 August 13, 2021	Title 42 litigation starts May, 2022
	New Biden EO to end MPP1, Oct. 29, 2021. restarted Dec. 2021 ¹	
	Metering ends Nov.2021	Biden Expands Title 42 to Venezuelans, Oct. 2022
Metering litigation starts Nov. 19, 2019 ¹	MPP2** starts: Dec. 2021	
	MPP2**ends: 9/2/2022	Biden EO to end Title 42 May, 2023

Nevertheless, the highly politicized projection of “legality” and “illegality” onto border operations of the DHS was at odds with the operational reality for the Border Patrol. As ordered by the Department of Homeland Security, this legally fictitious distinction also sought to disrupt smuggling operations. But its main purpose was to repress Meso-American migrants seeking asylum at US land Ports of Entry.

Tellingly, and the subject of this report, the bilateral agreements under Trump, and their rescission under President Biden - did not erode the Cartels’ human smuggling business along the northern Mexican border with the United States.

The policy camouflage created by the overlapping policy duopoly of MPP and Title 42, was effectively a means to have Title 42 as an administratively enforceable substitute for the eventual legal rescission of MPP, a pledge made by Biden during his presidential bid³⁵. Once in office, the

Biden administration attempted to “suspend” the MPP policy (which is not a legally definable term), but then also use Stephan Miller’s Title 42 to substitute for it.

Plan B (Title 42) was used to continue the selective application of a denial of asylum rights to nationals from four select countries: Mexico, El Salvador, Guatemala, and Honduras. Its bipartisan use represents a political choice to punish displaced Meso-American immigrants for their own governments’ lax enforcement of restrictive migration border controls.

Title 42 was a policy tool used selectively as an unwarranted public health justification to target select countries. It imposed a near total blockade against four countries’ nationals while migrants from other sender states were routinely allowed in both at US Southwest Ports of Entry and in the open terrain outside said ports. Thus Title 42 was and is a bi-partisan Plan B for border enforcement designed to expunge the right to asylum for Meso-Americans. Distorting public policy to substitute for law is often a signal that private and state interests have colluded in structural public corruption. How violence was used to implement Metering, MPP and subsequently Title 42 as immigration policies - is explained below.

Migrant Protection Program: 1.0 and 2.0

In December, 2018 Trump’s Senior White House Policy Advisor, Stephan Miller, created policy ostensibly designed to disrupt migration into the United States. The Migrant Protection Program 1.0 (MPP) policy was successful in denying a reasonable opportunity for immigrants at the border from requesting asylum as defined in international law. By December 2021 in the face a wholesale denial of Meso-American migrants at ports of entry, the Biden Administration

³⁵ MPP was partially rescinded by the United States Supreme Court in late June 2022, but its final adjudication is remanded to the Texas Federal Court that first heard the case. That court must determine if ending the policy violates administrative law. Supreme Court rules Biden administration can end “remain in Mexico” policy, sending case back to a Texas court, Texas Tribune, Uriel J. García June 30, 2022, <https://www.texastribune.org/2022/06/29/supreme-court-migrant-protection-protocols-remain-mexico-biden/>

witnessed large lines of immigrants continue to amass at ports of entry. While some non-governmental actors reacted by giving humanitarian aid in Northern Mexican border towns, others engaged in predatory and violent acts against the awaiting immigrants.

MPP 1.0 was preceded by the intermittent use by Customs and Border Protection of a deterrence strategy called *metering*³⁶. Metering restricts asylum seekers to five or so a day at a single land ports of entry. The practice had begun at San Isidro, California POE around October, 2016 under the Obama Administration, dropping off greatly by March, 2017 but then re-enforced under the Trump Administration by April, 2018. By December, 2018 metering was converted into the Migrant Protection Program 1.0 (MPP). MPP forced immigrants to voluntarily return to México after a brief encounter at a US land port of entry and then made to wait in Mexico for the scheduling of an asylum interview.

Though the Biden White House administratively ended MPP 1.0 June 1, 2021, the policy became embroiled in judicial review under adjudication in the Southern California US District Court. It's cancellation was found to be unconstitutional by September 2021.³⁷ To comply, it was reimplemented by order of the Secretary of DHS issued on October 29, 2021. By August 8, 2022, the injunction for reinstatement by Federal Court in Northern District of Texas was vacated giving the Biden Administration until September 2nd, 2022 to stop MPP operations at the border.³⁸

In response to the metering tactic, a shelter operator in Nogales, Sonora, México had, for example, begun to hand out numbers for those amassing at the Port of Entry, and neither Mexican immigration nor US immigration officials regulated the evolved unofficial numbering system until accusations of unexpended numbers being bought by individuals who wanted to advance more quickly in "La Linea" (the line). Many then took refuge in shelters in Nogales, Sonora until their number appeared on a particular day. On that day they would get in line and hope to be called into the US Port of Entry. Eventually the municipal government in Nogales, Sonora, Mexico took over the administration of numbering immigrants awaiting entry to the US Port of Entry at Nogales, Sonora México. By then a combined number of awaiting asylum seekers at Arizona POEs of Agua Prieta, Nogales, and San Luis numbered 3,988. Each number could represent an entire family, so the actual number awaiting - was many times that. Border wide MPP was implemented unevenly in the Northern Mexican border towns adjacent to US Ports of Entry.

³⁶ Obama Tripled Migrant Processing at Legal Ports—Trump Halved It, David J. Bier, February 8, 2019, Cato Institute. <https://www.cato.org/blog/obama-tripled-migrant-processing-legal-ports-trump-halved-it>

³⁷ Metering and Asylum Turnbacks, March 8, 2021, American Immigration Council, <https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks>. Judge rules 'metering' of asylum seekers is unconstitutional, Clara Migoya, Arizona Republic, Sept 3, 2021, <https://www.azcentral.com/story/news/politics/border-issues/2021/09/03/judge-rules-metering-asylum-seekers-unconstitutional/5719466001/>

³⁸ Court Ordered Reimplementation of the Migrant Protection Protocols, Department of Homeland Security, <https://www.dhs.gov/archive/migrant-protection-protocols-08/08/2022>, Featured Issue: Migrant Protection Protocols (MPP), October 7, 2022, <https://www.aila.org/advo-media/issues/port-courts>, The "Migrant Protection Protocols", January 7, 2022, <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>

At select locations during its roll out, the Migrant Protection Program (MPP) began to subject all denied asylum seekers to waiting in México for months or over a year for an appointment to enter a Port of Entry and have an interview about their asylum claim - but not to have the asylum interview itself- in their first encounter. CBP only allowed some five or so individuals or heads of households per day at any single Port of Entry. Typical was the scene in Nogales, Sonora where hundreds, then thousands, and then tens of thousands of immigrants had to seek immediate refuge in the streets or shelters like migrants in other Mexican border towns. The northern Mexican border zone from Matamoros to Tijuana was converted into an antechamber of self-detention. It reduced the cost to the US for detention and deportation of migrants whom it deemed unqualified after arrest for placement in long term detention in Arizona.

Other non-governmental actors, Cartel operators, initially lost a lot of smuggling fees given the slow-motion denial of the right to asylum for tens of thousands of immigrants did not bode well for a business model based on a few days' delivery of immigrants to Ports of Entry to make an asylum claim. In order to continue to extract profits, Cartel operators reacted by unleashing violence against migrants.

The CBP tactic of metering was then rebranded as part of MPP which became the operational basis for creating a large vulnerable population at the US-Mexico border. Graph 1 illustrates the transitional period from metering to MPP 1.0. As Alba Jaramillo, an immigration attorney in Sonora, stated, *"the system that we have now with Title 42 still leaves people stuck in Mexico as the metering system does"*.³⁹

As of August, 2022, after many months, that number reached around 55,000 migrants border wide.⁴⁰ The American Immigration Council reported that only 40.4 percent of asylum seekers who expressed a fear of returning to Mexico to CBP were given the required fear-screening interview, and "roughly 7.5 percent of asylum seekers in MPP had a lawyer."⁴¹

Many migrants who applied for MPP at Nogales, Sonora were required to make their appearance for an asylum interview in El Paso, Texas, 8 hours or 370 miles away⁴². That practice was a familiar "deprivation" variation of the long-standing Border Patrol tactic of laterally transferring immigrants as deportees who enter one border area and are then deported in a faraway crossing place. The same tactic was applied to immigrants who had lawfully waited for a chance just to enter a POE and request a credible fear interview, and would then be given a date months away at a far distant and different POE. Such coercive arrangements belied the true intent of the

³⁹ Ibid, Migoyo, Arizona Republic, 9/3/2022

⁴⁰ Metering Update, August, 20, 2022, Stephanie Leutert And Caitlyn Yates, Strauss Center for International Security and Law, University of Texas, Austin. https://www.strausscenter.org/wp-content/uploads/Aug_2022_Metering.pdf

⁴¹ Op cit, American Immigration Council, January 7, 2022

⁴² The "Migrant Protection Protocols," Jan. 7, 2022, American immigration Council. <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>

policy, to displace asylum seekers. It was another thinly veiled attempt to deter immigrants from following through and to dissuade them from actually seeking asylum.

The Migrant Protection Program is actually a euphemism for forcing immigrants to remain in Mexico. It is but one of a long line of many deprivation tactics couched as border protection protocols designed to mask the operative policy of de facto asylum denial. Instead of protection, immigrants found themselves in legal limbo and often under attack. As policy however, MPP directly crossed a red line itself in terms of legality. MPP was never meant to be a permanent policy, it was a short-term investment that produced violence.

What the combined official MPP and Title 42 US program effectively did achieve was deep, prolonged, and egregious violations of human rights. As Section I of this report laid bare most victims were first forcibly expelled by United States Border Patrol under orders from the Department of Homeland Security, and then Cartel members and Mexican security forces meted out seventeen forms of common and extreme violence against migrants.

MPP blatantly violates the 1980 United States Immigration Act. It also violates international law upon which the domestic US legislation was based. The use of cynical euphemisms to describe the opposite value of a given public policy and action is a deliberate act of official deception, both in terms of the intended outcome of a public policy, and in terms of it operationally stripping international legal protections for persons subjected to its true intention.

German officials in WWII used the phrase, “*Arbeit macht frei*” (“Work Sets You Free”) in the death camp of Auschwitz. The positive right of an individual to asylum was established some sixty-six years ago - precisely because Nazi Germany committed mass acts of genocide forcing migration across European states, which then like now, denied individuals and families the right to migrate.

The comparison with Nazis may alarm some readers, but over 8,000 documented cases of violence should invoke concerted thought as to the intended and quite sinister nature of the official policies enacted under President Trump, and then extended by the Biden Administration.

Under MPP, the United States Border Patrol breached a second international law of the post war era by refusing to inform foreign consulates what immigrants were in their custody upon arrest by the Border Patrol. Only once they were already in actual deportation, were their nationals’ names provided to consular officials. This was a violation of the Consular rights section of the Vienna Accords,

Article 36 , section 1, a, and b states ⁴³:

With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State

⁴³ See the full text at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

shall have the same freedom with respect to communication with and access to consular officers of the sending State;
(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.

The Biden Administration also declared that arrests and same day forced removals of migrants for non-Mexicans to México were legally not a “deportation,” but an “expulsion”. In terms of the principle of non-refoulement under international law and the Refugee Act of 1980⁴⁴ this distinction of *expulsion versus deportation* under international law is an act of legal fiction. The legal caveat that multiple entries and multiple expulsions for migrants would generally not be penalized - produced more opportunity for violent acts to be carried out against asylum seekers by Cartel. Legitimate asylum seekers from Meso-America were effectively corralled in the anteroom of the Ports of Entry, i.e., on the streets, in the temporary camps, and in assorted non-governmental migrant shelters all along the border from Matamoros to Tijuana, México.

The Biden administration has politically managed this issue by cancelling the former Trump administrations’ bilateral agreements, and “suspending” MPP, but then greatly expanded the immigrants who are subject to the new MPP 2.0 Policy starting in December 2021⁴⁵, as it played out in a challenge in a federal district court in Texas, Customs and Border Protection then temporarily applied MPP 2.0 to nationals from all Western Hemisphere countries (excluding Mexicans) meaning it expanded beyond exclusions of nationals from Spanish speaking countries and Brazil to include Haitians and other Caribbean nationals from appearing at the border to affirmatively apply for asylum,⁴⁶ or at least that was its intent.

An appellate Judge in Texas repealed the “suspension” of MPP and declared, ironically, that it had to be a policy kept in place. As an executive order, the Biden Administration could have immediately revoked the MPP order with a new executive order. In the border zone, it was clear this was all a ruse to buy time for the Biden administration to figure out its more permanent policy. Its final revocation did not change the asylum prospect for over 95% of migrants from the four banned countries, with medical and disability cases being exceptions to the rule. In the name

⁴⁴ PUBLIC LAW 96-212—MAR. 17, 1980 amended the prior Migration and Refugee Assistance Act of 1962. See: <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>

⁴⁵ See: “Remain in Mexico,” Biden’s MPP 2.0 - A Month In, Alexandra, 01/14/2022, Quixote Center, <https://quixote.org/remain-in-mexico-bidens-mpp-2-0-a-month-in>

⁴⁶ Ibid.

of border enforcement, the Biden Administration allowed MPP to play out in a judicial process as camouflage for the violence the policy produced.

Title 42 and the death of Non-Refoulement

“ bad usage can spread by tradition and imitation even among people who should and do know better”

George Orwell, *Politics, and the English Language*, 1946.

“Outsourcing US immigration enforcement to Mexico has led to serious abuses and forced hundreds of thousands to wait in appalling conditions to seek protection,”

Tyler Mattiace, Americas
researcher at Human Rights
Watch, 6/2/2022.

When the COVID pandemic came into full force, The Trump Administration instituted Title 42 on March 20, 2020⁴⁷. Title 42 is a public health provision which authorizes the administration in regulating foreign nationals from entering the United States to avoid a public health hazard, presumably given they are not COVID vaccinated and may have COVID. The provision was clearly implemented as a cloak to allow the executive to favor entry for nationals of some nations, but not others, with no international science-based evidence contingent upon COVID testing rates nor mortality rates from sender countries presented to provide a rationale.

Given they were still the largest sending countries of immigrants, and not offering any science-based evidence, under the Biden Administration initial rescission of Trump administration’s Title 42 in April 2022, was upheld in May due to litigation. Title 42 was continued exclusively for Guatemala, Honduras, El Salvador, and Mexican nationals until October 2022 when Venezuelans were added to nationals generally blocked from entry to the US under Title 42.⁴⁸ For immigrants arriving at the northern Mexican border area the blockade had deadly public health results. The resulting wave of deaths and mayhem in the US-Mexico border zone however were not caused by COVID outbreaks - but rather by non-state actors taking advantage of a captive population without resources and without security protection from state and federal security forces of México.

⁴⁷ Title 42 was enacted on March 20, 2020 from 42 U.S.C. § 265. It was modified three times under Biden, the last time on February 2, 2021 to exempt unaccompanied minors. References: 42 U.S. Code § 265 - Suspension of entries and imports from designated places to prevent spread of communicable diseases, <https://www.law.cornell.edu/uscode/text/42/265> , A Guide to Title 42 Expulsions at the Border, American

Immigration Council. <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.

⁴⁸ Biden embraces Trump’s Title 42 with expansion to Venezuela, , Rebecca Beitsch and Rafael Bernal, Oct. 18 2022, The Hill, <https://thehill.com/latino/3693444-biden-embraces-trumps-title-42-with-expansion-to-venezuela/>

Routinely deporting a Central American back to a third country (in this case from the United States' SW border to Mexico's northern border) is illegal under international norms. That practice violates the core principle of *non-refoulement*, established in the 1954 UN Protocol for Refugees. Our interviews revealed for example, that Central Americans who crossed at Sásabe, Arizona were then routinely laterally transferred by the Border Patrol using force who then used force to expel them into Agua Prieta, Sonora, Mexico from Douglas, Arizona, against their will. They were stripped of their right to *non-refoulement*. Since the onset of the pandemic Title 42 had enabled over 1.8 million expulsions by late May, 2022.⁴⁹ Nearly half of expulsions were of the same people being re-apprehended and re-expelled back to Mexico multiple times. Half of single adults from free trade countries of Mexico, Guatemala, Honduras, and El Salvador who were expelled to Mexico under Title 42 were re-apprehended attempting to cross the border again.⁵⁰

As the Appendix of Violence in this reports points out, multinational Cartels carried out wanton violence against the amassed and refuged immigrants under this strategy of human containment in the border zone. These acts were often carried out with the collaboration of local Mexican police. In most cases, neither the Mexican National Guard nor the Mexican Army intervened. Local acts of state commission and national acts of state omission in Mexico combined to permit the Cartel a near carte blanche operational base.

Numerous prior border political strategies for “hardening the border” previously failed; whether it was to stop immigrants by wall building over a 1,000 miles replete with vitriolic message campaigns demonizing immigrants as criminals, or the deployment of new surveillance technology coupled with bankrolling a large detention infrastructure. The overarching goal of the unspoken bipartisan Trump-Biden policy of expulsion was to repress the number of immigrants attempting to apply for asylum. Nevertheless, the Biden Administration estimated some 389,000 migrants slipped past the Border Patrol between October 2020, and September 2021 border wide.⁵¹

At the Arizona border, Title 42 was applied on a highly selective basis to nationals of the four Meso-American countries at the Port of Nogales, while at the Port of San Luis, Arizona it was not applied to immigrants coming from outside of Meso-America. From October 2021 to April 2022, some 82% of 122,600 apprehensions in this sector were expelled. However, the expulsion rate, a few hours down the road, at Yuma, Arizona, was a mere 11%.⁵² The number of apprehensions in the Yuma sector actually exceeded all of those in Tucson Sector BP with 2,474 more apprehensions. This policy highly favored Venezuelans, Brazilians, Colombians, Cubans,

⁴⁹ A Guide to Title 42 Expulsions at the Border, American Immigration Council.

<https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>

⁵⁰ Ibid, American Immigration Council., now c

⁵¹ How Asylum Seekers Cross the US Border, 6/10/2022, Kirsten Luce and Eileen Sullivan, New York Times.

⁵² Border sees record number of migrant encounters as policy change nears, Danyelle Khmara Apr 24, 2022 Updated Sep 16, 2022 , https://tucson.com/news/local/border-sees-record-number-of-migrant-encounters-as-policy-change-nears/article_87ab4654-c024-11ec-81b1-7b41f0a1ba6d.html

Ecuadorians, Haitians, Ukrainians, and Indians⁵³ while expelling mostly Central Americans and Mexicans.

COVID Testing in Arizona is carried out daily by Pima County privately contracting a testing service. Testing for COVID is carried out in Tucson at Casa Alitas Welcome Center, as well as at another location the near border zone. Casual observance in late Spring, 2022 would have put the averaged COVID infection rate at or less than 2%.⁵⁴ In other words, the COVID rate was then below border states' infection rates, even before quarantining of those who tested COVID positive.

Requested extensions of Title 42 were once contemplated in Congress, but an extension was then promulgated in US Federal Court in New Orleans. Upon continuance of the policy, the administration continued to violate the principle of *non-refoulement*, and the United States and Mexico are still both in violation of United Nations 1951 Convention on Refugees and the 1967 Protocols relating to the Status of Refugees.⁵⁵

Title 42 commenced in March 2020, but the border enforcement policies of metering, MPP, and or Title 42 were operationally overlapped since 2018. All three programs forcedly shuttered migrants for months to years to reside or circulate in Northern Mexico border towns where they were increasingly preyed on and subjected to violence. Though highly contested in partisan social media and by politicians, congressional bipartisan support of DHS was a determinant in US immigration policy which violates US domestic and international law though the use of violence by state and non-state actors.

Section III: Vulnerable Social Groups

A principle test of any public policy is that beyond reaching its main goal, the policy does not produce significantly detrimental unintended consequences. ILO's observations about vulnerable social groups are based on the reporting of violence by charitable and non-profit organizations reporting to Human Rights First, Human Rights Watch, and from interviews by ILO of shelter personnel and volunteers and of immigrants in Sonora, México who experienced violence in the Northern Mexican Border cities and rural towns.

Vulnerable Social Group I: LGBTQ

Accounts from Human Rights First's December 2021 report in which LGBTQ persons were identified numbered thirty-one out of 6,276 non-duplicated cases. Suggesting a normative

⁵³ This list is based on observations by the Indigenous Languages Office for Arizona, and affirmed by NYT's reporters in the Rio Grande Valley of Texas, Luce and Sullivan, op cit., footnote 24.

⁵⁴ This is based on firsthand observations at Casa Alitas Welcome Center on a weekly basis from Spring, 2021 through mid-May, 2022 by the author.

⁵⁵ Only if the US Congress votes to amend or override the Refugee Act of 1980, can this policy change be legally enacted. A provisional legal status approved by Congress as an extension of Title 42, or by a new executive order legalizing Title 42 or a similar program, if granted, amounts to denial of the international right to asylum, even if the Refugee Act of 1980 is amended.

percentage of immigrant populations self-identifying as LGBTQ is beyond the scope of this report, however if US Census bureau⁵⁶ standards are used as a proxy, some 8% of total population could be considered to constitute this social group as a percentage of total population. If the US proportion of LGBTQ individuals is applied to countries where LGBTQ victims of violence migrated from, and if they were victims of violence at the same rate as their counterpart non-LGBTQ immigrants, then we would expect to see at a minimum, 502 LGBTQ persons affected by the seventeen types of violence reported. What was reported, 31 accounts in the table below, is 1/16th the number of persons one would expect be reported using this methodology.⁵⁷

Under MPP and Title 42, thirty-one asylum seekers of the LGBTQ social group were especially at risk of bias-based violence based on gender, gender-identity and sexual orientation. LGBTQ individuals were reported to be primarily

Transgender	14
Lesbian	2
Gay	5
LGBTQ	10
Total:	31

from Honduras, Guatemala, El Salvador, Jamaica, Mexico, and Haiti. Reported violations of human rights for this vulnerable social group were six identified as belonging to LGBTQ; two were Jamaican, one Honduran, one Haitian, one Venezuelan, and one Mexican, plus one unidentified nationality. Of the two identified as lesbian, one was Mexican, and the other did not mention a nationality or country. Of eight transgender persons, four were Honduran, two Guatemalan, one El Salvador, and one unidentified nationality. Lastly, of five gay men, two were from El Salvador, with one each from Haiti, Cuba, and Honduras.

Based on ILO’s qualitative analysis of Human Right’s First survey data, findings from our analysis demonstrates that:

1. Many LGBTQ migrants, after being blocked at the border Ports of Entry from requesting asylum, were subject to waiting in Mexico to request U.S. asylum where they experienced high levels of violence under MPP and Title 42.
2. Under Title 42, other LGBTQ individuals were expelled back into Mexico by the US Border Patrol and CBP.
3. Transgender women, among all LGBTQ, faced the highest level of violence from Cartel, Mexican police, and U.S. officials among all LGBTQ persons reporting. Among the four transgender individuals interviewed, there were a Honduran, two Guatemalans, and one Salvadorian.

⁵⁶ “According to an analysis of data in the Census Bureau’s recent Household Pulse Survey, 8% of respondents identified themselves as LGBTQ+, suggesting previous surveys undercounted the population.” We Are Here: LGBTQ+ Adult Population in United States Reaches At Least 20 Million, According to Human Rights Campaign Foundation Report, Laurel Powell, Human Rights Campaign Foundation, December 9, 2021.

⁵⁷ Notably several challenges remain. Violence against LGBTQ appears to be highly underreported. Shelters and NGO’s engaged in reporting on violence may reflect a common practice of “equal treatment” without addressing specific forms of stigma that the LGBTQ community faces when asked to report on violence. Reporting on the violations of the rights of vulnerable populations often requires distinct approaches.

4. A fourth finding was that LGBTQ asylum seekers were frequent targets of violent attacks where the most common perpetrators were Cartel members and Mexican authorities.

As state actors, Mexican authorities both continued to carry out and ignored violent attacks reported against LGBTQ asylum seekers. Interviews with migrants recount Mexican police assaulting Jamaican LGBTQ migrants, one of which was tased by a Mexican official.

Locations of the following LGBTQ rights violations were urban areas in Mexico's Northern border towns.

Six reports of violence mention Tijuana as the location where the violence occurred, two of those six mention Mexican police as perpetrators. In Tijuana violence was reported to happen by Mexican police to Jamaican and Guatemalan LGBTQ individuals. Against transgender women, Cartel violence was recorded in Nuevo Laredo, Piedras Negras, Reynosa, and at the Rio Grande / Rio Bravo River.

Forced Removal, or "expulsions" of LGBTQ immigrants by US authorities were carried out as CBP officers who expelled LGBTQ immigrants into: Nuevo Laredo and Reynosa, Tamaulipas, and in Ciudad Juarez, Chihuahua, Mexico.

One case which reveals the discriminatory impacts Title 42 took place amidst the systemic blocking of LGBTQ asylum seekers and non-LGBTQ asylum seekers from Honduras, El Salvador, Guatemala, and Mexico at the SW US border. A Gay Cuban individual was offered an exception to Title 42 to enter the United States to seek asylum in the United States, while his Salvadoran partner was told he would be expelled if he entered the United States, albeit without his Cuban partner.⁵⁸ Given Cubans have no special option for a favorable immigration status, a claim for persecution must rest on a credible fear of return. For the Salvadoran partner, and generally for Salvadoran LGBTQ persons, such fear is often palpable given its judicial system fails to identify LGBTQ murder victims as hate crime victims when they are LGBTQ identified. Though hate crimes are prohibited by legislation in El Salvador, attacks on LGBTQ are nonetheless common, and go unpunished.⁵⁹

The Biden administration's Guidance issued in December, 2021 by Department of Homeland Security to the Customs and Border Protection and USCIS, the agents who effectively handle such requests at Land Ports of Entry and for select individuals in detention, was blatantly discarded by

⁵⁸ US: LGBT Asylum Seekers in Danger at the Border, Human Rights Watch, May 31, 2022, <https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border>

⁵⁹ Justicia para personas LGBT en El Salvador requiere que se reconozca el componente de odio, Cristian González Cabrera, Human Rights Watch, 11 abril, 2020, <https://www.hrw.org/es/news/2020/04/11/justicia-para-personas-lgbt-en-el-salvador-requiere-que-se-reconozca-el-componente>

US border agents in February, 2022 upon the Gay couple's arrival, 3 months later. That Guidance⁶⁰ called for recognition of vulnerabilities for certain categories of asylum applicants:

“. . . Individuals will be presumed to be exempted from processing under MPP due to their particular vulnerabilities:

- Those with a known mental or physical health issue, including a disability or a medical condition related to pregnancy.
- Those with particular vulnerabilities given their advanced age; and
- Those at increased risk of harm in Mexico due their sexual orientation or gender identity.

Each assessment will be made on a case-by-case basis, based on the totality of the circumstances.”

This case illustrates but one example of the discriminatory DHS policy under MPP and Title 42 of denying the asylum claim from one Gay man from Central America (El Salvador) while allowing another potential claim from his Gay partner from Cuba. Both Gay men had been subjected to extortion by Mexican immigration officers on their journey. After denial of entry to the Salvadoran, they decided to stay in Mexico and later married. Nevertheless, their status as partners and the extortion by Mexican officials should have been enough for US CBP officers to consider their joint request for an asylum interview.

The practices of CBP and Border Patrol prior to the Guidance issued needs to be examined in context. The issuance of policy guidance from Washington, D.C. by DHS to CBP and USCIS creates the appearance of governance vis a vis expected operational changes at the border, however CBP agents are individually allowed discretion in interpreting such Guidance. Their non-compliance is not monitored nor is it penalized.

The bifurcated response given to two gay men in a couple of two different nationalities reflect that CBP allowed a USCIS interview – meaning they made it past the initial encounter with CBP and Border Patrol agents. Nevertheless, DHS practices continued just as described above, practices which were operational before the issuance of Guidance, demonstrating that for LGBTQ individuals little has changed since the issuance of the Biden Administration's Guidance. MPP was also used to deny entry to the United States for a Salvadoran transgender person and a Guatemalan transgender person, both of whom were subsequent victims of violence.

In January, 2021 a Salvadoran transgender woman taken off a bus to Matamoros, was subjected to sexual extortion and assault by a Mexican immigration official. A Honduran Lesbian woman in

⁶⁰ Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols, December 2, 2021, U.S. Department of Homeland Security, https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.

*Reynosa was kidnapped and then subject to torture while photographing her nudity, sending it to her sister, and extorting her sister for payments.*⁶¹

*In July 2021, under Trump administration's [by then continued under Biden] MPP policy denying entry to Guatemalans, a Guatemalan Transgender woman was robbed and beaten so bad by Mexican state police in Piedras Negras she became hospitalized and vomited blood. Afterwards, in an interview with a Mexican immigration official who told her she should report the incident, which she then did, she was subsequently deported back to Guatemala by Mexican Immigration. The application of MPP in this case illustrates the desired policy effect; wholesale denial of human rights and deportation by Mexico (instead of the United States) of a Guatemalan national who was blocked at the US Border at Nuevo Laredo, Texas while having arrived to Piedras, Negras.*⁶²

The collaboration of Mexican officials with this schema completed the US foreign policy goal but only through the use of state violence. In March of 2022, now under the Biden Administration, she returned to seek asylum again at the US border where she was robbed by machete wielding criminals, in other words this time by - non-state actors.

These narrative accounts documented by Human Rights Watch illustrate various combinations of how state and non-state acts engaged violence to ultimately enforce US and Mexican state policy goals for deterring immigrants. Other accounts detailed above were subject to MPP, Title 42 (or both) with similar results.

Gay and Lesbian identity is a recognized as part of a social group in domestic US law generally. Each asylum claim where an associated identity is affirmed by the immigrant applicant, equal rights should apply regardless of the nation they fled from. In the SCOTUS case, *Obergefell v. Hodges* (2015).⁶³ Gay and Lesbian legal rights to same sex marriage were recognized as protected under the Fourteenth Amendment's Due Process Clause, thus establishing a recognized social group.⁶⁴ LGBTQ rights were also established through immigration and federal court cases culminating in *Avendano-Hernandez v. Lynch* (2015) in the Ninth Circuit which recognized transgender rights distinct from Gay or homosexual identity.⁶⁵

⁶¹ Ibid, Human Rights Watch. May 31, 2022.

⁶² Ibid, Human Rights Watch. May 31, 2022.

⁶³ *Obergefell v. Hodges*, 14-556, 576 U.S. 644 (more) 135 S. Ct. 2584; 192 L. Ed. 2d 609; 83 U.S.L.W. 4592; 25 Fla. L. Weekly Fed. S 472; 2015 WL 2473451; 2015 U.S. LEXIS 4250; 2015 BL 4553.

⁶⁴ See: Syllabus *OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL.* CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, No. 14-556. Argued April 28, 2015—Decided June 26, 2015. https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

⁶⁵ *Avendano-Hernandez v. Lynch*, 2015, WL 515521, 9th Cir. 2015.

Out of Sight and Out of Mind

LGBTQ in Mexico

In México, on-going maltreatment and violence against LGBTQ reflect discriminatory operations which commonly override law. The gap between law and practice allows for tolerance of high levels of violence against LGBTQ as a vulnerable social group without effective protection. In their home countries where no such law exists, similar levels of violence are common. As one transgender rights research project noted, state security forces, military, and police in México, are as active in anti-LGBTQ violence as non-state Cartel members.⁶⁶ As well, the Mexican Supreme Court ordered protection for LGBTQ community members throughout Mexico in 2015, and after that date the increased visibility of LGBTQ community members in general appears to have brought more targeting of transgender women as a result.⁶⁷

While in Mexico, the law and policy environment for this social group is distinct from other vulnerable groups, but as with other vulnerable groups violence is often committed in a routine pattern: attacks by Cartel affiliates or police in public spaces of Northern Mexican border towns, expulsion or rejection by US immigration officials, subsequent abuse by Mexican immigration officials and or police who are in immediate contact with immigrants upon their physical return and in some cases, signaling about expelled migrants by Mexican officials to Cartel whom they then attempt to extort.

Barriers To LGBTQ Migrant Rights Research

Several challenges face researchers in documenting violations of LGBTQ rights in the Border zone. As with other vulnerable groups, social stigma, and repressive responses by police against LGBTQ community members who attempt to report crimes against them highly diminishes public accounts of violence carried out against LGBTQ individuals and couples.

Another question is whether attacks against LGBTQ in migration are disproportionately targeted compared to migrants generally in the migration stream. Finally, the lack of training for encouraging positive self-identification of LGBTQ in reporting on LGBTQ victims primarily by border shelters and by human rights organizations, impede a more representative sample of the extent of LGBTQ community members subjected to violence in the US- Mexico border zone.

One shelter required religious confessional acts as a condition of giving human shelter. This practice of a shelter in Juarez, Chihuahua, Mexico reproduces the discriminatory beliefs and abusive practices that reinforce gender-based violence.

⁶⁶ See page 12,18-20. Report on Human Rights Conditions of Transgender Women in Mexico, Transgender Law Center, LGBT Clinic, 2016, <http://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf>

⁶⁷ Latin America has a homophobic killings problem, Dec 30, 2013, Simon Tegel. Tucson Sentinel, https://www.tucsonsentinel.com/nationworld/report/123013_lat_am_homophobia/latin-america-has-homophobic-killings-problem/

Out of Sight and Out of Mind

Vulnerable Social Group II: Indigenous Peoples

The day MPP was announced, December 20, 2018, Claudia Patrisia Gomez Gonzalez crossed the river at Rio Bravo, Texas where she was murdered shortly thereafter by the US Border Patrol. The death of that young Mayan Mam woman would be the first of three preventable deaths within four more days in December when two Indigenous Mayan Children died preventable deaths: Jakelin Caal Maquin (Q’eqchi) and Felipe Gomez Alonso (Chuj)⁶⁸. On April 30, Juan de Leon Gutierrez (Ch’orti), and on May 13 Carlos Gregorio Hernandez (Achi) also perished in Border Patrol custody; both were 16 years old. The day after Carlos’s death, 2-year-old Wilmer Josue Ramirez (Ch'orti') also passed away from medical negligence. These deaths, their causes and the origins of Indigenous migrants who died at the US-Mexico border are illustrated below in Table 6. Indigenous Child Deaths at the US-México Border.

Over a span of six months under MPP, five children and one Indigenous youth passed away under the Border Patrol’s command and control.⁶⁹ There is no evidence that the Border Patrol attempted to speak with these Indigenous children and youth in any language - other than in Spanish.

Given that Indigenous children crossing the border were one fifth of all immigrant children, and that two non-Indigenous children’s’ deaths also occurred in that time period, Indigenous losses should have proportionally been no more than two – three deaths out of the eight. In fact, they were nearly 400% higher than non-Indigenous child deaths at the border.⁷⁰

Table no. 6. Indigenous Child Deaths at the US-México Border under MPP

MPP announced on Dec 20, 2018. MPP ended June 30, 2022.
Title 42 announced in Dec. 2018. Title 42 was on- going as of Dec. 30, 2022

Name & Age*	Date of Death	Indigenous Nation and place of origin	Observations**
1.Claudia Gómez González aged: 20 yrs.	Dec. 20, 2018.	Mam (San Juan Ostuncalco, Quetzaltenango, Guatemala)	Shot in the head at point blank range by US Border Patrol on private property in Rio Bravo, Texas. Video footage of aftermath: https://archive.org/details/GomezGonzalezKillingVideos Source: Laredo Morning Times Online LMTonline. May 15, 2020, César Rodríguez, https://www.lmtonline.com/local/article/Court-records-reveal-details-after-family-of-15272413.php

⁶⁸ Each case and the cause of death for the Indigenous youth and five Indigenous children discussed herein are detailed in Table 6 in appendix I.

⁶⁹ For their places of origin and determined cause of death see: Table 6. Indigenous Child Deaths at the US-México Border under MPP.

⁷⁰ The 20% Indigenous child migration rate is reported by Americans for Immigrant Justice. Do My Rights Matter? The Mistreatment of Unaccompanied Children in CBP Custody, Americans for Immigrant Justice, October 2020, 16-35, <https://aijustice.org/wp-content/uploads/2021/10/Do-My-Rights-Matter-The-Mistreatment-of-Unaccompanied-Children-in-CBP-Custody-110dpi.pdf>

Out of Sight and Out of Mind

<p>2. Jakelin Caal Maquin aged: 7 yrs.</p>	<p>Dec 23, 2018.</p>	<p>Q'eqchi' (San Antonio Secortez, Raxruhá, Alta Verapaz, Guatemala) <i>Extreme Poverty.</i></p>	<p>"... died from a bacterial infection known as streptococcal sepsis while in the custody of U.S. Customs and Border Protection." "The medical examiner's office in El Paso released its autopsy report on Friday showing that streptococcus bacteria was found in the girl's lungs, adrenal gland, liver, and spleen. The report says the infection led to the failure of multiple organs." Source: NPR, Shannon Van Shot, March 30, 2019, https://www.npr.org/2019/03/30/708388844/autopsy-for-7-year-old-migrant-who-died-in-u-s-custody-shows-she-died-of-sepsis, Vox, Dara Lind, Dec 18, 2018, https://www.vox.com/2018/12/18/18144434/child-died-jakelin-caal-seven-border-patrol</p>
<p>3. Felipe Gómez Alonzo aged: 8 yrs.</p>	<p>Dec 24, 2018.</p>	<p>Chuj, (Yalambojoch, Nenton, Huehuetenango, Guatemala). <i>Extreme Poverty</i></p>	<p>"The cause of death was complications of influenza B infection. The influenza virus damaged his lungs, allowing a generalized bacterial infection." Source: New Mexico Office of the Medical Investigator, publisher: Health Sciences Newsroom, https://hsc.unm.edu/news/news/statement-regarding-the-death-of-felipe-gomez-alonzo.html</p>
<p>4. Juan de León Gutiérrez aged: 16 yrs.</p>	<p>April 30, 2019.</p>	<p>Ch'orti (Tizamarte*, Camotán Chiquimula, Guatemala) <i>Drought reported</i></p>	<p>"Doctors detected an infection in his brain known as Pott's puffy tumor that could have been caused by an untreated sinus infection or head trauma. What caused Juan's infection is still unknown. Doctors operated to try to save his life." Source: Time, Anna-Catherine Brigida, https://time.com/5587817/juan-de-leon-gutierrez-guatemala-migrant/, CNN: Nicole Chavez, Michelle Mendoza and Catherine E., May 7, 2019, Shoichet https://www.cnn.com/2019/05/06/us/guatemalan-boy-federal-custody-death-family/index.html</p>
<p>5. Carlos Gregorio Hernández aged: 16 yrs.</p>	<p>May 13, 2019.</p>	<p>Achí (Cubulco, Baja Verapaz, Guatemala) <i>Dry Corridor, River disappeared, poverty.</i></p>	<p>"Died in a Texas Border Patrol station, after being diagnosed with influenza and waiting a week in holding facilities. He was the fifth Indigenous child to die on the border since December." Source: Cultural Survivor Quarterly, Katherine Hamilton, https://www.culturalsurvival.org/news/five-Indigenous-children-have-died-border-patrol-december-2018, Prensa Comunitaria, diciembre 6, 2019, https://prensacomunitaria.org/2019/12/revelan-video-del-joven-migrante-carlos-gregorio-hernandez-horas-antes-de-su-muerte/, Prensa Libre, Sergio Morales Rodas, June 1, 2020, https://www.prensalibre.com/guatemala/comunitario/casi-tres-mil-familias-buscan-adaptarse-las-condiciones-climaticas-del-corredor-seco/</p>
<p>6. Wilmer Josue Ramirez aged: 2 yrs. old</p>	<p>May 14th, 2019</p>	<p>Ch'orti, (Olopa, Chiquimula, Guatemala)</p>	<p>"He died of multiple intestinal and respiratory infections after being in the custody of Border Control." Source: The Way of Asylum, https://www.thewayofasylum.com/in-memoriam, BBC, 27 May 2019, https://www.bbc.com/news/world-latin-america-48421861</p>
<p>other sources: * International Mayan League "Rally to Protect Migrant Children" Poster⁷¹, **The Way of Asylum.</p>			

On the Mexican side of the border, a mass clandestine murder, the forced confession of a Chuj Maya speaking woman at the point of a gun, and an unaccompanied child denied to the right

⁷¹ See also: Open Letter from the International Mayan League on the First Anniversary of the Death of Jakelin Caal Maquin, December 8, 2019, <https://mayanlanguageimmigrationlawinfo.wordpress.com/2019/12/08/open-letter-from-the-international-mayan-league-on-the-first-anniversary-of-the-death-of-jakelin-caal-maquin/>

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to speak in her Indigenous language⁷² while being in Mexico awaiting transfer to a US juvenile facility are examples of human rights violations of Indigenous migrants. These examples of egregious and routine cases of violence highlight a pattern of the US government and Mexican government and non-state actors operating with impunity against the rights of Indigenous peoples.

Indigenous Migrants in Mexico

A 25-year-old Mayan woman from San Mateo Ixtatán, Huehuetenango, Guatemala in November 2014 was arrested by state police in Reynosa, Tamaulipas, Mexico and held as an accomplice to smuggling for eight years in a state penitentiary. After intervention by the UN Human Rights Commission and an Executive Order from Mexican President Andrés Manuel López Obrador, her journey from a Reynosa border stash house (where she was forced to work) and her forced incarceration - ended.

A native speaker of Chuj, she did not understand the accusations against her on the paper she was coerced to sign after being tortured. The intervention of Mexican President called on local authorities to release her after eight years' incarceration.

Her uncle stated upon her release that the biggest crime his niece committed was being born in a town where Chuj is spoken, and not having gone to school to learn Spanish. That was the crime that kept her eight years in prison.⁷³

An extraordinary intervention by a United Nations working group, the Working Group on Arbitrary Detention of the United Nations Human Rights Council, took place in 2021 when it approved decision No. 35/2021 in which they declared that Juana's deprivation of liberty contravenes the Universal Declaration of Human Rights and the International Covenant on Human Rights, Civil and Political Rights.

The arbitrary arrest and forced incarceration of this Chuj Maya migrant from Huehuetenango, Guatemala reflects the lack of federal and state level protocols in the northern Mexican Border towns where Guatemalan Indigenous have arrived to for decades.

The rather empty declarations of Mexico's Human Rights Commission in regard to the case calling for all the competent authorities in Tamaulipas to "*guarantee her freedom and establish compensation for damages they caused*" reveal Mexican border security forces, including and especially the notorious Reynosa based police, operate with apparent impunity and autonomy from Mexico's judicial system. Only international attention brought the pressure necessary to

⁷² For that account, please see the Section IV. D Accompanied Minors.

⁷³ Libre después de 8 años, indígena maya acusada de secuestro, 24 mayo, 2022, Pie de Página, <https://piedepagina.mx/libre-despues-de-8-anos-indigena-chuj-acusada-de-secuestro/>

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liberate an innocent Indigenous woman which led to the direct intervention of the offending country's top elected official, President Andrés Manuel Lopez Obrador.

Indigenous Peoples, Unseen and Unheard

Indigenous Peoples reported in the Human Rights First report ending December 31, 2020 of over 8, 000 cases of violence in the Northern México border Zone only registered three (3) cases. This reflects, not an absence of Indigenous victims of violence, rather a systemic and deeply prejudicial social barrier that leads to silence in reporting about extraordinary exploitation, language repression, false imprisonment, torture, and death for Indigenous Peoples.

Prior to the implementation of MPP and Title 42 the frequency of Indigenous peoples arriving at the Arizona /Sonora border who spoke an Indigenous language as their primary language was 20% (or one in five) according to research carried out over seven years by the Indigenous Languages Office (ILO) from 2014-2019 and substantiated for unaccompanied minors transferred to Florida under legal representation by Americans for Immigrant Justice.⁷⁴ ILO operating in cooperation with Casa Alitas migrant shelter, also recorded by August 2019, 29 Indigenous Languages spoken as primary languages in the Arizona border zone.⁷⁵

Elsewhere in the deep recesses of the immigration system, USCIS has failed to record race and language data for 300,000 asylum cases. As reported by the National Council of Indigenous in the Diaspora (CONPID) to the UN ICERD Committee (International Convention on the Elimination of All Forms of Racial Discrimination Committee):

“In a second contact for the Indigenous migrant, an Indigenous migrant asylum seeker fills out the I-589 form which asks about their language and race. According to the Indigenous persons that members of CONPID have encountered, they report that the officers identify them as if they were from the same racial and ethnic group as the others who emigrate from the country of their colonization without distinguishing between Indigenous peoples and persons and non-Indigenous persons. CBP officers do not inform them that they can self-identify. Or when they exercise their right to interpretation in proceedings as the documents are in English or Spanish and not accessible in their first language, officers explain to them ... de facto... the process of legally processing them can take much longer time if they request the use of their

⁷⁴ See for 2014-2017 language data: Gentry, Blake. "O'odham Niok? In Indigenous Languages, US "Jurisprudence" Means Nothing." *Chicanx-Latinx Law Review* 37.1 (2020): 29-64., For 2017-2019 language data See: Indigenous Language Migration along the U.S. Southwestern Border—the View from Arizona Blake Gentry, Marianne Richardson, Diego Piña Lopez, and Joseph Watkins, *Chance*, VOL. 34.3, 2021. See also; Do My Rights Matter: The Mistreatment of Unaccompanied Children in CBP Custody, Americans for Immigrant Justice, October 2020, 16-35, <https://aiijustice.org/wp-content/uploads/2021/10/Do-My-Rights-Matter-The-Mistreatment-of-Unaccompanied-Children-in-CBP-Custody-110dpi.pdf>

⁷⁵ *ibid*, Gentry et al, 2021

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primary Indigenous language. So, CBP and Border Patrol officers use the attempt to exercise their right as a form of prior racial discrimination. Also, recently 95% of a sample (n=+300,000) of I-589's completed by asylum seekers, was reported to the General Counsel of the Executive Office for Immigration Review (EOIR) of the immigration court (EOIR). USCIS officers reported the phrase “other” instead of complying with racial identification.”⁷⁶

The same practice applies to the lack of identity of their primary and Indigenous languages. The lack of transparency in publicly reporting the data required by the EOIR itself on the I-589 form demonstrates a gapping data deficiency and it contributes to the invisibility of Indigenous peoples in the second doorway to the asylum process. That is to say that the inequitable racial treatment for asylum seekers begins with the first contact of the Indigenous migrant and continues throughout the questionable legal process in the US immigration system, irrespective of Executive policy.⁷⁷

The egregious treatment of Indigenous Migrants along the migration route from Meso-América to the United States and at the US – Mexico border has been well documented prior to the Implementation of MPP and Title 42 , if not remaining outside the mainstream of human rights reporting, mainstream concern, and outside of their human rights advocacy agenda. The International Mayan League and Alianza Indígena Sin Fronteras, the Indigenous Languages Office, Comunidad Maya Pixan Ixim, and the National Council of Indigenous Peoples in the Diaspora, all United States’ based organizations, have spoken at length in public on the misidentification and the exclusion of Indigenous migrants.

Public awareness of the presence of Indigenous persons entering the United States greatly diminished under MPP and under Title 42 given the blockade against Guatemalans and Mexicans generally and against Indigenous Peoples coming from those countries specifically. As stated elsewhere in this report, Indigenous were nevertheless greatly impacted by violence at the Mexican border and experienced expulsions at a high rate. Just as before to the onset of MPP and Title 42, documenting Indigenous Identity and language was not carried out during MPP and Title 42 policy implementation by the US Border Patrol or Customs and Border Protection. This deficit has proven deadly in several cases where Indigenous migrants are victimized but the Border Patrol lacks human intelligence gathered to investigate and prosecute smugglers whose actions caused such deaths.

It is an obvious indicator that CBP intelligence officers, though mandated to report actionable intelligence to their counterparts in DEA and other DHS agencies through the Fusion Centers -

⁷⁶ Quote translated from original in Spanish by author B.G., taken from the National Council of Indigenous Peoples in the Diaspora (CONPID) From a document publicly submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th session (08 -30 August 2022), Office of the High Commissioner for Human Rights CERD Secretariat UNOG-OHCHR.

⁷⁷ See also: Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Jan 20, 2021.

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are not up to the task. It also signals loudly that protection of Indigenous peoples is not a priority for the Border Patrol or DHS.

Displacement of Indigenous Peoples in the Western Highlands of Guatemala by Cartel is ongoing. Their migration and ongoing dispossession is due to the melding of human smuggling operations with narcotics operations in the new business model of Cartel operations in the border zone. ILO recalls, anecdotally, one Indigenous immigrant fleeing in 2018 who described the use of dynamite by Cartel from Mexico which attacked farmworkers and displaced them in order to grow illicit crops in a rural Mam area of the Western Highlands being occupied. Consistent reports of Cartel operations expanding in the area continued throughout 2022.⁷⁸ Smuggling from the Chiapas, Mexico and the adjacent Guatemala Border region continues in parallel with deadly results, as the accounts below suggest.

Notably, violence carried out in Mam border towns, such as in la Mesilla, in the border Municipality of La Democracia, Guatemala are locations of an expansive Cartel Jalisco Nueva Generación (CJNG). The CJNG has also entered the Guatemalan Pacific Coast of Retalhuleu where Indigenous Mam and other internal Indigenous migrants carry out farm labor.^{79, 80}

Afghanistan or the US-Mexico Border?

The US Department of State notably issued level 4 travel warnings for its officials and US citizens alike in summer of 2022 for the US-Mexico border zone two weeks prior to their issuance of Level 4 advisories for conditions in Afghanistan.⁸¹ Most major migration routes in the northern border zone of Mexico are covered in the advisory warnings. These include the environs around and in Matamoros, Reynosa, Juarez, Nogales, and Tijuana. These are the major routes used by migrants, including Indigenous migrants.

Indigenous immigrants traveling the México's Pacific and Central Valley routes have become among the targets of recruitment in Guatemala by international smuggling rings in cooperation with Cartel along Guatemala's western border with Chiapas, Mexico. As well, in Tucson numerous Indigenous Mixtec families from Guerrero who were reluctant to openly identify themselves were able to gain exceptions to Title 42 for entry across the Arizona Border, but

⁷⁸ Guatemala Profile, 28 Feb 2021, Insight Crime, <https://insightcrime.org/guatemala-organized-crime-news/guatemala/>

⁷⁹ Carros quemados y zozobra: reportan enfrentamiento armado entre supuestos narcos en zona fronteriza con México, 12 August 2021, Edwin Pitán, La Prensa, <https://www.prensalibre.com/ciudades/huehuetenango/carros-quemados-y-zozobra-reportan-enfrentamiento-armado-entre-supuestos-narcos-en-zona-fronteriza-con-mexico/>

⁸⁰ The Jalisco Cartel's Quiet Expansion in Guatemala, 18 May, 2022, Alex Papadovassilakis, <https://insightcrime.org/news/the-jalisco-cartels-quiet-expansion-in-guatemala/>

⁸¹ See: Mexico Travel Advisory, August 17, 2022, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html#Sonora%20state>. See also: <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Afghanistan.html#/>

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without direct legal representation, many others never make it across. One such family in 2022 reported that their mother had been poisoned and their father executed by Cartel in Guerrero, México.⁸²

Arizona is historically and currently a frequent crossing area for Indigenous from Guatemala who have fled Cartel violence back home.⁸³ As Grandin and Oglesby (2019) reported, a United States Border Patrol agent, John Logan, has previously provided security training (with a State Department cover but in service of the CIA) to Guatemalan internal security forces in nefarious methods of repression; security forces who were linked to death squads and political murders in Guatemala.⁸⁴ That deadly role of United States civil and intelligence institutions which are not publicly tasked to be involved in domestic immigration policy remains as a key determinant of Indigenous migrants' trauma and the resulting social stigma they subsequently experience when interviewed by untrained Border Patrol agents at the Arizona border.

Several recent acts of violence unleashed in other border locations against Indigenous Peoples reported below have also proven deadly. The following accounts are of Indigenous and Guatemalans who were victims of violence, many of whom are only identified as Indigenous long after fading headlines announced their brutal deaths.

- On January 22nd, 2021, charred bodies of 19 people were found on a road in the Mexican municipality of Camargo, state of Tamaulipas, bordering the United States, 16 victims were Guatemalan, and all were from Comitancillo, San Marcos, Guatemala. The migrants were first met with a cascade of bullets and then their bodies were incinerated.⁸⁵, ⁸⁶ Comitancillo is a major Maya Mam population in Mountainous Western Guatemala. Mam migration from this municipality was frequently registered by the Indigenous Languages Office from 2017-2019. A Comitancillo Mayor and his family was charged with smuggling in that case.

⁸² Interview conducted by Blake Gentry in Tucson, Arizona. The family consisted of five persons.

⁸³ The Fear of No Future: Guatemalan Migrants, Dispossession and Dislocation, Linda Green, *Anthropologica*, Vol. 51, No. 2 (2009), pp. 327-344.

Linda Green, *Anthropologica*, Vol. 51, No. 2 (2009), pp. 327-344

⁸⁴ Washington Trained Guatemala's Killers for Decades. The US Border Patrol played a key role in propping up Latin American dictatorships, Greg Grandin and Elizabeth Oglesby, January 25, 2019, *The Nation*.

⁸⁵ See: Masacre en Tamaulipas: exalcalde de Comitancillo y su familia serían responsables del tráfico de 16 guatemaltecos asesinados en México, dice MP,

⁸⁶ Congreso reforma Ley de Migración y endurece penas para "coyotes" con hasta 30 años de cárcel, César Pérez Marroquín y Henry Montenegro, 1 Feb. 2022, *La Prensa Libre*.

https://www.prensalibre.com/guatemala/migrantes/congreso-reforma-ley-de-migracion-y-endurece-penas-para-coyotes-con-hasta-30-anos-de-carcel-breaking/?utm_source=modulosPL&utm_medium=linkinterno&utm_campaign=ux?utm_source=modulosPL&utm_medium=linkinterno&utm_campaign=ux,

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- On December 11, 2021, a truck illegally transporting over 100 migrants overturned leaving some 55 Guatemalan victims dead and injured. The Public Prosecutor's Office Against Illicit Trafficking of Migrants cited 320 other cases under active investigation.⁸⁷

The origins of Guatemalan victims are commonly not identified as Indigenous persons. When the frequency of Indigenous entering Arizona and other borderlands is considered we would expect, for an example, a minimum of 11 victims of the 55 were Indigenous, however, the lack of reporting Indigenous identity makes discerning if that proportion of victims, or a higher one (like 100% of the 16 victims of Comitancillo, San Marcos, Guatemala) were from an Indigenous community.

Domestically in the United States, legally recognized Native Nations recognize the maltreatment of Indigenous immigrants, and they have advocated for their rights to self-identity and to speak their languages. The National Congress of American Indians passed a resolution in Oct. 2019 entitled: Calling to Protect and Advance the Human Rights of Indigenous Peoples Migrating to the U.S. Concurrently the Tribal Council of the Cherokee Nation, supported and strengthened the NCAI resolution, stating,

Whereas, given current practices under DHS, DHHs, DOJ, and Department of State and their immigrant serving agencies: Border Patrol (BP), Customs and Border Protection... , Immigration and customs Enforcement (ICE) and the Office of Refugee Resettlement (ORR), Federal Immigration Court, and Federal Criminal Court, may be in violation of US Executive Order 13166 that calls for language assessment and the use of "primary languages", international standards supported by the U.S. in the United Nations Declaration. . . on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Civil and Political Rights (ICCPR), the International Convention of the Elimination of All Forms of Racial Discrimination (ICERD), and the Organization of American States ['] American Declaration on the Rights of Indigenous Peoples (ADRIP).

Now Therefore be it resolved, the Cherokee Nation calls on the United States government to create and implement methods to identify to identify Indigenous Peoples at the U.S. border at first contact and throughout short and long term detention, and during immigration proceedings in US immigration and criminal court, and develop Indigenous language resources for these individuals and families; specifically as called for by NCAI [National Congress of American Indians] Resolution # ABQ-19-012 which also calls upon the Department of Homeland Security (DHS) to create an Indigenous Language Advisory Commission.

⁸⁷ Tragedia en Chiapas: más de 50 fallecidos en accidente en México podrían ser guatemaltecos, dice fiscal, Douglas Cuevas, 11 De. 2021, La Prensa Libre. <https://www.prensalibre.com/guatemala/comunitario/tragedia-en-chiapas-mas-de-50-fallecidos-en-accidente-en-mexico-podrian-ser-guatemaltecos-dice-fiscal/>

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By fall of 2022, the Biden Administration refused to create an Indigenous Language Advisory Commission, despite a formal request to do so from the National Council of Indigenous Peoples in the Diaspora to the White House Task Force on the Reunification of Families.

The refusal of CBP officers to report on Indigenous Identity and language is ongoing. The Office of Civil Rights and Civil Liberties CBP reported to the main author of this report in December of 2022 that civilian clothed CBP officers had forms in place at short term detention centers in Arizona to report migrants' race and language, but officers remained untrained and they maintain their legal discretion to forego such reporting. Title 42 systematically discriminates against Indigenous Peoples who are from El Salvador, Guatemala, Honduras, or Mexico given they are denied the right to apply for asylum upon initial inspection at the border, but rather are expelled.

The current administration, like past administrations' failures to move past the Settler Colonial legacy of displacement and removal abroad, domestically resound in the border region of Arizona. The legacy of forced boarding school assimilation, Indigenous nation termination informed it's current assimilationist policies which officially designate Indigenous migrants as "Hispanics" . Settler Colonial practices are recognized by Indigenous migrants and Native Nations in the United States alike as connected in time and space in the current border zone, as discussed in the conclusion.

The pattern of arbitrary detention and non-identification of Indigenous peoples by the Mexican state documented above is not an isolated one-off incident. It also reflects similar rhetoric and practices by the US security forces in the border zone as well.

Vulnerable Social Group III: Tohono O'odham Nation

Since its inception in 2001, militarization of the Southwest US-Mexico border has adversely affected the O'odham in residence on their main reservation and their relatives living in nearby towns, Ajo, Casa Grande, Gila Bend, etc., and in the cities of Tucson, and Phoenix, Arizona, as well as in twenty O'odham Communities in the border zone of Northern Sonora, Mexico.⁸⁸ Roughly one third (10,201) of the total number of citizens of the Tohono O'odham Nation live on the main reservation.⁸⁹ Under the latest border migration policies of Migrant Protection

⁸⁸ Two additional communities were added to the 18 communities identified referenced here: San Luis Rio Colorado, and Trincheras, Indigenous Survival and Settler Colonial Dispossession on the Mexican Frontier: The Case of Cedagī Wahia and Wo'oson O'odham Indigenous Communities, Blake Gentry, Geoffrey Alan Boyce, Jose M. Garcia, Samuel N. Chambers, *Journal of Latin American Geography* 18(1), 65–93, April 2019.

⁸⁹ US census of 2010 lists 10,201 residents. Baseline of TON members varies from 28,000 to 33,000, with a dip of 5.4% in residents from 2000-2010 in 2010, likely due to the global recession in 2008. Demographic Analysis of the Tohono O'odham Nation, Using 2010 Census and 2010 American Community Survey Estimates, Arizona Rural Policy Institute, Center for Business Outreach, W.A. Franke College of Business, Northern Arizona University, p. 6. file:///C:/Users/User/Downloads/tohono_oodham_nation_0.pdf

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Protocols and Title 42 expulsions, a sustained denial of human rights for members of the Tohono O’odham nation marks reservation life for many O’odham.

The San Xavier District of the Tohono O’odham Nation (TON) was once an Akimel (river) O’odham settlement predating the main O’odham reservation. It is dissected from the main body of the Tohono O’odham Nation (TON), whose nearly 3 million acres or 4,500 square miles (estimated to be the size of Connecticut) is flanked on the east by Raytheon & Arizona’s 162nd wing fighter squadron at Davis Monthan Air Force Base, and on the west by the Barry M. Goldwater Bombing Range replete with a *mock terrorist hamlet*. Tohono O’odham, historic and steadfast allies of the United States, are now being repaid for their loyalty with a shameless disregard for O’odham human and cultural rights in contravention to international standards cited herein.

A series of DHS electronic surveillance towers were planned and have been under construction within the southern and western borders of the Tohono O’odham Nation. O’odham villages in a five-mile radius of the towers are observable through a plethora of technologies used on the towers to track immigrants. The photos herein show one four miles north of San Miguel, and the second at San Miguel - within two miles of the US- Mexico Border. Both towers are in operation.



Photo 1. DHS Surveillance tower 4 mi. north of San Miguel, Tohono O’odham Nation.
Photo: taken Sept. 2022

Occupying Armed Forces

Tribal residents who live in and around the main TON reservation, geographically the second largest reservation in the United States, effectively live in a military border zone which is occupied by a federal paramilitary force, the US Border Patrol. In southern districts of the Tohono O’odham Nation forming the international border with Sonora, Mexico, O’odham communities in Chukut- Kuk and Gu Vo districts experience the loss of respect for their governing institutions, the maintenance of their social organizations, and the control of their communities and peoples.⁹⁰

In addition, in Pisinemo District residents experience these same losses of rights due to the presence of US Border Patrol. Given that “The primary mission of the Border Patrol is to protect our Nation by reducing the likelihood that dangerous people and capabilities enter the United

90 Article XXX, subsection 2 American Declaration of the Rights of Indigenous People’s 2016

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States between the ports of entry,”⁹¹ the confrontational tactics of the Border Patrol in Sells, the Tohono O’odham Nation’s seat of government, belies their defense of “the border” which is over 25 miles south of where O’odham were killed by the Border Patrol.

For example, on June 27, 2018 in Sells District, a Border Patrol agent ran over and killed an O’odham resident who posed no threat to the vehicle driven by a Border Patrol agent - needlessly.⁹²

As well on December 7, 2011 a resident of the Tohono O’odham Nation was shot and killed near Sells, Arizona.

Sells is 26 miles north of the US-Mexico border, and the capital of the Tohono O’odham Nation where the largest concentration of O’odham live.

In addition, the National Guard as mandated by the Arizona Governor, every year for the last twenty years, camps along the 62 miles of shared border with Mexico on the Tohono O’odham Nations’ reservation, further

compounding an already saturated military presence on the main TON reservation. This violates O’odham self-determination, sovereignty, and autonomy.



Photo 2. DHS electronic surveillance tower at Multi-Disciplinary Law Enforcement Center, San Miguel, Tohono O’odham Nation, 2 mi. north of San Miguel Gate at US Mexico Border. Photo taken by Todd Miller,

⁹¹ US Customs and Border Protection, <https://www.cbp.gov/border-security/along-us-borders/overview>

⁹² Border Patrol runs over O’odham resident, <https://www.youtube.com/watch?v=qZc9gPsiAk4>, UN DRIP 2017, Article: 30 – 1,2.

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Militias, if officially unapproved by the Arizona Governor, are illegally operating in Arizona. Nevertheless, armed anti-immigrant organizations could be found straddling tribal lands, such as in Buenos Aires Wildlife Refuge reportedly “assisting” Border Patrol agents. Militias have even entered the reservation itself, such as in the District of Gu Achi.⁹³ The presence of armed militia members who are not members of the Tohono O’odham Nation pose a threat to TON tribal members, as do National Guard units entering Indigenous O’odham territory. Through an Executive Order 13175, O’odham Peoples were recognized as semi-sovereign nation, but its boundaries were not legally settled until 1955, having endured many changes to them since 1874.⁹⁴ Without official treaty status or congressional recognition of O’Odham sovereignty, TON governments are highly vulnerable to executive pressure to accept occupational forces and to not investigate violence by Border Patrol against its citizens

The federally armed Border Patrol readily restricts access for tribal members to freely reach districts and communities on their own reservation. Together, BP and National Guard are occupying armed forces in violation of United Nations Declaration on the Rights of Indigenous Peoples.⁹⁵

Border Patrol checkpoints are in place to intimidate 30,000 enrolled Tohono O’odham Nation tribal members from free travel along State Routes 85, 86, 286 & O’odham Routes 15 and 29 (highway to Kaij Mek and Santa Rosa). Rotating Border Patrol personnel assigned to rural checkpoints, who have no meaningful orientation to O’odham communities, continually harass TON residents living on the main reservation in route daily to Tucson, Phoenix, or when returning south to O’odham communities in Sonora, Mexico. Many tribal members will often cancel or delay trips in hopes of avoiding agents altogether. Tribal members’ access educational institutions off the main reservation, to access household supplies and other work-related activities O’odham mobility for routine daily travel is highly impeded. These checkpoints are in violation of United Nations Declaration of the Rights of Indigenous Peoples. Article 21,1.

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

93 Author Raymond Daukei’s January 25, 2017 interview with Tohono O’odham Nation Tribal Member Willard Anita. See also: In Plain Sight: Uncovering Border Patrol’s Relationship with Far-Right Militias at the Southern Border, Freddy Cruz, July 29, 2021, Southern Poverty Law Center, <https://www.splcenter.org/hatewatch/2021/07/29/plain-sight-uncovering-border-patrols-relationship-far-right-militias-southern-border>

94 Tohono O’Odham Nation v. U.S., No. 06-944L, 2 (Fed. Cl. Dec. 19, 2007)

95 See: Article 30.1, UN Declaration on the Rights of Indigenous Peoples, 2007.

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Various effects on O’odham life include but are not limited to delaying medical care and visiting family members, reduced commercial and economic exchanges, and impeded or delayed attendance of schools in Tucson and Phoenix.

Cultural Rights

O’odham cultural practices are negatively affected by the armed presence of federal, state, and private security forces in and around the TON in several critical geographic areas:

1. Tohono O’odham hunters cannot access game out of fear of coming in contact with armed nontribal visitants in a chance encounter on the Tohono O’odham lands.
2. Traditional healers cannot gather traditional healing staples for preparation or visits to holy landmarks in traditional O’odham territory to offer prayers, material offerings, nor even gather firewood to build fire - out of fear of living in a war zone.
3. *‘A’al Vaipia* (Quitobaquito), a natural Desert Oasis and sacred site to Hia Ched O’odham⁹⁶ and Tohono O’odham in Organ Pipe National Monument located at the US-Mexico border just west of the O’odham community *Ṣon ‘Odiag* (Sonoyta) Sonora. It is considered by O’odham as part of their traditional O’odham Territory and a spiritually significant sacred water source. This was the site of US Border Patrol’s destruction of a previously installed border wall with the use of dynamite only to replace border wall with a second wall in exactly the same place disintegrating burial sites.
4. *I’itoi’s Cave* is the setting for numerous O’odham sacred teachings. The ability of O’odham to fulfill religious practices and realize their Himdag (way of life) at this site is highly restricted by the presence of armed Border Patrol agents. These are two examples of how the very presence of non-O’odham armed forces on O’odham lands inhibit O’odham religious freedom.⁹⁷ The American Declaration of the Rights of Indigenous Peoples in Article XVI,3. calls for . . .

Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their sacred objects and relics, and to recover their human remains.

Article XX.2, calls for Rights of Association, Assembly, and Freedom of Expression and Thought,

Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For that

⁹⁶ A safe haven, a home.’ O’odham communities fight against border wall construction at Quitobaquito Springs, Alisa Reznick, AZPM, April 23, 2021, <https://news.azpm.org/safehaven/>

⁹⁷ Article XVI,3. (Indigenous Spirituality) American Declaration on the Rights of Indigenous Peoples

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purpose, they shall have free access to, and use of, such sites and areas.

Additionally, Article XXXI states:

States shall ensure the full enjoyment of civil, political, economic, social, and cultural rights by Indigenous peoples; their right to maintain their cultural and spiritual identity, religious traditions, cosmology, and values; the protection of their sacred sites and places of worship, and all the human rights contained in this Declaration.

The federal government has failed to protect sacred sites and O'odham tribal members' access to them. This has been carried out without free, prior, and informed consent in violation of UNDRIP Article 11.2.

States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.

Migrant Deaths on the Tohono O'odham Nation

Human remains of migrants on the Tohono O'odham Nation are highly concentrated in its canyons and mountain skirts, along its arroyos and in open country. The breadth and depth of the locations of remains throughout the reservation (as documented by a Geographic Information System analysis) reflects a frightening reality for Tohono O'odham. The TON is the epicenter of death for the militarized border zone, bar none. Total remains recorded on the Tohono O'odham main Reservation since 2015 as a percentage of all migrants remains found in the surrounding Pima County, is forty-nine percent.

Perhaps the most damaging are the traumatic experiences of children who go out to play in the desert on the main reservation and encounter migrant corpses, for example in Pisinemo District. O'odham children can be scarred and impacted for life. This strategy of turning the Tohono O'odham Nation into a militarized zone, resembles a war strategy which seeks to funnel migrants into a death trap, thus weaponizing O'odham lands, and the arid desert itself.

Mapping Deaths by Policy Changes

The loss of migrant lives on the Tohono O'odham Nation are documented and illustrated in tables no. 3, and 4 and maps no. 1 and 2, respectively below. After a dramatic shift in 2015 from Arizona to Texas being the most frequent land border crossing area for migrants entering

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the United States, reported migrant deaths in Pima Co., Arizona and the adjacent TON decreased by 2017, but only to rise again in 2019 and subsequently as Table 4 portrays.

Table 3. Migrant Death Counts in Pima Co. AZ and Tohono O'odham Nation 2015-2022							
Pima Co.							2022 full yr. projection
2015	2016	2017	2018	2019	2020	2021	2022
112	128	110	105	122	178	168	183.8
TON							2022 full yr. projection
2015	2016	2017	2018	2019	2020	2021	2022
52	63	40	43	50	86	92	102
TON % of Pima Co. averages							% change in 4 yr. averages
46.4	49.2	36.3	40.9	40.9	48.3	54.7	55.49

Migrant death counts rose from 122 in 2019 to a projected 183.8 in 2022, as illustrated in Table 4, with the onset of MPP in early 2019. Within Pima Co. deaths increased by 34%. On the Tohono O'odham Nation during the same period the increase

Table 4. Pre MPP v MPP & Title 42 Periods Migrant Death Counts in Pima Co., AZ, and Tohono O'odham Nation *			% Change in ave. frequency of migrant deaths
Pima Co. 4 yr. average	(2015-2018)	113.75	46.6%
Pima Co. 4 yr. average	(2019-2022)	166.75	
TON 4 yr. average	(2015-2018)	49.5	66.7%
TON 4 yr. average	(2019-2022)	82.5	
Increase in % of Deaths on TON v Balance of Pima Co.			
Pima Co. less TON	(2015-2018)	64.25	31.1%
Pima Co. less TON	(2019-2022)	84.25	
* Table calculations by Daukei, R. and Gentry, B. All data from Humane Borders for 2015-2018 (pre MPP/Title 42) and for 2019-2022 (MPP / Title 42 period thru Dec.31, 2022). Used with permission.			

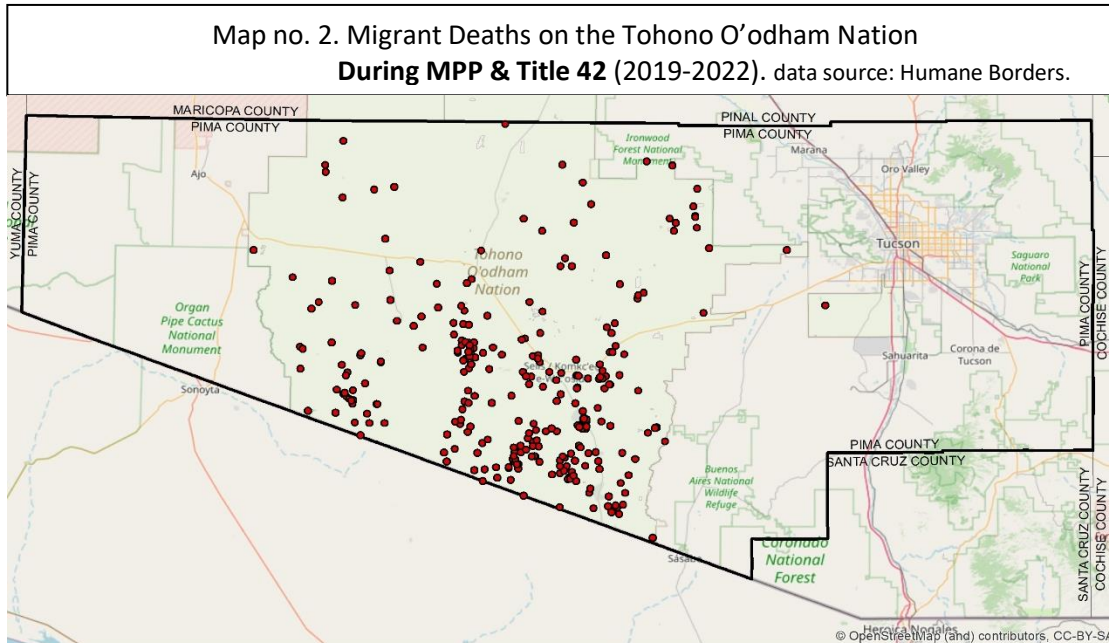
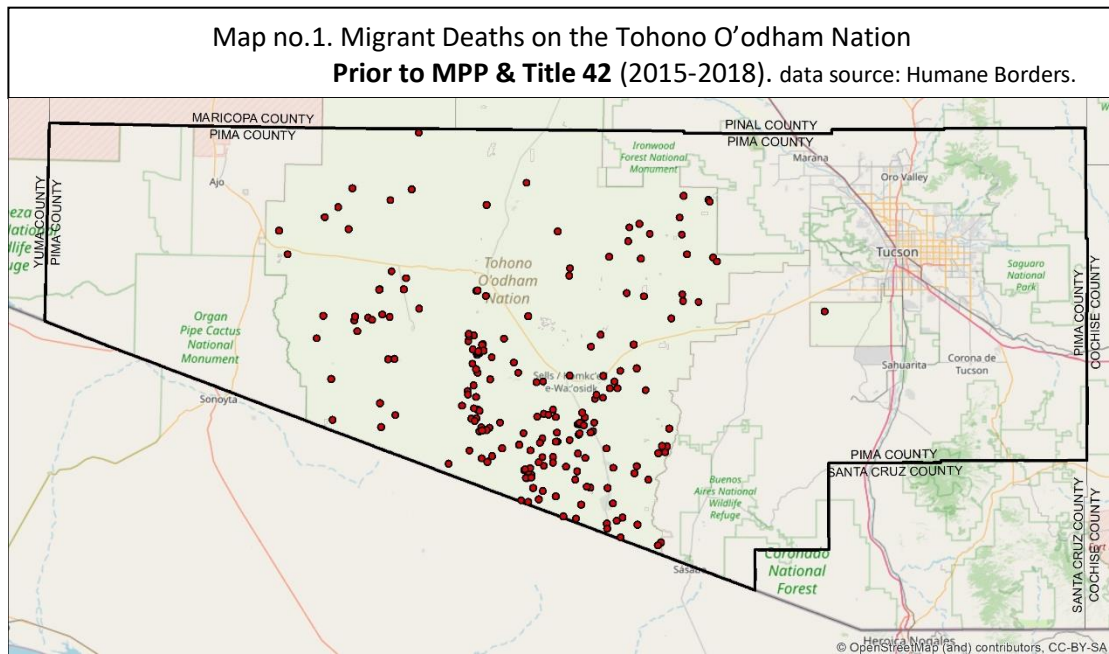
in migrant deaths was 51%. Migrant deaths within the geographical area of Pima County increased by 46.6% when comparing the pre-MPP and pre-Title 42 period (2015-2018) to MPP and Title 42 implementation (2019 to 2022). The same comparison demonstrates a 66.7% increase in migrant deaths on the Tohono O'odham Nation which is geographically surrounded by Pima County on three sides and by the international border on the south. Not only did migrant deaths increase, but they became more concentrated by 67% on the Tohono O'odham Nation.

The concentrated migrant deaths on the Tohono O'odham Nation prior to the deadly implementation of MPP and Title 42 is shown on map no.1 below. The same geography is demonstrated in map no 2. with an increase in the percentage of migrant deaths during MPP

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and Title 42 through 2022. When compared to Pima County during MPP and Title 42, Migrant deaths *increased 31.1% more* on the TON compared to Pima Co. for the 2019 through 2022 period.

In strategic terms, this means that under MPP and Title 42 to date, the Department of Homeland Security relies on the TON as a catchment area for containment of migrants and the resulting deaths that occur due to its remote mountains and extreme desert climate.



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Rights of O’odham Children for Protection Against Violence

O’odham children live throughout the eleven mostly rural districts of the Tohono O’odham Nation in a land base of over 4,500 square miles. The occupation of their lands diminishes natural resources available for their welfare. O’odham families are quite mobile, with family members often working off the reservation in large urban areas of central and Southern Arizona within two hours driving distance.

The composition of O’odham families vary considerably however from the general population of Arizona. Given extended O’odham family and kinship ties, O’odham children often live in various locations throughout the reservation over time. Just over a third live with their grandparents, and O’odham families on the reservation are five times more likely to live in multigenerational households compared to Arizona families in general.⁹⁸ Child poverty for children under 18 years is 57%, while 43% of families live in poverty. For the over five-year-old population, 38.7 % do not speak English or Spanish at home, indicating O’odham is the primary language for nearly 40% of O’odham residents.⁹⁹ Families of these children live off of a family income 35% less than the Arizona state average.¹⁰⁰

The availability of traditional wild food resources for local harvesting by O’odham families depends on seasonal cycles and physical access to such natural foods. A documented list below presents foods accessible at different times of the year with spring and summer being key growth and harvest seasons (Fazzino: 2008).¹⁰¹ Apart from the farm at San Lucy, the seven most frequently identified traditional foods by O’odham across the districts in one recorded sample were (in ranked order): 1. Squash and tortillas, 2. Saguaro cacti fruit, 3. Corn, Tepary beans, and Pinto beans, 4. Deer and rabbit, 5. Prickly Pear Cactus fruit, Cactus jam/syrup, Cholla Buds, and beans, 6. Wild spinach, and 7. Watermelon, Lima beans, and Mesquite sap. Whether it is for harvesting *wild desert foods* (Saguaro cacti fruit, Prickly Pear Cactus fruit, Cholla Buds, Wild spinach, Mesquite sap, Lima beans, Cactus jam/ syrup, beans) harvesting *wild game* (deer and rabbit), or attending to *planted cultivars* (Tepary beans, corn, pinto beans, watermelon).

⁹⁸ Demographic Analysis of the Tohono O’odham Nation, Using 2010 Census and 2010 American Community Survey Estimates, Arizona Rural Policy Institute, Center for Business Outreach, W.A. Franke College of Business, Northern Arizona University, table 10. p 26, 27. file:///C:/Users/User/Downloads/tohono_oodham_nation_0.pdf

⁹⁹ Demographic Analysis of the Tohono O’odham Nation, Using 2010 Census and 2010 American Community Survey Estimates, Arizona Rural Policy Institute, Center for Business Outreach, W.A. Franke College of Business, Northern Arizona University, p. 63. file:///C:/Users/User/Downloads/tohono_oodham_nation_0.pdf

¹⁰⁰ Ibid. table 14, p. 32.

¹⁰¹ Traditional foods identified in a reservation wide study were: : “tepariy beans (bawĩ), O’odham squash (ha:l), O’odham corn (huñ), O’odham watermelon (milon), O’odham sugarcane (ka:no), O’odham melons (ke:li ba:so), garbanzo beans (kalwas), O’odham spinach (‘i:wagi), lentils (lañji), O’odham peas (wihol), O’odham pink beans (s-wegi mu:n)”, Fazzino, David V. Traditional Food Security: Tohono O’odham Traditional Foods in Transition. Diss. University of Florida, 2008., p. 110, <https://ufdc.ufl.edu/UFE0021669/00001/images/0>

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The armed presence of Border Patrol, the omnipresent surveillance towers, and human remains all negatively affect the families of children attempting to sustain them with tribal traditions rooted in desert land uses. Without natural food harvesting and processing, reliance on commercial foods is harmful to the physiology of O'odham children.

The psycho-social development of O'odham children is also being damaged as they are witnesses to violent acts, made to accept life in a militarized zone, as well as see physical damage caused by the Border Patrol to O'odham lands in order to sustain border militarization. No other jurisdiction in the United States, Indigenous or not, is exposed to such concentrated forms of ongoing violence to local populations. Prominent international human rights organizations have largely failed to report these effects.¹⁰²

Witnessing the remains of immigrants left on tribal lands is a particularly violent and traumatizing experience for children. It is akin to low intensity warfare where recurrent death and violent environments retraumatize children over time.

When considered as a deliberate federal policy, and not as an accident, border militarization it is a violation of the UN Declaration of the Rights of Indigenous Peoples, as Article 22.2 states:

States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Neither the Federal government nor the governor of the state of Arizona have protected O'odham children and adults from exposure to migrant deaths. Indeed, they have systemically allowed them - to increase.

Conclusion: MPP and Title 42 Impacts of the Tohono O'odham Nation

Given the armed occupation by US Border Patrol of Traditional O'odham territory and of the legally mandated boundaries of the Tohono O'odham Nation, the rights of its peoples have been greatly circumscribed. The Nation opposed wall building on its southern border, a wall that would literally cut them off from relatives who live in the immediate border areas of Sonora, México.¹⁰³

Enforcement of Title 42 expulsions and Migrant Protection Protocols (MPP) by the US Border Patrol continues to violate rights of the members of the Tohono O'odham Nation to normal

¹⁰² Human Rights Watch has not investigated CBP presence or its impacts on the TON. Amnesty International last investigated border policy impacts on the TON in 2012, eleven years ago.

¹⁰³ Resolution Of The Tohono O'odham Legislative Council, Border Security and Immigration Enforcement on the Tohono O'odham Nation, Resolution No.1Z-053, 7 and 8 February 2017. <http://www.tonation-nsn.gov/wp-content/uploads/2017/02/17-053-Border-Security-and-Immigration-Enforcement-on-the-Tohono-Oodham-Nation.pdf>

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egress and ingress across the nation's boundaries. It restricts their mobility throughout their main reservation. It greatly curtails their traditional hunting areas, areas where tribal members gather plant food and medicine, where they practice their spiritual beliefs at well-known sacred sites, on both sides of the border.

Neither the US government nor the Mexican federal government have protected O'odham religious sites at Quito Vac Quito and at Bab Wuj (Baboquivari) in Arizona, or at Vac and at four oasis in the salt marches located in two biospheres of Sonora, Mexico. It has greatly diminished the security of O'odham communities, and their access to the greater use of traditional O'odham territory. Lastly, the border design funnels migrants into the Tohono O'odham Nation, cruelly subjecting their children and O'odham families to the constant and traumatizing presence of migrants' human remains.

The legacy of burial sites at former boarding schools now being investigated by the US Department of the Interior elsewhere mirrors the historical exposure of Indigenous children to what no other children in the United States are exposed to currently. O'odham children are witnesses to many migrant deaths, living in poverty and in a traumatized landscape they are unable to escape. They will bear the horrendous cost of a violent border policy for a long time; a border policy that fails to deter migration, but most efficiently - increases death.

The period of prior active federal military involvement in Indian Territories was discontinued in the interior United States after the late 1880's in the Southwest. But for the O'odham since 2003, nineteen years of border militarization now reflects the reappearance of a wanton federal and state disdain for them as Indigenous Peoples. The officially sanctioned and ongoing brutalization of their homeland - is one indication that successive US federal authorities are engaged in a process of para-military occupation, and are therefore using the strategy of low intensity warfare on the southern US Border, in the name of national security.

Vulnerable Social Group IV: Unaccompanied Minors

In November, 2021, A 15-year-old Ixil Mayan girl, Rosalia*, fled the Guatemalan Highlands after girlfriends of hers had been raped and then warned her - she was next. After arriving in Altar, Sonora, Mexico one hour south of the US border at Arizona, she and group of nineteen other immigrants were kidnapped by a rival gang and taken to Nogales, Sonora, next to the border. She and others subsequently escaped their captors in Nogales, Sonora but she was then arrested by local police. Prior to her arrest, the Guatemalan Consulate in Tijuana had been alerted about the missing minor by her mother, and they reported her daughter to Mexican immigration. She was transferred to Mexico's child welfare agency who sent her to a shelter in Hermosillo, Sonora for over three months. In the shelter she was forbidden to speak with her mother who called her from the United States, in their native language of Ixil. After

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being held in México for several months, she was transferred to US custody and spent two more months in detention.

(Indigenous Languages Office account used with permission of parent, *name changed to protect a minor.)

Mexico, in its Sonoran border zone, has not implemented standards that recognize the right for Indigenous children to speak their Indigenous language. This right is clearly stated in Article 30 of the UN Convention of The Child, to which Mexico is a signatory state.

In those States in which ethnic, religious, or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Other unaccompanied minors experienced distinct and damaging forms of trauma on their migration journeys, and at the border zone. But they also encountered violent acts carried out against them which are commonly also carried out against adults.

Florence Project has . . . assisted several Mexican teenagers who had been assaulted, beaten, and robbed in Nogales [Sonora] after CBP [Customs and Border Protection] officers turned them away from the [Nogales, Arizona] port of entry.

Human Rights First, 11/8/2021

Two of the five immigrant girls who appeared alone near the southern border of the United States last Sunday, [had] been kidnapped in Mexico along with their mother and had to pay thousands of dollars to be released before being able to cross into the United States... locked in a room without clothes and whipped them... the ransom cost around 3,000 dollars and, once free, Daisy decided to cross into the US, but she reported that at the border they found policemen who, at gunpoint, they took all the money [s]he was carrying.

Human Rights First, 5/12/2021 ¹⁰⁴

One significant and positive change the Biden administration made to Trump administration immigration policies was to accept unaccompanied minors (UAC) into the United States. By improving the shelter infrastructure for their detention and vetted release to families and state foster care systems, UACs were accepted within the previously hastily organized unaccompanied migrant shelter system created under the Obama Administration. However, for those Indigenous children who cannot speak out about their identity or speak in their language in the over 200 shelters for unaccompanied minors nationwide, a pervading silence

¹⁰⁴ Translated by ILO from Spanish language original text.

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echoes a disquieting destruction of Indigenous cultures once experienced by Native America over a span of sixty years. One report from Al Jazeera¹⁰⁵, is quite shocking. Despite the laudable and necessary reduction of time families wait for reunification clearance from four months to one month on average,

- AP reports that around half of all detained migrant children in the US sleep in shelters with more than 1,000 other children
- Five shelters held over 1,000 children
- In March 2021, a large Houston facility was suddenly shuttered after it became known that children were given plastic bags instead of restroom access.
- Shelters include some dozen unlicensed emergency facilities located on “military installations, stadiums and convention centres” which skirt state regulations and are exempt from traditional legal oversight
- “HHS could not cite any legally enforceable care standards for children housed in emergency sites, nor any standards for monitoring”.

At play in the provision of shelter for migrant children in general are lax standards and the use by successive administrations of privatized providers. Private organizations are incentivized by the profits their organizations reap from government contracts. The pattern of unprepared and lightly monitored services for migrant children follow the inconvenient burden successive administrations have under domestic and international law; laws that are weakly applied and that require more expenditures and political capital than successive administrations have been willing to spend.

When considered from a policy perspective, the recurrence of ad hoc and abusive conditions of detention for children is a product of neo-liberal governance where the efficiency of outsourcing this legal responsibility is accomplished through contracting and when shelters are exposed as dangerous or abusive, contractors are then blamed, but not the federal government; particularly - not the Department of Health and Human Services nor the Office of Refugees and Resettlement.

The true cost to the displacement and dispossession of families and their children is partially hidden here, in the receiver country, which controls the labor pipeline initiated by prioritizing trade with economic elites instead of longer-term investment in pro-human development strategies to diminish the need for migration in the first place.

Little has changed in the arch of causation for the suffering of unaccompanied migrant children since the Obama administration, as author Diego Cupolo¹⁰⁶ wrote in 2014,

¹⁰⁵ Migrant children in US living in mass shelters, little oversight, 11 May, 2021, Al Jazeera, <https://www.aljazeera.com/news/2021/5/11/migrant-children-in-us-living-in-mass-shelters-little-oversight>

¹⁰⁶ Op cit, Cupolo. 2014.

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As Central American children continue streaming into detention camps along the US border, government officials in Washington are confronted with the consequences of their own decisions. By supporting corrupt governments and unsustainable economic models, the U.S. has heeled create conditions so horrendous the United Nations claimed that most child migrants qualify for refugee status and should not be sent back home.

In 2022, while unaccompanied children are no longer forcibly separated, such families should not be forced to send their children to the border unaccompanied in the first place, but the pipeline for economic displacement and dispossession has not changed in their communities of origin.

Forced Separation of Migrant Families

The Trump Administration's egregious policy of the forced separation of migrant children from their migrant parents mirrored in several crucial aspects the historical forced separation of Indigenous children from their families carried out over fifteen decades in the Indian Boarding School program of the United States. Just like the Indigenous children of yesteryear forced into far off boarding schools, immigrant childhood traumatization plays out over the life of an Indigenous person. IT does not end after leaving detention. It has a crucial effect on their long-term well-being, general functionality, and may be the cause of lifelong medical and psychological problems.¹⁰⁷ That legacy is one of forced intergenerational trauma, which is further addressed, on a larger scale, in our conclusion.

Despite the cruelty and racism of Trumps' forced separation of families, The Biden Administration's Task Force on Reunification of Families and the Department of Justice failed to open investigations against the criminal actions of DHS under President Trump who launched the forced separation of children and their parents. The Biden White House Task Force's use of non-disclosure agreements blocked a public reckoning of previous US government violations of international standards in that process for organizations involved in the Biden Task Force.

This is not just a political consideration for an incoming administration, it is rather first and foremost an international abrogation of the rights of children in the United States border zone. The United States is the only country that refuses to affirm the United Nation's Convention on

¹⁰⁷ Jud, A., Pfeiffer, E., & Jarczok, M. (2020). Epidemiology of violence against children in migration: a systematic literature review. *Child Abuse & Neglect*, 108, 104634.

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the Rights of the Child, thirty-three years after its passage. But this does not exempt it from being subject to *jus cogens* under international law¹⁰⁸. Article 9 of the convention¹⁰⁹ reads,

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.

In the absence of *jus cogens*, the policy promoted acts of systemic racial discrimination against Indigenous families, which clearly took place. Furthermore, the refusal of the Biden Administration to request the Department of Justice determine the criminality of the policy under the previous administration and the perpetrators sets the stage for possible future violations given no international legal precedent has been accepted nor domestic remedy - established. The severest impact took place against Indigenous children.

There was no published accounting of the racial and ethnic identification of forcibly separated Indigenous children nor an accounting of the denial Indigenous children to speak their primary Indigenous languages while in forced captivity, nor in the process of reunification. But internally, the Task Force identified undisclosed Indigenous families as victims.¹¹⁰

Despite the Biden Task Force's reunification effort of Indigenous children with their families, its culturally and linguistically impervious staff continued to communicate only in Spanish to separated Indigenous parents who were sent e-mails with links to an online application form in a language they do not adequately speak nor read.

Given they don't read in English or Spanish "on-line", separated Indigenous families members who speak primarily Indigenous languages began contacting volunteers in Washington D.C. and

¹⁰⁸Jus Cogens, Anne Lagerwall, Oxford Bibliographies, 29 May 2015, <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>, see also, Tomuschat, Christian, and Jean-Marc Thouvenin, eds. The Fundamental Rules of the International Legal Order. Leiden, The Netherlands: Martinus Nijhoff, 2006.
DOI: 10.1163/ej.9789004149816.i-472

¹⁰⁹ Convention on the Rights of the Child, 20 November, 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹¹⁰ This information was shared with members of CONPID, including the main author by a participant in the Task Force.

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in Los Angeles seeking voluntary support from Indigenous immigrant organizations without any guidance or support from the Biden Administration. They were unable to process requests for reunification forms *in order to get their children back*.

*A predictable and evasive attempt to placate Indigenous representatives participating in Biden's White House Task Force on Reunification of Families replaced the willful racism and expulsions of forcedly separated families under Trump. Both approaches demonstrate an on-going bipartisan impunity that reigns in border region and in the interior to wholesale denial of the internationally recognized human rights of Indigenous Peoples to self-identity and to speak their Indigenous languages.*¹¹¹

The Biden administration's stated intentions did not produce appreciable outcomes for the Indigenous victims of forced separation. The reunification process is now subject to adjudication given the Biden administration pulled out of negotiations in the lawsuit of Ms. L vs. ICE.¹¹² By omission, it allowed the previous administration to not only commit acts of genocide without a legal investigation by the Department of Justice, but it foreclosed prosecution by covering up information through non-disclosure agreements. While politically expedient, the abandonment of that proposed settlement¹¹³ belies the actions taken at the opening of the Biden Administration to address socially vulnerable groups in migration.

Tolerance of criminal behavior against children by the Executive Branch sets a precedent that may yet encourage another administration or agency of DHS to reinstate a forced separation policy and not undergo any legal (or political) consequences for the policies that the US government.

As one of many international guarantors, the United States agreed to the Genocide Convention, a convention that was passed to *never again* allow acts of genocide to take place. Original acts committed by the Trump Administration under international law - rise to the level of an act of genocide. As the National Council of Indigenous Peoples in the Diaspora communicated to the

¹¹¹ Based on observations of Blake Gentry, Dir. of the Indigenous Languages Office, and contributor to the National Council of Indigenous Peoples in the Diaspora's (CONPID) two written responses to the White House Task Force on the Reunification of Children, the first sent to the Task Force on June 8, 2021 and entitled, Recomendaciones de los Pueblos Indígenas a el Grupo de Trabajo de la Agencia para la Reunificación de Familias Específicamente sobre los Derechos de los Niños Indígenas separados entre el 20 de enero de 2017 y el 20 de enero de 2021, was followed by the second, Posición Política y Propuesta sobre Asistencia Técnica Para Niños y Familias Separadas, 23 de agosto de 2021, CONPID.

¹¹² See: <https://www.aclu.org/cases/ms-l-v-ice>

¹¹³ The Settlement consolidated three separate suits (discounting appeals). See: Notice Of Proposed Settlement And Settlement Election Form, https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2018_Oct_Asylum%20Settlement%20-%20Complete%20Notice%20Packet%2010.17.18.pdf

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White House Task Force on Reunification, the Convention on the Prevention and Punishment of the Crime of Genocide states:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II. e. states:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

(e) Forcibly transferring children of the group to another group.

The lack of prosecution of the violators of the convention means that no one was held responsible, but the facts of their forced separation still remain, nonetheless. Indigenous children, their families, their communities, and their Indigenous nations await the enactment of the meaning of Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide, cited below.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

Unless or until their needs are compensated and they spend the rest of their lives overcoming these crimes, the families will bear the indelible scars of those acts.

Conclusion: Vulnerable Social Groups

Guidance (from the Interior) and Legacy Practice (at the Border)

At the US border, erasure of Indigenous identity by US officials also has its consequences. By January 2021, the Biden Administration issued new guidance seeking equity for disabled, LGBTQ, and Indigenous language speakers, to address their particular needs. It also created an executive order for racial equity with a timetable and process to establish equal access to government services through the office of Budget and Management.¹¹⁴ This guidance echoes previous administration's stated but failed efforts to apply Executive Order 13166 to conditions

¹¹⁴ Executive Order 13985— on Advancing Racial Equity and Support Underserved Communities Through the Federal Government, Jan. 20, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

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for migrants lawfully present in the United States¹¹⁵, but it ignores them for apprehended migrants under CBP custody.

Once again sidestepping the responsible agencies which carried out forced separation at the border, the Customs and Border Protection and Border Patrol, this administration attempts to direct access to justice from Washington D.C. when the critical malfeasance for migrants occurs under an agency which is given *carte blanche* discretion through individual officers at the border to continue to violate human rights

Given the border was still closed to most Indigenous Peoples, it has made minimal difference in the actual provision of rights for Indigenous languages speakers seeking to apply for asylum, but who were for example, routinely “expelled” under Title 42 at Douglas, Arizona after their arrest in Sásabe, Arizona. Border human rights advocates commonly observe that the issuance of guidance can become a hollow political exercise which does not change agencies’ behavior.

A border perspective regarding this series of actions is that the legacy practice of Border Patrol agents is what overwhelmingly determines the treatment of vulnerable social groups; the disabled, the LGBTQ community, and Indigenous Peoples. If human rights are to be upheld in the border zone, inflammatory, propagandistic, and anti-immigrant public rhetoric requires public denunciation; while that is a political task, the operational task of protecting human rights will only change with institutional reform and a discharge of agents who disregard human rights and objectify immigrants in the myriad of ways their public record has demonstrated, takes place.

To date, there is no will in the Executive office to discharge officers who repeatedly violate human rights standards. Every US Executive has the legal task of enforcing the law, and their personnel are far from understanding or operating in the border zone.

Indigenous advocacy for Indigenous rights based on Executive Order 13166 and international Conventions (UN DRIP 2016, ILO 169 of 1989, OAS’s ADRIP 2016) perhaps led the Biden administration to recognize the need for Guidance. The Office of Civil Rights and Civil Liberties has publicly disclosed it will implement Executive Order 13166. However, there is fresh evidence that the Border Patrol and USCIS is ignoring the Guidance issued by DHS as reported to the UN-ICERD Committee. This underlines the long-term issue of a lack of transparency in public reporting on outcomes from all administrations on the lack of Border Patrol compliance.

It appears in Southern Arizona that the Border Patrol’s refusal to follow compliance is part of its culture of periodic repression of human rights.¹¹⁶ The non-disclosure requirements of the

¹¹⁵ See: Comments to the Office of Civil Rights in Response to Policy Guidance on Prohibition Against National Origin Discrimination As It Affects Persons with Limited English Proficiency (“LEP Guidance”), ACLU, undated. <https://www.aclu.org/other/comments-office-civil-rights-response-policy-guidance-prohibition-against-national-origin>

¹¹⁶ For conditions in the 2014 -2015 era, see: Deprivation, not Deterrence, A report on human rights violations of immigrants held in the Department of Homeland Security’s short term detention facilities in

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Biden Administration's task force is a cultural behavior borrowed from corporate America. It is a tool used to publicly manage unfavorable facts. Combined, those practices perpetuate the non-accountability of government operations in the border zone, and they suppress free speech. Together they are a form of legalized impunity, impunity which impedes the full defense of human rights to which immigrants, like all citizens of the world, are warranted.

By February 2021, the Biden Administration issued an Executive Order to establish a task force to address the separated families created by actions of the previous Trump administration.¹¹⁷ The Task Force eschewed a commission to address Indigenous migrants grievances, and it allowed the separation of families under the Trump Administration to stand without pursuing criminal charges under the Genocide Convention. A prior legal precedent took place in Arizona territory which originates from an historically analogous event, the Indigenous Boarding School Experience of Native Americans in Arizona (and elsewhere in the United States). The totality of the Indigenous Boarding School Experience which is only now being addressed in a very preliminary investigation - *150 years later*.

The absolute failure of conservative and more liberal administrations in both the United States and in Mexico to mandate training and enforcement of human rights for unaccompanied minors, LGBTQ, Indigenous Peoples, for state security forces goes to the very core of the Universal Declaration of Human Rights. While the United States does not adhere to international standards for the rights of children or those of Indigenous peoples, while stating publicly it does for migrants identified as LGBTQ + , ongoing practices are an anathema to similar outdated discriminatory claims based on past social norms now rejected by the US Supreme Court for LGBTQ people.

Also, the deeply disturbing inhumane and accumulative impacts of armed occupation of the Tohono O'odham Nation by the federal government are part of the planned border architecture of migration suppression. That occupation is often justified by liberal administrations- all the while gender-based and racially prejudicial popular conservative beliefs in public discourse - pervade the judicial and security systems in Mexico and the United States against migrants.

Ongoing violence against vulnerable social groups, LGBTQ, Indigenous, unaccompanied minors, and the Tohono O'odham Nation is now commonplace. To break the silence about the practices that reproduce a wide array of human rights violations, international investigations by international rights organizations are needed. Otherwise, the wanton and brutal treatment of immigrants becomes an acceptable national culture of violence against migrants.

Southern Arizona, GUAMAP, 2014, and see In Hostile Terrain, Amnesty International, 2012, https://www.amnestyusa.org/wp-content/uploads/2017/04/ai_inhostileterrain_032312_singles.pdf

¹¹⁷ Executive Order on the Establishment of Interagency Task Force on the Reunification of Families February 02, 2021, February 02, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-the-establishment-of-interagency-task-force-on-the-reunification-of-families/>

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Section IV: The Business of Human Smuggling

An extensive appendix to this report provides counts and narratives of violence comprising human rights violations. Those sordid facts almost speak for themselves. This report however will not report only on human rights violations against immigrants, rather, it closely examines human rights violations in light of the little discussed political economy where violations of human rights take place.

Our theoretical views of border violence, discussed in the conclusion, are informed by histories of Indigenous Peoples and other people contained in Arizona, and are based on an acute awareness of Indigenous Peoples currently in migration at the Arizona border. They are considered in our interpretation of the large and sustained investment in border militarization and the use of violence in the border zone by State and non-state actors.

The most salient aspects of the recorded human rights violations were the increase of violence, and wholesale denial of access to asylum at the US SW border under MPP and Title 42. The economic function of that violence within the multi-billion-dollar US-Mexico bi-national border economy bears examination.

In response to acts of terror on US soil on September 11, 2001, in 2003 the United States created a supra-agency, the Department of Homeland Security.¹¹⁸ That act inexorably transformed the US-Mexico border economy with an investment of \$333 billion (2003-2021).¹¹⁹ President Trump pulled an additional 13.8 billion for border wall construction from DEA and DOD budgets by May 2019. Funds used initially, however, from the 2003 funding included an expansion of commercial truck lanes, beefing up security at land ports of entry, and introduction of more military surveillance technology. On average, DHS outlays were 19.2 billion annualized from 2003 to 2021.

Prior to 2001, the economies of towns and cities on both sides of the US – Mexico border co-existed with international trade. Before the signing of NAFTA in 1993, US exports to Mexico clocked in at 46.5 billion¹²⁰. By 2015, 256.6 billion of US goods were exported across the border to Mexico.¹²¹ Total trade in goods exported to Mexico by the United States (excluding services) from 2003-2021 was 3.6 trillion¹²² or if annualized, \$ 191.7 billion yearly. In other words, for an annual average of 19.2 billion expense, multinational companies made over 10-fold gross profit on US security outlays.

¹¹⁸ The Homeland Security Act of 2002 created the Department of Homeland Security.

¹¹⁹ The Cost of Immigration Enforcement and Border Security, Jan 20, 2021, American Immigration Council, <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security>

¹²⁰ Executive Office of the President of the United States, NAFTA: A Decade of Success, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/archives/2004/july/nafta-decade-success>

¹²¹ Office of the US Trade Representative, <https://ustr.gov/countries-regions/americas/mexico>

¹²² US Census, Trade in Goods with Mexico, <https://www.census.gov/foreign-trade/balance/c2010.html>

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This figure excludes the billions of profits of illegal narcotics trade that are also mostly using the same US Southwest land ports of entry.

By 2006, local border economies were politically and economically overrun by federal authority and intervention. New federal powers enacted restrictions on civil liberties in the 100-mile border zone, and they highly truncated local border trade. It highly disrupted deeply embedded cross-border socio-economic networks and long-standing social ties that remained 150 years after the imposition of a border delineated by the binational Gadsden Purchase. Contextualized violence which constitutes human rights violations is discussed in light of this transformative act.

What was once a drug trade monitored by dispersed federal agents throughout the borderlands grew into a multinational business model operating with modern technology driven by militarized state security measures and an unprecedented federal economic intervention. Acts of violence, once portrayed as aberrations outside the security structure of US federal agents, and under control by agents of the DEA, even now are treated as an apparition of “lawlessness” of criminal organizations, not as a highly successful outcome produced by a neo-liberal political economy despite unprecedented budgets for more border militarization. The roots of border criminality are most often claimed as belonging to organized crime.

Nevertheless, states of the Meso-American region historically used violence during colonization. Under modernization they have inconsistently promoted the use of violence by state security forces, but they also tolerate violence by non-state militias and paramilitary groups alike. Historically however, the original and primary targets of non-state militias, were Indigenous peoples in the Americas. As historian Roxanne Dunbar Ortiz (2014)¹²³ has imparted, on the Eastern US seaboard, militias that once attacked Indigenous Nations were subsequently turned by colonists into salve patrols, and then they became state militias to control the largest captive labor force in US history - Western Africans sold by English slave traders into the forced labor plantation system.¹²⁴ Once American expansion crossed the Mississippi River and then moved west, a federal army had replaced colonial era militias.

Currently state paramilitary forces and private militias in the militarized border are more adaptative to low intensity conflict than battalions of heavily armed militaries. What is confusing is the co-existence of official paramilitary forces (CBP) and international criminal organizations in the same border zone; a place where apparent enemies co-exist with little direct military confrontation. The contradiction of this confluence lies in the very nature of the border zone’s function in the neo-liberal model.

¹²³ Dunbar-Ortiz, Roxanne. *Loaded: A disarming history of the Second Amendment*. City Lights Books, 2018, pages 36,38,63.

¹²⁴ *Ibid.*

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The criminalization of Mexico's free trade area in the northern Mexican Border zone is now a common observance. It originates from the weakening of the Mexican state and the historic shift of the drug trade from Colombia through Florida to Mexico under the tenancy of the intellectual author of NAFTA, George H.W. Bush during his Vice Presidency of 1981-1988 and his subsequent Presidency of 1989-1993. It was greatly empowered by the then concurrent Mexican presidential administration of Carlos Salinas de Gortari from 1988-1994. As Mexican author Gilles Bataillon points out,

Two phenomena greatly contributed to this collusion between the legal and illegal economy: the signing of the North American Free Trade Agreement (NAFTA) and changes in the channels for introducing cocaine into the United States. The signing of NAFTA resulted in an increase in truck traffic between Mexico and the US to transport products manufactured in maquiladoras or agricultural merchandise. In addition, the effects of the anti-drug policy carried out by the United States together with Colombia were twofold: they made it more difficult to introduce cocaine through Florida and the Caribbean islands, and weakened the Colombian cartels, which broke up into smaller entities. Small and less powerful. Once their country became an obligatory transit point, Mexican carriers became the dominant players in the market. (Bataillon: 2015) ¹²⁵

Under the neo-liberal model, demonstration effects of a newly deregulated state can be seen through the lens of "lawlessness" or the lens of "economic opportunity" that turns the new *openness* into - a security vacuum. The reshaping of that geographical arena of Northern Mexican border states through criminal armed assault and murder despite the armed Mexican federal presence of its National Guard is politically managed by both Mexico and the United States.

However, the increase in the homicide rate for example, in the northwestern Mexico border zone from Chihuahua to Baja California (and including Sinaloa) rose from some 6% to 15% for mountainous Chihuahua, Sinaloa, and Baja California, with a smaller rise in Sonora, from 1995-2007 compared to the national average which attests to the fact that one knock-on effect of deregulation under free trade - includes violent outcomes (Escalante Gonzalbo: 2010). ¹²⁶ This rise in violence occurred as state forces came bearing down on Cartel elsewhere in Mexico.

In 2006, newly elected Mexican President Felipe Calderon, launched an anti-narco war which eventually produced 60,000 deaths by the end of his term in 2012. Several writers observing the waves of violence prior to and early on during the Calderon presidency have consigned that violence pervading Mexico's public spaces as state centered (Gibler: 2009, Bowden: 2002,

¹²⁵ Translation by the author. Narcotráfico y corrupción: las formas de la violencia en México en el siglo XXI, Gilles Bataillon, NUSO Nº 255 / Enero - Febrero 2015, <https://nuso.org/articulo/narcotrafico-y-corrupcion-las-formas-de-la-violencia-en-mexico-en-el-siglo-xxi/>

¹²⁶ Panorama del Homicidio en México. Esquema de Análisis Territorial 1990-2007, 2010, Fernando Escalante Gonzalbo, Los Grandes Problemas de México, XV Seguridad Nacional Y Seguridad Interior, El Colegio de México, Gráfica 9.5., 311. <https://2010.colmex.mx/16tomos/XV.pdf>

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2010¹²⁷). For that period, that was a reasonable conclusion, as the federal Mexican narco-war launched in 2008 in Nuevo Leon, Tamaulipas, and Chihuahua state, were home to the notorious Juarez drug war. By 2009 federal Mexican armed forces visited Sinaloa and Sonora.

Since then, Cartels have pivoted their business model to include human smuggling as an economic enterprise. And in so doing, they now produce violence primarily to control the market to profit from migrant smuggling at the border. Their capacity to exploit that opportunity is enhanced by the know-how gained from their narcotics smuggling networks in the border zone, and the vulnerability of defenseless migrants.

In the context of neo-liberal governance, the economic model has failed to promote national development and human rights for immigrants in their communities and countries of origin. At the US-Mexico border the US national security model has also failed repeatedly to deter immigration. On the policy plain, violence on the border is tolerated by US immigration policy which puts it at odds with international human rights standards.

The neo-liberal states that operate in Meso-America and North America have constructed this regional economic model since 1994. Active defense of the model required spending enormous public funds and engagement in repressive military campaigns against internal rebellions in Central America from the US military base in Honduras. Repression against the Zapatista uprising in 1994 (a rebellion carried out in direct response to the change in property law in México) was the responsibility of the Mexican state under neo-liberalism. During the post-war period in this region, the same states imposed free trade agreements as a panacea for social development.

In Mexico, links between local police, politicians, and the Guerreros Unidos Cartel in Guerrero State were exposed in the first investigations of the massacre of 43 students of the Ayotzinapa Rural Teachers College on September 26, 2014 in Iguala, Guerrero.¹²⁸ By August 2022, allegations and arrest of local army commander, Colonel José Rodríguez Pérez in conjunction with aiding Guerreros Unidos were carried out.

Corruption exists between elements of the Guerrero Unidos Cartel in Guerrero State and the Mexican Armed Forces, Mexican Marines, federal and state police forces according to the latest findings in the fourth report of the Interdisciplinary Group of Independent Experts for the Investigation (IGIE) of the disappearance of the 43 students from Ayotzinapa, Guerrero, Mexico¹²⁹, commissioned by the OAS. IGIE previously also noted in its 2nd report the existence

¹²⁷ Mexico Unconquered, John Gibler, City Lights Books, 2009, see Chapter 2, the Rule of Law, Down by the River Drugs, Money, Murder, and Family, Charles Bowden, 2002, Simon & Schuster, 2-3, Murder City, Nation Books, 2010.

¹²⁸ Op cit, Batallion, 2015

¹²⁹ See: Ayotzinapa IV, 29 de septiembre de 2022, p. 23 síntesis, <https://mail.google.com/mail/u/0/#search/carlos.beristain%40gmail.com/QgrcJHrhsvWgxNZRLCJGlgkBXVdJQKGKMBv?projector=1&messagePartId=0.2>

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of an intelligence report from a member of the "CGP" (General Maritime Port Coordination) of the Infantry from the Mexican Navy that "indicates that an element of Battalion 27 [Mexican Army Battalion attached to Iguala] would be an arms trafficker for Guerreros Unidos."¹³⁰

Separately, IGIE investigated and confirmed that a fifth bus it proposed was involved in the events of September 26 and 27, 2014 in Iguala, Guerrero, Mexico, based on interviews with employees of the bus company and tracking data who contradicted the statements by the bus driver.¹³¹

The GIEI also investigated an aspect of the scope of the criminality of the buses used by Guerreros United to transport illegal narcotics for their possible connection across the northern Mexican border with a criminal complaint in Chicago, Illinois.¹³² The previous federal Mexican government and the federal Attorney General of Mexico then refused to investigate and share information directly related to the buses in question.¹³³ Nevertheless, the new incoming administration of Andrés Manuel López Obrador resubmitted the request to the US Federal District court.¹³⁴

In its third report in 2022, the IGIEI pointed out that in wiretaps carried out by the Attorney General of Illinois in a case tried in the Federal District Court in Northern Illinois, recorded conversations pointed to the payment of bribes to members of the 27th and 41st battalion with

"Official: 6 of 43 missing Mexican students given to army" AP NEWS. August 26, 2022, Fabiola Sánchez and Christopher Sherman, <https://web.archive.org/web/20220827022739/https://apnews.com/article/mexico-crime-caribbean-army-34010c60dd7f6e3615fcf60bef57f7e7> .

¹³⁰ Informe Ayotzinapa II. Avance y nuevas conclusiones, Grupo Interdisciplinario de Expertos Independientes (Alejandro Valencia Villa, Ángela María Buitrago, Carlos Martín Beristain, Claudia Paz y Paz Baile, Francisco Cox Via), p. 151 OAS, <https://www.oas.org/es/cidh/actividades/giei/giei-informeayotzinapa2.pdf>, accessed: 2/7/2023.

¹³¹ Op cit, Informe Ayotzinapa II. p. 245.

¹³² UNITED STATES OF AMERICA v. PABLO VEGA CUEVAS, et al. UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION, AO 91 (Rev. 11/11) Criminal Complaint , <https://nsarchive.files.wordpress.com/2018/04/criminal-complaint-usa-v-pablo-vega-cuevas.pdf>

¹³³ Op cit, p. 162.

¹³⁴ IGIE solicitó a la Procuraduría General de la República (PGR) de México que presente una solicitud internacional FOIA sobre información de la Corte de Distrito de los Estados Unidos Distrito Norte de Illinois División Este, sobre la existencia de uno o más autobuses comerciales de pasajeros utilizados por Guerreros Unidos, una organización de trata, citada en una denuncia penal presentada ante el Tribunal de Distrito del Norte de Illinois. La denuncia identificó autobuses identificados por sus marcas como "Monarca" y "Volcán", pero la denuncia no proporcionó información específica de identificación del autobús más allá de eso. La solicitud al Tribunal de Distrito del Norte de Illinois no se cumplió, pero rechazó la solicitud de PRG por ser una solicitud demasiado general. Asimismo, la PGR en México no identificó información específica sobre los autobuses utilizados por Guerreros Unidos en Iguala con la cual comparar los autobuses utilizados por Guerreros Unidos en Illinois contenida en la denuncia penal.

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their headquarters in Iguala, Guerrero, Mexico, where the events occurred.¹³⁵ In their IV Report, IGEI confirmed that the same type of conversations had continued to occur.¹³⁶

By summer 2022, in reaction to the political pressure to respond to claims of out-of-control migration at the US Southwest border, the executive, judicial, and congressional powers scrambled in the United States to truncate asylum rights at the border. Their actions eschewed discussion of human rights or the human cost of enforcing a cookie cutter border strategy; categorically denying entry for some nationals while allowing it for others. Bipartisan policy differences on immigration policy aired in public are by now largely symbolic and opportunistic, not substantive to the operations of the United States Border Patrol.

Another little understood aspect of the seemingly contradictory co-existence of paramilitary and private militia forces both acting as agents of border militarization are the economics of the human smuggling business.

Rather than attempt a financial analysis for which scant reliable data is available, the opportunities and constraints of the human smuggling business are reviewed below: inputs of supply and demand, market making, marketing, profits, and losses. This reviews the basic contours of how Cartel operates and why it benefits from border militarization under neo-liberal economic conditions.

Supply

Habituated behavior does not necessarily minimize costs, but it makes production possible.

Barbara Harris- White, 2003¹³⁷

Cost Structure

Within Mexico, the essential goal of Cartels' business plans are to physically guard access to the border region, expand operational control over sub-regional confederate networks, and expand retail outlets in their US distribution network. The border is where immigrants are transported to directly under the orders of the head of a plaza. Cartels transport narcotics through the US land ports of entry hidden on commercial trucks.

Costs are structured for affiliates operating along smuggling routes in Mexico's interior, while other costs cover border smuggling operations. The business requires operational partners who command a network of smuggling contacts and firepower to ensure terms of trade for

¹³⁵ Informe Ayotzinapa III, GIEI. Febrero 2022, p. 151,

https://www.oas.org/es/CIDH/GIEI/Ayotzinapa/docs/Anexo10_ResumenInformeAyotzinapaIII.pdf

¹³⁶ Informe Ayotzinapa IV, GIEI, Septiembre 2022, p. 16 – 23.

<https://mail.google.com/mail/u/0/#search/carlos.beristain%40gmail.com/QgrcJHrhsvWgxNZRLCJGlgkBXVdJQKGKMBv?projector=1&messagePartId=0.2>

¹³⁷ On Understanding Markets as Social and Political Institutions in Developing Countries, pp. 482-497, Rethinking Development Economics, Ha-Joon Chang, ed. , Anthem Press, 2003.

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smuggling services before reaching a separately negotiated zone for border crossing operations. Given border operations are subject to the dynamic and shifting demands for profit sharing from affiliates in the network, the supply chain of immigrants may be periodically disrupted by rival affiliates in charge of one or another chokepoint on a smuggling route. Rarely does this occur at the border in Arizona, but it is most frequent in Tamaulipas. However, the example below describes an operation reflecting a rival's business decision to increase profits.

In November of 2021, a 15-year-old Ixil youth who fled Guatemala to evade a gang who had raped friends of hers, was kidnapped from the Altar, Sonora area by a rival Cartel faction from Nogales, Sonora where the youth and some 5-6 others then managed to escape in Nogales. Subsequently, Mexican immigration authorities took her into custody.¹³⁸

From a Cartels' point of view, to maintain profit margins from affiliated confederated criminal operations, it is occasionally necessary to expel or extinguish underperforming operators and replace them with others. Affiliates often involve local and state police. Bribing a sub-unit of a police force is a more stable strategy than corrupting individual officers. It is also more expensive. Individuals strategically identified and recruited for intelligence gathering may be more cost effective for that function.

In the human smuggling business, maintaining both the interior network and border operations are nominal costs of doing business. If key affiliates are expelled or extinguished, risks to operations from associates of the former affiliate – rise. If that action causes a serious rupture within the network of contracted services, costs increase. If affiliates shift allegiances to rivals in the Cartel - it can set off factional battles. If betrayal to the Cartel is involved, inter-Cartel violence may increase costs and risks to the core organization.¹³⁹ Operational delays mean considerable losses of revenue for the Cartel.

The percentage of costs associated with affiliates versus border operations (excluding bribes of political elites) is unknown outside of the Cartel business. Smuggling within the interior US also adds to the Cartel's profits. This commercial activity may indicate a Cartel's attempt to increase profits on the US side due to rising costs for smuggling in Mexico's interior.¹⁴⁰

Transactional Costs of Kidnapping

Lowered and unregulated transactions costs are a prime feature of the global neo-liberal reforms embraced by companies signing free trade agreements. Among benefactors operating

¹³⁸ Personal knowledge of author, Blake Gentry. Note: Some three months later, the youth was transferred to US custody and re-sheltered but reunited with a family member in the US after several more months in detention.

¹³⁹ This scenario is how Gulf Cartel and their armed wing the Zetas eventually declared the other as an enemy and violent reprisals resulted internationally.

¹⁴⁰ Smuggling Migrants at the Border Now a Billion-Dollar Business, Miriam Jordan, NYT's, July 25, 2022. <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>

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the smuggling market are the international financial institutions, often banks, that transfer funds. These services were popularized by immigrant workers sending remittances from United states to families back home in México, and throughout Meso-America. Cartel operators kidnap and extort families who are coerced into sending ransom through such international financial institutions.

Money transfer services are making large profits off the volumes of cash paid by families to individuals with bank accounts who hold their relatives for ransom.

This extortionary process is profiting the banking industry without state intervention which would require monitoring of the institutions and the identification of senders and receivers. Investigation of extorted funds is practically non-existent in Mexican border towns or in rural Central American locations where money transfer services reside in store fronts and commercial enterprises that house the service desks which exchange ransom for human freedom - like Western Union, Money Graham, Walmart, etc.

Demand: High and Low Value Clients

Longer migration routes, the veritable supply chain of the business, are seen and treated as business opportunities by both criminal organizations and state actors. Under MPP and Title 42 the cash flow from smuggling operations has shifted over the years as migration occurs from beyond the blocked region of Meso-America. To maintain profit margins, a steady supply of higher value clients is cultivated from previous lower value clients. Prior to MPP and Title 42, and based on a lower average of \$US 4,000-\$US 6,000 per capita, the previously higher volume of Meso-Americans (Mexican, Salvadoran, Honduran and Guatemala) provided a baseline of profits.

Though the price of smuggling services can vary by operator, with adjustments for gender and age, family composition, etc., the current average of \$US 5,000- \$US 8,000 per capita has been typically paid by Venezuelans, Brazilians, Colombians, Ecuadorians, and Peruvians to smugglers entering Arizona under MPP and Title 42. Cubans, also in constant migration, have direct access to Mexico, so their route is truncated, though they are not exempt. Generally, Haitians, and other poorer immigrants, are more often preyed upon by criminal operators in the border zone given they attempt to migrate without paying the perquisite smuggling fee.

A lower margin of profit per capita is in play when Central Americans and Southern Mexicans pay for smuggling services given their distances to the border are half or less the higher paying clients. The majority of victims were Guatemalans, Hondurans, Salvadorans, and Mexicans. However, smuggling is just the baseline of the price structure.

Smuggling Boundary

The Cartels exploit their decades long border experience with using violence in new forms, modified from previous tactics, through kidnappings, extortion, and labor exploitations, adding

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to their bottom line. As long as the immigrants are “contained” in the Mexican border zone, they are then not a threat to US Border Patrol or US citizens, but their containment requires their continual control upon expulsion by the US government.

Prior border militarization created the necessary infrastructure to implement the blocking and expulsion policies of MPP and Title 42, respectively. Blocking entry of asylum seekers resulted in the retention of large pools of immigrants in border towns. Title 42 extended the population’s residence in the Northern Mexican border area given the mass of immigrants feared return to their home communities more than the exposure to the violence in the border zone. Then the smuggling market grew exponentially, as non Meso-Americans were given preference for entry without being subject to MPP or Title 42. In this market, the poorer, less mobile, and more constrained Central American and Mexican immigrants were present in public spaces, and a secondary market was created for kidnapping and extortion. This market is a direct result of the implementation of Trump and Biden administrations’ use of MPP and Title 42.

The Cartel in Mexico is the de facto marketplace enforcer for human smuggling. It controls the cost of *market entry* for would-be competitors. It determines the market boundary for smuggling, much as a retail franchise carves out its sales territory by blocking, outcompeting, buying out, bribing official regulators, disrupting the supply chain of rivals, or using extra legal means to eliminate its competitors.

Market heterogeneity is repressed by force of territorially controlled zones. The adjacent border zones are direct hierarchical profit centers, a portion of which is remitted to the Cartel in exchange for recognition of territorial operational control. Access points to the market in human smuggling include private transport networks (buses and taxis), lodging zones (hotels and stash houses). State and local police facilitate intelligence and asset transfers (kidnaped immigrants) Supplier agreements with smugglers originate in home countries and regions of México. Market boundary protection includes denying, restricting, or regulating these market access points.

All markets are governed by structures that disallow other investors from entry. Cartels are no exception, and there is little to no evidence of wholesale buyouts, though rents on routes are possible. One component of pricing for smugglers besides regular operational costs, and product quality competition, is market demand. Smuggling markets in the Northern Mexican border towns for narcotics were once discrete, relatively quiet operations, that institutionalized corruption in order to maintain a normal public order - bereft of constant conflict.

Profits

Traditionally, the longest enduring Cartel, the Sinaloa Cartel, operates in Mexico’s Pacific Coast region, did not engage in human smuggling. The Cartel avoided the more labor-intensive industry of human smuggling. Given their continental dominance in the drug trade, smuggling

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narcotics was exponentially more profitable than smuggling humans. However, underdeveloped areas of México, El Salvador, Guatemala, and Honduras under US free trade agreements produced a steady stream of migrants into the Texas, New Mexico, Arizona and California borders, and . . .

despite narcotics smuggling operations that eschewed the mix of smuggling narcotics and migrants, it became imperative for the Cartel to clamp down on the near border migration routes - lest they disrupt their more lucrative narcotics routes.

Cartels traditionally control drug *plazas* - known sections of the border used by smuggling franchises. But as migration did not relent in the early 2000's, the Sinaloa Cartel eventually conceded to ongoing presence of human traffic and established plazas for human smuggling. This sequence is key to understanding the growth of Cartel operations and their subsequent expansive supply chain of clients and routes of established business affiliates or collaborators among state security forces.

Cartel operations are successfully carried out as a private business which controls market access in the US-Mexico border region, including Sonora and Arizona, for human smuggling in conjunction with state security forces. Profits for smugglers at the border rest on three main costs: 1. the sunk cost of establishing a formal network of affiliates to control smuggling routes by a criminal organization where migrants can arrive, 2. Supply of and disposable income of their clients, and 3. operational costs of enforcing their market share in the border zone marketplace, including revenue from more informal or "loose" networks.

Typically, in 2021 prior to the arrival at the US southwest's border with Mexico, Central American immigrants paid around 4,000-4,500 each US dollars. A US Border Patrolman in the El Paso, Texas border sector stated the cost as \$8,000 and \$15,000 depending on the place of origin and destination.¹⁴¹ News accounts from 2018 reported a fee of 5,000-6,000 from Central America to Los Angeles, and in 2017 from Guatemala to Houston, costs were 9,500-10,000 per immigrant.¹⁴² While the route to Houston is somewhat shorter, detection is greater than for the Los Angeles route which often uses Arizona as a crossing place.

Profit Centers

Narcotics

¹⁴¹ Border Patrol: Cartels cash in on billion-dollar human smuggling business, Oct. 11. 2021, KTSM Border Report, Christina Aguayo, Oct 11. 2021, <https://www.borderreport.com/immigration/border-crime/border-patrol-cartels-cash-in-on-billion-dollar-human-smuggling-business/>

¹⁴² Greenfield, Victoria A., Blas Nunez-Neto, Ian Mitch, Joseph C. Chang, and Etienne Rosas, Human Smuggling and Associated Revenues: What Do or Can We Know About Routes from Central America to the United States? Homeland Security Operational Analysis Center operated by the RAND Corporation, 2019, 17. https://www.rand.org/pubs/research_reports/RR2852.html.

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The rise in violence in Mexican Northern Border States and the growth of the Sinaloa Cartel bears closer examination. Estimates of the Cartel's profits range from \$3 billion to \$39 billion annually¹⁴³. A United States federal investigation in 2011 uncovered a money laundering operation of a single Cartel through Wachovia bank that stretched over ten years - producing \$378.4 billion in gross profits, or an average of \$37.8 billion per year¹⁴⁴. The role of Cartel controlled drug trade in Mexico's economy couldn't be bigger. By 2009 it surpassed both PEMEX oil sales and remittances returned to Mexico by its migrant workers toiling abroad.¹⁴⁵

The Sinaloa Cartel was the largest Cartel operating in that period. The relative proportions of drug and human smuggling profits of these totals - is publicly unknown, but there is no evidence of a drop in smuggling of the most popular types of illegal narcotics in the United States, except for Marijuana, as of 2020,¹⁴⁶ nor a drop in the volume of immigrants. In other words, supply is not a determining factor in pricing for profits.

Humans

The Rand Corporation, in 2017 prior to MPP and the COVID pandemic, using DHS and private research data from Mexico's southern border, calculated a highly uncertain range for human smuggling of El Salvadorans, Guatemalans, and Hondurans. The estimated range of income was from \$200 million to about \$2.3 billion in 2017. Fees paid to Cartels by coyotes leading immigrants across controlled border crossings were estimated at \$30 million to \$180 million in 2017. When narcotics' taxes (but not product) and human smuggling are combined, they estimate \$US 230 million to 2.48 billion dollars in 2017.¹⁴⁷

Nevertheless, given that human smuggling is paid for in México, it is reasonable to assume that most profits laundered back into Mexico are from narcotics sold on the streets of the United States. Those operations require money laundering to repatriate profits.¹⁴⁸ Over time smuggling networks and plazas are subject to violent attacks from competitors all along the supply chain, and Cartels often fracture and fail in the market, however, the Sinaloa Cartel's more federated model has consistently delivered consistent profits.

¹⁴³ Sinaloa Cartel, Amy Tikkanen, Britannica, <https://www.britannica.com/topic/Sinaloa-cartel>, Mexico Unconquered, John Gibler, City Lights Books, 2009, 54.

¹⁴⁴ How a big US bank laundered billions from Mexico's murderous drug gangs, Ed Vulliamy, Sat 2 Apr 2011, Guardian. <https://www.theguardian.com/world/2011/apr/03/us-bank-mexico-drug-gangs>, How A Major U.S. Bank Laundered Billions In Mexican Drug Money, Grace Wyler, Apr 4, 2011, Business Insider, <https://www.businessinsider.com/how-wachovia-laundered-billions-in-mexican-drug-money-2011-4>

¹⁴⁵ Op cit, Gibler, 55.

¹⁴⁶ DEA, Executive Summary, p 4-5, United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by Individual Cartel, p 65, 2020 National Drug Threat Assessment (NDTA), DEA. https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹⁴⁷ All figures from Greenfield, et al, XV, XVI, https://www.rand.org/pubs/research_reports/RR2852.html.

¹⁴⁸ US based narcotics sales for Cartel operations necessitate the laundering of US dollars back to its Mexican operatives. Estimates of drug sales vary, as previously stated, but they may not account for costs. Stated totals logically then represent gross profit, not net profit. Estimates also logically do not include income from human smuggling, given "sales" are paid in México, or to Mexico based accounts.

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The Sinaloa Cartel, according to the DEA, has a presence in twenty-eight US states, and they dominate in 50 of 61 or in 82% of the United States cities by 2020 where Mexican Cartels operated. Arizona and California are their major transshipment routes. They dominate with sole operations in thirty-one locales nationally, plus equal presence alongside rival Cartels in three additional locations. Their dominance covers every region in the United States except the upper plains states where little know activity is recorded and the population is sparser.¹⁴⁹

There is no published DHS calculation of revenue from kidnapping and extortion in the Border zone, however, it is clear that Cartels control that business. Perhaps local police extract a larger percentage, but in terms of revenue, ILO calculates an average would be based on four factors: number of kidnapping victims, percentage of children among them (priced at 50% adult rate), loss rate (perhaps 10% for non-payment), and average payment.

Losses

Smuggling operations can fail due to rival Cartel factions which assert hegemony over another operations' supply chain, business affiliates in the supply chain, or in border territory. One border shooting victim in Arizona reported such an incidence to the ILO in fall of 2021 near Sásabe, Sonora, Mexico.¹⁵⁰ Other operational failures occur when an immigrant family cannot pay additional sums, or when maintaining an extortion operation becomes too costly. Housing and food are allowable normal costs for "paying customers" but not for non-paying customers. Then immigrants may at first be tortured, and or murdered. Their bodies are then publicly dumped outside the near border migration zone, or disappeared to lessen costs.

Prior to 2019, it was common practice to use poor immigrants as *mulas* (mules). By 2021 it was highly infrequent to hear of smugglers using migrants crossing in open desert at the border to transport drugs on foot.¹⁵¹ Losses are mitigated by operatives in cross border smuggling when they use larger groups of migrants as a diversionary tactic to drain Border Patrol away from one area to avoid a drug bust in another area. The revenue from smuggling migrants in the open desert outweighs that of marijuana, but not cocaine. Cocaine and fentanyl are however most easily smuggled on commercial trucks through land Ports of Entry.

¹⁴⁹ DEA op cit, See: Figure 58. p 65. United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by Individual Cartel.

¹⁵⁰ The victim, a young Guatemalan man in his twenties was wounded by a bullet from an unknown source, and then arrested by Border Patrol.

¹⁵¹ The term *mula* (mule) refers to an immigrant who is persuaded to carry a backpack of marijuana or other drugs in lieu of payment to Cartel for smuggling services.

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Market Making

A market maker or liquidity provider is a company or an individual that quotes both a buy and a sell price in a tradable asset held in inventory, hoping to make a profit on the bid–ask spread, or turn.

Radcliffe, Robert C. (1997). *Investment: Concepts, Analysis, Strategy*. Addison-Wesley Educational Publishers, Inc. p. 134. ISBN 0-673-99988-2

In the neo-liberal border model, market share is subordinate to market making, given that while immigrant deterrence inputs (immigrant arrest and short-term detention infrastructure, personnel, technology, transportation, etc.) are eclipsed by the cost of public policy and the cost to the private economic environment used to create and maintain a state secured border wide free trade zone.

The physicality of the zone imposes a restrictive access for those on the Mexican side of the Border. It's physical and geographic constraints create a high cost for market entry when one Cartel already has operational control. To assert a new business for smuggling in the border zone can be a deadly expense few other Cartel attempt to complete.

Creating demand is one side of market making. Primary demand for human smuggling was largely not created at the border, but rather in the underdeveloped countries of origin. The other side of demand is pricing well enough to induce more customers. The following account explains what demand looks like.

Early in the morning of May 27, 2022, a Mayan Ixil and K'iche' man gave this information to staff of the International Mayan League.

On "Thursday, May 26, at 9:00 am a group of migrants, whose total number is not known, left Puebla / Mexico taking a bus to Monterrey/Mexico. 'Today, Friday, dawning around 2:30 am, we were stopped by checkpoints. I can't distinguish between officers and soldiers, but I think there are 3 classes of agents because of the differences in their uniforms.

'We have been traveling for about 17 hours without eating without drinking water, so far at 11:30 in the morning we have not eaten anything, we have been detained at the checkpoint for about 9 hours, we still have not eaten. In total we have been on the bus for almost 28 hours. There are 3 migrant buses, there are pregnant women, mothers with children and children suffering. They are from different countries, Ecuadorians, Hondurans, Guatemalans, etc.' "Of the Guatemalan group, it is unknown how many are from original peoples because they infiltrate everyone, leaving behind their original clothing and languages". 'They force us to sign a document, without having an explanation, they do not explain what the signature is for. I don't know what the document is for. They only say that it is for deportation, but the colleagues mention that it is not for deportation. The officers do not give permission to read the document.' We note that there may be people who cannot read the document because they have

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only had a few years of formal study at school or because they do not speak Spanish well because they belong to an Indigenous people.

'The officers mention that we can pay 1,500 dollars each and they will provide us with a lawyer, but many of the fellow brothers say that it is a lie to get money from us. They want to take away our phones and the things we carry, they don't want us to carry anything.'

(International Mayan League Correspondence, May 27, 2022).

Criminal operators have turned to a deeper reconnaissance of this potential secondary market, the migrant routes and the transportation choke holds on such routes. By cajoling and or threatening transporters and local police who check immigrants status as they traverse north in Mexico with or without a visa, additional fees are paid out and collected through mobile routine - everyday – extortion of migrants in transit.

Extortion is then normalized to become a paid “fee” (a quota per capita) within the price structure of smuggling service paid by the immigrant. When and where anomalies appear, for example, immigrants traveling on buses where they did not pay a smuggler, then predatory behavior is applied, and affiliates in the smuggling network carry out their armed coercion against immigrants before they arrive in the border zone, or repeatedly in the border zone, and or in both locales.

In the Human Rights First reports in 2021, Cartel affiliates applied acts of violence in a myriad of places: on the street, getting into taxis, in taxis by drivers kidnapping immigrant riders, on buses, on trains, outside of stores, at bus stops, in rented apartments, in migrant camps, in and around Mexican Ports of Entry where immigrants are expelled by the Border Patrol, in stash houses, close to the Rio Bravo river, on the edges of migrant camps, in the vicinity of shelters, etc.

The counterweight in the Cartel making business are the suppliers of narcotics who establish routes and buy their influence in networks further south and then expand north. Where maritime narcotics transshipments took place in the 1990's in Mexico, operators shifted away from South Florida under the control of the then dominant Colombian Cartels into Mexico's maritime ports. Since then, one multinational Cartel in Mexico has dominated the marketing in the United States and maintained a stable supply chain to the United States of a more diversified product line from manufacturing sources in South America, Central America, and in Mexico.

Marketing Access at Sásabe and Yuma

Altar, Sonora, Mexico is a preliminary staging area where immigrants are initially brought to before being sent to the border staging area of Sásabe, Sonora. They are then moved to within a few miles of the actual border to wait in rural ranch houses. If arrested by Border Patrol upon

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crossing the international border into Arizona, they will be expelled at Douglas , Arizona into Agua Prieta, Sonora. Their return to Altar for another go round is highly regulated by Cartel.

A group of Guatemalan immigrants who had been expelled and received by Mexican immigration Officials at Sásabe, Sonora, requested assistance back to Altar where they knew their contacts would receive them. When an Instituto de Inmigracion Mexicana vehicle approached Altar with the immigrants in their vehicle, they were stopped by armed Cartel who told them they could not enter Altar, and forced them to turn back. In early Nov. 2021, at Casa de Esperanza, a community and migrant center, an immigrant who wanted to return to Altar after being expelled from Arizona was transported in a private taxi from a local aid station and instead of being left at the local immigrant shelter in Altar Sonora, he was left in the plaza, where he was set upon, had a gun drawn on him, was beaten, hit in the face, and had his personal effects stolen, necessitating subsequent medical aid. ¹⁵² (Dec. 8, 2021, Interview in Sásabe, Son., Mex.)

Actions of Cartel, such as the one stated above, in charge of the Sásabe area (read: plaza) are often demonstrated to display their physical presence and direct control of the near border area (within one hour's drive) and the actual section of border their plaza corresponds to.

The Cartel, at the beginning of an immigrants journey registers the names of immigrants in a data base with a tag for their smuggler's operational name. At every check point that Cartel affiliates control (bus stops, bus stations, police check points, etc.) that name is used before the immigrant group is allowed to pass forward. The original smuggler recruits immigrants in home countries and Guatemala is a major recruitment and staging ground.

Their border plaza is their final marketplace, the terrain and space where their smuggling service is carried out. It is uncontested by the newly installed Mexican National Guard in Sásabe, Sonora, México, which has its installation within two blocks of the international crossing. Beyond the Cartel's grip on local security arrangements, the United States deterrence model has failed to deter border crossers from amassing frequently in the area east of Sásabe, Sonora, Mexico including in "Coyote cannon" some 14 miles distance.

Single male immigrants responded due to the Cartel's adjustment of its business model in reaction to market forces. The Cartel also physically limited market access to crossing areas where border wall contractors and the Trump Administration left twenty-three gaps in the constructed border wall - despite President Trump's grandiose boasts about sealing the border. Where extraordinary construction was required to fence in around irregularities in the terrain, contractors just skipped over them. Faced by uncompleted border walls in rural Sásabe, Sonora,

¹⁵² Indigenous languages office interview in Sásabe, Sonora, Mexico, on Dec. 8 2021, with Sásabe immigrant aid worker, Gail K.

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at Sásabe, Arizona, and at Yuma, Arizona, the misapplication of standards of credible fear for asylum seekers in these two places could not have been starker. Concurrently, by mid-May, 2022 only a few Mexican families who fled Cartel-dominated rural Guerrero state ten months to a year ago prior- were allowed to seek asylum at Ports of Entry.

San Luis - Yuma

In early December, 2021 some 1,500 immigrants arrived at the US Port of Entry at San Luis and staged themselves along the US side of the US border wall, entering through the gaps left by construction crews.¹⁵³ Their arrival coincided with the highly restrictive imposition of the Migrant Protection Protocols (MPP). While MPP denies legal entry for immigrants to regularly seek asylum at Ports of Entry where DHS has most of its human and technological security assets in place, the Cartel exploited a weakness in the restriction on the smuggling market. The Yuma Valley is close to the California transport route and smugglers understood that delivering them to a POE that enables middle class immigrants quick access to the United States would generate large profits. Then many Venezuelans, Brazilians, and others took advantage of this Cartel's adjustment to the market. By summer of 2022, Indian nationals (among others) were accessing this route with a flight from Mumbai to Cancun, Mexico, and a direct bus ride to San Luis Rio Colorado, Sonora, adjacent to the Yuma Valley of Arizona.¹⁵⁴ The blockade against Central Americans and Mexicans under MPP was then being selectively applied under Title 42, leaving non-Meso-American immigrants to apply for asylum at San Luis, Arizona while Meso-Americans continued to be excluded at Sásabe, Arizona.

Mexican nationals and Central Americans were routinely and systematically excluded from seeking asylum on a daily basis compared to roughly 100-150 times that number of higher value clients received by the Border Patrol and Customs Border Patrol along the Arizona border, particularly at San Luis, Arizona, on a daily basis. In both cases, the Cartel made substantial earnings, regardless.

Adjusting to the Market

Two Nicaraguan women reported that 23 Nicaraguan asylum seekers who had been traveling with them were kidnapped in Reynosa in July, 2021. Police at a checkpoint handed the group, which included the women's partners, over to a cartel extorting family members in the United States for ransom. Some of the group remain kidnapped, while at least one of the kidnapped asylum seekers has gone missing after his family paid ransom to secure his release.

Human Rights First. 23 Aug. 2021

https://www.humanrightsfirst.org/sites/default/files/HumanRightsTravesty_FINAL.pdf

¹⁵³ Interview with Julia Lastikka, Yuma Arizona, 12/09/2021.

¹⁵⁴ Observations from author over seven months in Arizona's largest border immigrant shelter, Alitas Welcome Center, in Tucson.

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Once in the border zone the Cartel often then “kidnaps” immigrants from their handlers. Their new handlers extort an additional five thousand dollars per person.^{155,156} Less frequently but more brutally, persons are literally kidnapped off the street and then - their families are extorted over the phone internationally.

When contracted, smugglers may be subject to sagging Cartel profit margins, and they need to generate more revenue under orders from Cartel bosses. Under the guise of a proof of purchase guarantee payment system, where immigrants are baited to first pay a proportion to recruiters up front, and then owe a second installment after reaching near their destination, smugglers resort to kidnapping and extortion. These acts are often carried out against the most vulnerable; expelled and lost migrants literally walking the streets of border towns in the near border zone, up to 75 miles away. The second portion can and is then arbitrarily inflated in order to make up for a lack of revenue in Service Type I regardless of prior agreements. The Service Type II involves switching the “baited” clients from smugglers to kidnappers and extorters within the same network. The extortion price ranges from 4,000-10,000 per person.¹⁵⁷ Handing over human cargo to extortion demands is a classic use of bait and switch.

Elasticity of Demand in Human Smuggling

San Luis POE, Arizona

At the Arizona border, since implementation of MPP and Title 42, the crossing at San Luis Colorado, Sonora, Mexico into San Luis, Arizona has been a highly lucrative operation given the open terrain, sparse DHS personnel, and practically no Mexican immigration officials deterring immigrants in Sonora, Mexico as map no. 3 Arizona Border Market for Human Smuggling, demonstrates below.

¹⁵⁵ Ibid.

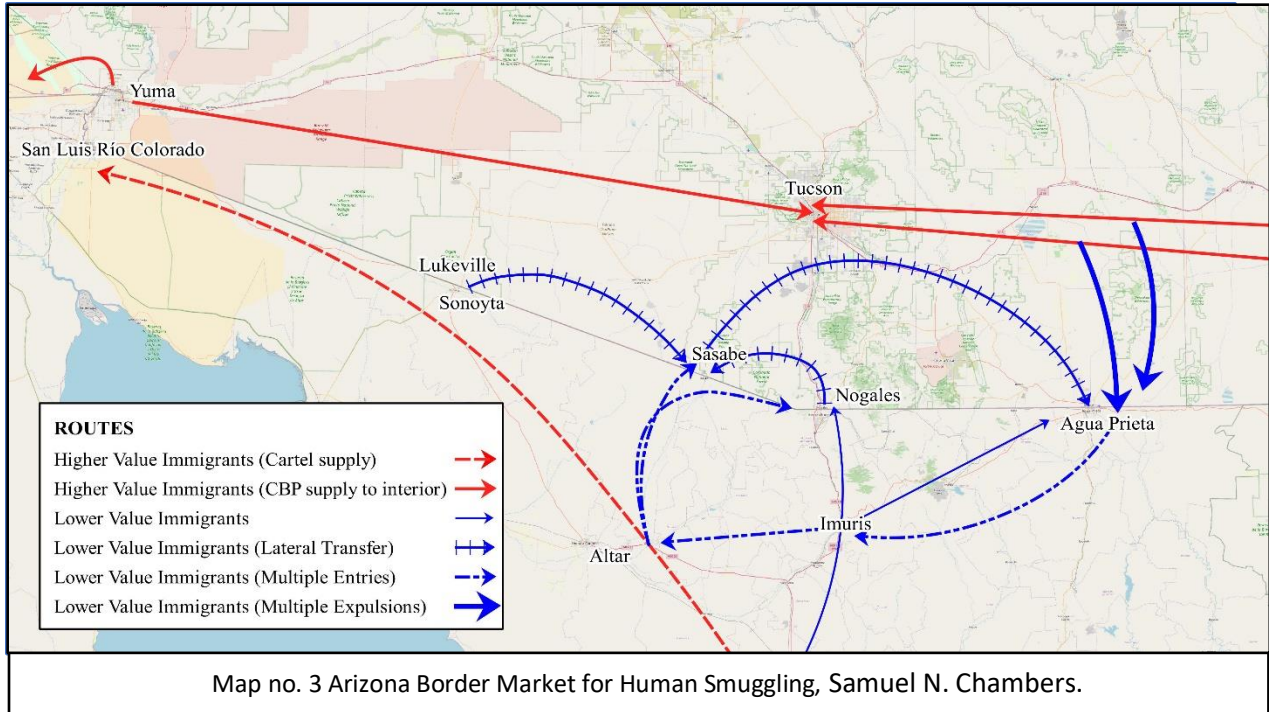
¹⁵⁶ This news account confirms a common extortion amount of \$US 5,000 per head.

<https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum>

¹⁵⁷ See: Al menos 27 nicas secuestrados en 30 días, Dic 27, 2021, Nicaragua Investiga (NI).

<https://nicaraguainvestiga.com/nicaragua-investiga/> Human Rights First report, December 2021.

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On a daily basis, at least since Fall 2021, routinely 150-300 higher paying foreigners arrived at that port of entry in the northern border on a daily basis. For the high value clients of nationals mentioned above, airlift to Mexico with legal visas indicate a large influx of middle-class immigrants.

The shift from lower value clients to higher value clients did not prove to make the smuggling service elastic¹⁵⁸ because the overall effect is not an overall increase in the number of smuggled immigrants, but rather higher profits from higher value clients with the number of pre-paid-for-smuggling service or immigrants remaining - roughly even.

In general, the reasons for migration among “high value” clients contrasted greatly with the Central Americas and Mexicans, or “lower value” immigrants huddled in the Northern Mexican Border Towns and forcedly held back by the Border Patrol under MPP and Title 42, vary markedly. To be clear, MPP and Title 42 commenced under President Trump and continued under President Biden. Extortion of smuggled immigrants who already paid a quota is often staged to appear that kidnappers took them completely by force and by surprise, instead of the routinized business transaction that it is. The fake appearance of unexpected Cartel presence is done in order to avoid reputational damage to the smuggler who must recruit new clients to sustain the business for the smuggler and for the Cartel.

¹⁵⁸ “Elasticity is an economic concept used to measure the change in the aggregate quantity demanded of a good or service in relation to price movements of that good or service. A product is considered to be elastic if the quantity demand of the product changes more than proportionally when its price increases or decreases.” Elasticity, Adam Hayes, Updated May 12, 2022, <https://www.investopedia.com/terms/e/elasticity.asp>

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To understand better elasticity of demand in migration at the border, we turn to the smuggling location of Sásabe, Arizona.

A general pattern for expelled immigrants under MPP & Title 42 at Sásabe is that Border Patrol arrests immigrants in and around Nogales, Arizona, and then laterally transfers them to be expelled at Sásabe, Arizona (an hour and a half distance) into Sásabe, Sonora, México, where they account for some 45% of expelled immigrants at Sásabe. Lateral transfers from Lukeville, Arizona, to the West of Sásabe about one hour and 45 minutes distant, for immigrants who enter the United States at Sonoyta, Sonora, comprise perhaps 10% of expelled immigrants at Sásabe. Immigrants arriving to Sásabe, Sonora, Mexico typically stay initially at Altar, Sonora, a community further south on a bus route that diverges an hour west from the main Highway 15 running from Hermosillo to Magdalena. Some 80% of immigrants that visit the Casa de Esperanza are single males, and most are in larger groups of Indigenous peoples from Guatemala.

(Casa Esperanza, 12-8-2021 ILO interview with Gail Kocourek. note: distances in mileage inserted into account by ILO).

Some 60% of expelled immigrants at Sásabe, Arizona, have medical conditions from their journeys requiring medical attention. These “lower value” Central Americans and Mexican clients often attempted to cross some 14 miles east of the Sásabe area, from which they were routinely expelled - up to three times each. In this relatively open desert area, mostly single men crossed into the United States. They face a partially walled border for at least 13 miles. The US Border Patrol, in a vain attempt to punish border crossers under Title 42 laterally transferred these immigrants to Douglas, Arizona for expulsion to Agua Prieta, Sonora 187 miles and a 3.5-hour drive away.

Cartel operating at Agua Prieta across the border from Douglas, Arizona (which is also a crossing area in its own right) arranged to bus the expelled single men back to Altar, Sonora. There they are housed a few days before taken back closer to the border at Sásabe. East of Sásabe they are staged to cross yet again into Arizona. This cycle of arrest, lateral transfer for expulsion, and re-entry and re-expulsion was allowed by smugglers up to three times under one original smuggling payment. Customs and Border Protection are quite aware of this duplicitous arrangement. (TRAC Immigration:2022)¹⁵⁹

This Cartel’s adjustment to this more difficult and less lucrative smuggling demonstrates *elasticity of demand* for their smuggling service. The local Cartel affiliate in Altar and Sásabe, Sonora, were adept at marketing its location’s disadvantage as an advantage for low value customers restricted from entry under Title 42. This adjustment to market conditions meant changing its service delivery method. Pitched to those who are categorically excluded from legal entry in contrast to Venezuelans and Brazilians who typically spent 2-3 days in arriving to

¹⁵⁹ Most Border Patrol Apprehensions are for Repeat Crossers, But Agency Data Doesn’t Yet Provide the Full Picture, Sept. 9, 2022, TRAC Immigration, <https://trac.syr.edu/reports/694/>

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San Luis, Arizona, where they were strategically taken to by Cartel in large numbers from México City. This niche market exploits a relatively less guarded border area, offering the appearance of a higher probability of success.

This would normally dissuade most immigrants because expulsions do not allow for them to engage in the legal asylum process in the US. Many families however already have family in the United States that they want to reunite with, and or to gain protection from violence in their communities of origin. Cartel in Altar appealed to single young men who aspired to make it across the border undetected by promoting their sense of prospect given the Cartel facilitated their transfer and provided them with three tries to cross into the United States at Sásabe, Arizona from Sásabe, Sonora, Mexico.¹⁶⁰ Other immigrants are laterally transferred from Texas at El Paso and Del Rio to Douglas for expulsion to Agua Prieta, or to Tucson Sector Headquarters for legal procession in Tucson, respectively.

Market Share

Market share of human smuggling in the border zone is the terrain and proportion of business under the economic control of a Cartel's operation. Market making creates market share and market access is subordinate to both market making and market share.

It is not that tools of economics have not been used to address institutions. It is that economic markets are the vehicles for the exercise of forms of social authority, the origins of which lie outside of markets, and which operate outside of markets as well as inside them. In the same way, economic markets are one of the arenas for struggles between political interests.

Barbara Harris-White. 2003

Market share in the border zone at first appears rather simple. Smugglers (coyotes) determine the reach of their territorial operation by their ability to regularly pay quotas to affiliates in the supply chain for their regular clients. They maintain their share of the market. A Cartel's total operational theatre is defined by collaborators operating along all major transportation routes to and in the near border zone. In urban areas, this near border marketplace, this network of collaboration can extend to bus drivers, bus station personnel, taxi drivers, hotel operators, street informants (*halcones*) and local police.

Cartel operatives receive business intelligence about the anticipated arrival of smuggled groups, and about those arriving without pre-paid service. When immigrants unknowingly arrive to the near-border zone without prior verbally agreed upon smuggling contracts, they are captured by affiliates and preyed upon by Cartel. Smugglers who respect the boundaries of

¹⁶⁰ This cycle was confirmed by shelter volunteers in both Douglas/Agua Prieta and the Sásabe, Sonora/Arizona border areas.

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the human smuggling marketplace reinforce market boundaries of narcotics smuggling by Cartel.

Those boundaries include narcotics operations near Ports of Entry. Their affiliates can include Mexican military, customs, and immigration officials. Often, Mexican immigration has firsthand knowledge of the movements of migrants, especially when they are forcedly expelled under MPP and Title 42 into Mexican Ports of Entry. The expulsion of immigrants under MPP and Title 42 ensured a ready supply of vulnerable and economically exploitable migrants.

Section V: Violence and the Neo-Liberal Border Economy

Neoliberalism is...a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.... The state...must also set up those military, defense, police, and legal structures and functions required to secure private property rights and to guarantee, by force, if need be, the proper functioning of markets...if markets do not exist...then they must be created, by state action if necessary.

Brief History of Neoliberalism, David Harvey,
2005, Oxford University Press.

Violence is the last refuge of the incompetent.

Isaac Asimov

Interpreting violence associated with human smuggling in the US-Mexico border zone under MPP and Title 42 is traditionally limited to a human rights framework only. In that, it concentrates on rights violations as a breach in international legal norms. But that approach fails to look at the business of smuggling itself and the enabling socio-political environment it operates in. In this section we seek then to answer the questions of *how and why the violence is reproduced* ?

Large scale human rights violations can mirror a more complex economic reality, for example, than patterned racial discrimination – alone can. In this view, at issue in the US-México border zone is the current *operational rationale*, in contrast to the currently over bloated *ideological rationale* for border militarization.

In this case, the market for human smuggling is defined by migrants' access to entry into the United States. Migrants bring forth a myriad of motivations for migration, but generally are comprised of various nationalities, social classes, and vulnerable social groups. Many experience to varying degrees, acts of persecution as recognized in domestic and international law.

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What motivates the perpetrators of violence against immigrants at the border may indicate the function that state militarization and the accompanying and overlapping non-state violence plays. Under neo-liberalism, social issues are understood to be best solved as a problem of the market. Under this logic, violence in the border zone is a solution created in the marketplace itself, and states are active perpetrators of and witnesses to violence against migrants. The Biden Administration policies of MPP and Title 42 were scrutinized.

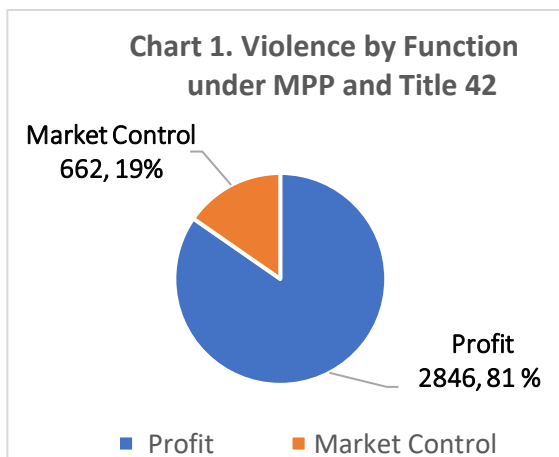
Our focus turned to the economic function of that violence. The role of profits* from and market control** of the human smuggling industry border wide were analyzed and reported on in Table 5 below. Cartel acts to smuggle, kidnap, rob and rape in order to extort profit from migrants.

Their main function of affiliated police and officials is to maintain control of the marketplace by alerting Cartel members of rival intruders and informing Cartel members about migrants' presence.

The re-supply of immigrants into the marketplace is carried out by the Border Patrol through expulsions on a very large and geographically predictable scale. As agents of suppression, they annually justify their institutional budgets and outlays for border militarization spending in general. In this schema, they are a very profitable state enterprise, in institutional terms, operating on the US side of the border zone marketplace.

By expelling migrants directly into Mexican Ports of Entry which are subject to

Table 5. Top 10 Types of Border Violence 99% of all acts of violence (N= 7227)	
<i>Violence for profit at N. Mex. Border</i>	
1. Kidnapping	2346
2. Robbery	234
3. Extortion	195
5. Sexual Assault and Rape	<u>71</u>
sub total	2,846
<i>Violence for market control at N. Mex. Border</i>	
6. Mex. Police assault	212
4. Mex. Police extortion	95
7. Threats	158
8. Assault: 121 + 10. Beatings:3	124
9. Disappearances	<u>73</u>
sub total	662
Total violent acts of Cartel and Mex. Police	3508



informers notifying Cartel members, migrants were kidnapped and extorted. Expulsions are the most organized section of a compressed supply chain which fed migrants into the systemic violence carried out against them at US Ports of Entry and in the Northern Mexican border zone.

This larger border industry operates in the militarized near-border-zone within 100 miles of the Sonora -Arizona international border. In contrast to this interpretation of the function of the

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market for border militarization is the view held typically by free market adherents, exemplified by as Richard Holden,

*Those on the left of politics should embrace markets. Not the fanatical laissez-faire views that oppose government and market regulation. But a view of liberalism – in the classical sense, emphasizing individual liberty – that harnesses the power of markets for social and economic good.*¹⁶¹

Holden (and many other economists) also posit that markets can produce “broad prosperity and what is sometimes called “inclusive growth”. This report examines this notion of prosperity and growth within the communities of origin for many migrants from Meso-America. It also considers such claims at the international US- Mexico border zone, particularly how individuals are treated in the border zone market, as a geographic center of regulatory commerce by state and non-state actors. Holden advances that the forces of capital make judicious and productive choices within markets, and therefore this market is ready made for such an application.

Border Economy under Neo-liberalism

In this report we refer to the border economy brought under the process of border militarization to be constructed under the regulatory and policy framework of the regional neo-liberal economic model. This model’s orthodoxy favors free trade through multilateral agreements while promoting a market-based solution to displaced peoples who are forcedly displaced into migration. Markets, in classical neo-liberal theory, are the answer to these very social conflicts. BY this logic, migration is a deliberate relocation of human capital, is to be expected, and therefore managed, not solved.

We recognize that while many immigrants merely seek an economic opportunity that is not accessible to them in their home country, we are also witnesses to many of those specifically displaced due to the trade policies and tangible threats to life in the sending countries which are often described as Narco-states. We consider such states as integral to a legislated economic model and not an anomaly based on, for example, ungovernable regions or immutable corruption.

We also consider the now unevenly militarized US-México border as an integral part of the regional economic model operating under a larger neo-liberal political economic framework. This paradoxical duality of large-scale flows of international trade and extreme measures taken to deny entry to migrants across the same borders - is at the heart of free trade agreements.

Over the past nineteen years the local Arizona border economy became dominated by transnational trade under free trade agreements which increased both legal and illegal trade. In that time period, the massive alteration of the physical border and ever greater constriction on the mobility of local populations has constrained local societies, refracted familial ties, and

¹⁶¹ Vital Signs: what the neoliberalism-hating left should love about markets, March 10, 2022, The Conversation, <https://theconversation.com/vital-signs-what-the-neoliberalism-hating-left-should-love-about-markets-178777>

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blunted civil liberties. The former binational border zone economy in Arizona before the trade pacts was one where a local vibrant economy of small businesses engaging in cross border commerce coexisted with federally regulated trade. But both Nogales and in the twined border towns of Douglas and Agua Prieta are now dominated by investment in the border militarization industry in support of a national economy far from the border.¹⁶²

The disadvantaged terms of trade for Arizona are visible when considering the disproportional burden of border militarization for Arizona compared to other border states. Arizona constitutes only 20% of the US-Mexico geographic border, and 12% of border population.¹⁶³ For example, Arizona exports of \$US 261.7 million to Mexico in 2021 were only 2.5% the value of imports from México into Arizona (17.6 billion). But when imports and exports are combined for total value of trade in goods from 2003 to 2021, the revenue increased by 9.8 billion. But again, Arizona's share among southern border states of border wide trade exports to Mexico was a paltry 5.07% in 2021. The border budget for the Customs and Border Patrol (which excludes all long-term detention facilities) in FY 2021 was 12.9 billion.

Arizona as the 2nd largest migrant transit state has a disproportional burden for receiving migrants into the United States. But under NAFTA and CAFTA, Arizona has the lowest percentage of all Southwest border states in such bimodal trade.¹⁶⁴ Small business growth in Arizona from 1994 to 2018 was 44% or basically 2% per year. That workforce represented 43% of all employees in the state.¹⁶⁵ While it is above the national average, it points towards the centralization of commercial activity in the metropolis of Phoenix, Arizona north of the border zone while sacrificing the economy of the southern Arizona border region for national priorities.

Lastly, of the burgeoning immigrant surge in 2022 of 2.4 million arrests at the SW border, Arizona shouldered 23.8% or 572,000¹⁶⁶ of the total migrant population entering the United States. In short, Arizona, which is 12% of the border population, clears only 5% of the value of border trade but handles 24% of migrants at the border.

¹⁶² Shuttered businesses came about in Nogales, Arizona as a result of the decrease in Mexican consumption in border shops after the inflammatory rhetoric of the Trump administration against immigrants in the border zone and the ineffective installation of razor wire, and the targeting of Latino Communities in the border zone under the Obama administration with 287-g program. Personal observation of main author, B. Gentry.

¹⁶³ CRS Report to Congress, U.S. International Borders: Brief Facts, November 9, 2006, <https://sgp.fas.org/crs/misc/RS21729.pdf>, The Southern Border Region at a Glance, https://www.southernborder.org/border_lens_southern_border_region_at_a_glance, accessed 11/18/2022

¹⁶⁴ See: Eller School of Management, University of Arizona. Arizona 2021 Imports from Mexico, <https://azmex.eller.arizona.edu/exports/exports-to-mexico>, and Southern Border States Comparison, and States as a percentage of Southern Border States' Exports. <https://azmex.eller.arizona.edu/exports/exports-to-mexico/total>

¹⁶⁵ Arizona 2021 Small Business Profile, U.S. Small Business Administration, Office of Advocacy, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30141144/Small-Business-Economic-Profile-AZ.pdf>

¹⁶⁶ Southern border apprehensions hit record 2.4 million in fiscal 2022, Tristan Richards, Cronkite News, Oct. 24, 2022, <https://cronkitenews.azpbs.org/2022/10/24/southern-border-apprehensions-hit-record-2-4-million-in-fiscal-2022/>

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Perceptions from the interior of the border are regularly constructed with select but persistent news cycles of punditry describing mayhem and perpetual or pending crisis at the border. This results in a sense of insecurity for interior residents towards the border. By summer 2022, over half of Americans believed an immigrant invasion was happening at the US southwest border, and that immigrants omit more crimes than the US born population.¹⁶⁷ When the present 12 million undocumented and newly arriving 2.4 million immigrants are added together, the migrant population is only 4.3% of US population.

However, crime rates in US SW Border towns are also generally significantly lower than in interior US cities ¹⁶⁸. This is but one example of how heated political rhetoric shapes perceptions, and how perceptions then lead to policy choices to address violence on the US side of the border. This false media claim about migrants however project the image of migrants as perpetrators of violence against US citizens, and therefore justifying border militarization, and not as victims of violence by US security forces and Cartel.

In the neoliberal border political economy, selling the image of a violent US side of the borderlands is accomplished by vested interests. Those economic interests lobby the US congress for significant annual budgets to construct walls and or deploy spatially remote technological fixes. However, the profits of such projects produce paltry economic gains for Arizonans, even while Arizona receives a disproportionate burden of immigrants under this model. Border militarization for Arizona is a security solution to an economic problem that does not originate at the border. The Arizona border is the operational linchpin in the suppression of migration.

Keeping the doors of migration shut while operationalizing trade is highly dependent on operating a militarized Arizona border as part of a regional economic model. For migrants it is the modern equivalent of middle passage in the pipeline of forced migration.

The Border Patrol Union has continuously called for more agents, now around 22,000, the largest federal police force in the United States. Their calls add political clout to the crisis mongering scenarios that fund Border Patrol agents' salaries. But the use of political propaganda by state actors and non-state actors to maintain the political view of the border as insecure is a highly successive business strategy. As David Harvey (Harvey)¹⁶⁹ has defined it, state perpetuated violence under neoliberalism is to be expected at the border. It is a very

¹⁶⁷ [On immigration, most buying into idea of "invasion" at southern border](https://www.ipsos.com/en-us/news-polls/npr-immigration-perceptions-august-2022), 18 August 2022, NPR/Ipsos poll, <https://www.ipsos.com/en-us/news-polls/npr-immigration-perceptions-august-2022>

¹⁶⁸ U.S. border cities again see low violent crime rates, Russell Contreras, Oct 28, 2021, Axios, <https://www.axios.com/2021/10/28/us-border-cities-low-violent-crime-rates> , Crime on the U.S.–Mexico Border: The Effect of Undocumented Immigration and Border Enforcement, Roberto Coronado, Pia M. Orrenius, Migr. Inter vol.4 no.1 Tijuana, ene. / jun. 2007, https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1665-89062007000100002

¹⁶⁹ Brief History of Neoliberalism, David Harvey, 2005, Oxford University Press, 2.

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much a planned part of the neo-liberal model, and not an unexpected outcome, nor even, a failure of the state.

Lessons in Market Making

In Section IV, *The Business of Human Smuggling*, *market making* focused on the human smuggling market at the US-Mexico Border. For the Meso-American free trade region as a whole, a larger concept of market is in order. In this context, the value of the market is the sum total of all trade between the countries less the resulting costs of human migration. In the real economy, all trade includes both “legal” or “illegal” border business activity. While the border determines the high cost of human migration to migrants themselves, the cost of migration for the regional economic model is so far, an affordable tradeoff.

Central American and Mexican laborers who are agricultural workers are now largely displaced from rural areas in NAFTA and CAFTA countries’ with agro-export economies but cannot access guest worker programs which rely on small inadequate quotas to fulfill labor demand and soak up “excess” labor supply.¹⁷⁰ Prior Mexican and Central America cyclical migration once engaged in on a seasonal basis, is now highly eclipsed for workers not allowed in under H-2A labor quotas.¹⁷¹ This is how the border, in essence, directly shapes the labor pool available to the interior United States.

Prior to the current Trump-Biden mass expulsion policy, a policy of mass detention of immigrants at the border prevailed. Though now diminished, it remains a multi-billion-dollar industry that lobbies for government contracts. Though not deeply analyzed here, it is also part of the border security complex described by Todd Miller (2019) who points out that the detention sector is dominated by multinational contractors: Core Civic, Geo Group, and G4S¹⁷².

In addition to the detention sector, the border security sector enjoys federal outlays for what the Transnational Institute reports as the world’s largest militarized border; the US-Mexico border. The border security sector at the US-Mexico border generated an annual federal outlay of “\$US 19 billion from 2013 to 2018”.¹⁷³ The outlays to the private border security firms, akin to those privatized and contracted firms in the detention sector, together comprise the overarching border security complex, known as the border militarization industry.

The “Consequence Delivery System” is *federal border policy parlance* for technologically instrumentalizing the brutality of violence meted out to immigrants at the border. Despite its pseudo-scientific use of behavioral terminology, all US border militarization strategies since 2003 have failed to deliver a significant sustainable reduction in the number of arriving

¹⁷⁰ OP cit. Green (2011).

¹⁷¹ See: H-2A Temporary Agricultural Workers, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>

¹⁷² More than a Wall, Corporate Profiteering and the Militarization of US Borders, Todd Miller, Transnational institute, September, 2019. <https://www.tni.org/files/publication-downloads/more-than-a-wall-report.pdf>

¹⁷³ Defund the Global Climate Wall, Todd Miller, 29 October 2021, Transnational Institute, <https://www.tni.org/en/article/defund-the-global-climate-wall>

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immigrants.¹⁷⁴ But the structure of the border businesses (narcotics, human smuggling, and commercial trade) all take place in the same geographical environment, and they are all economically intertwined.

In Meso- American production markets, investors in the principal export sector of agriculture (but also in mining) have introduced mechanized modes of production which has caused large-scale social disarray. Displaced workers are in turn fed into a migration pipeline targeting the North American labor market. This dynamic process, once identified by economist Joseph Schumpeter as *creative destruction*, is a mainstay of the regional economy of North America and Mesoamerica. The neo-liberal rationale of forcing such a redistribution of human resources posits that if investments are unrestricted by national barriers, the redistributed capital will absorb such workers. In other words, it is markets, not immigration quotas, that rule the supply and demand of labor; including markets created by force.

While the entire North American regional market as a whole determines the multilateral trade in goods, it is US-México border that suppresses, detains, and controls the resultant labor flows. Neither the miniscule United States labor quotas nor the grossly distorted asylum law are effective regulators of labor flows.

Migrants fleeing brutal economic conditions and human rights violations face the militarized border is a middle passage. CAFTA and NAFTA signatory countries use migration to lower the political pressure on them from populations fleeing grinding poverty. Having failed to invest in workforce development, immigrant remittances circulate capital back to families and rural towns long neglected by federal governments. However, the remittance dependency cycle is made worse by neo-liberal governments in Meso-America due to the de-capitalization of their own economic sectors (Solis and Rivas: 2016).¹⁷⁵ Once out of the sight of politicians, policy makers, bankers, and business owners back home and in the United States, migrants cowering in shadows of the rather porous SW US border are no longer their concern.

To slow the burgeoning labor flow, expulsions, detention, and deportations are blunt tools used to respond to a public which perceives migrants as an economic threat. For example, to stop poor Indigenous migrant workers from trickling into the Arizona border, Title 42 was quite effective from blocking their entries, but not their migration to the border. With the Nov. 16, 2022 court ordered rescission of Title 42 in December, a selective use of asylum once again appeared to have been restored by a court order.

¹⁷⁴ Significant declines in immigration, apart from that of México during the global recession of 2018, are not sustained for more than 18-month periods because the root causes of migration remain, and Cartels successfully adjust their business model to counter US security measures.

¹⁷⁵ [after] 13 years of Plan – Puebla Panama . . . 10 years of CAFTA, and twenty years of free trade between Mexico and the United States . . . poverty, hunger, international migration, and violence are characteristics of this economic opening. Solis, Villafuente, Castillo, Rivas: 2016, “Balance crítico del Plan Puebla Panamá y perspectivas del Proyecto Mesoamérica: Asimetrías regionales, límites del modelo maquilador y datos comparativos de la región”, Heredia Zubieta, Carlos (coord.), 2016, El Sistema migratorio mesoamericano, México, D.F., El Colegio de la Frontera Norte/CIDE.

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Title 42 was the third such policy in the past three presidential administrations used to regulate the same ongoing migrant labor force. This illustrates that there is a political economy for immigration policies divorced from the reality of migrant labor market demand for Mexican and Central American workers in the interior US. For Indigenous immigrants that demand resides in Florida, Texas, California, Southern Appalachia, and along the Northeast corridor (Gentry 2021).¹⁷⁶ Migrant workers who are paid low wages benefit the economies of both “Red States” and “Blue States” alike. In other words, despite the prostrations of politicians in Arizona, Texas, and Florida regarding immigration, their local labor markets cash in on that workforce.

Though seemingly contradictory (given politicians anti-migrant stances) it is employers in those very states (and in California) where employers clamor for more workers. Those employers both oppose higher wages for agricultural work and reward such politicians. They are part of the reason why border security regulates labor with violence. Maintaining a labor force which will not openly oppose wage restrictions supplies a largely complaint - low wage work force - in the interior. That is how the border regulates labor according to economic demand; but an economic demand bounded by concurrent and opposing ideologically driven - political demands.

The “Other” Trade

Laxed regulation of commerce at the Ports of Entry by the Customs and Border Patrol (CBP) plays a function in the illegal border market economy as well. Commercial vehicular inspection at Ports of Entry is deliberately unobtrusive. The CBP does monitor commercial truck traffic entering the United States, but not so much as to seriously disrupt the multi-billion-dollar drug trade, which ships over 80% of its goods on trucks undetected through land Ports of Entry (Green:2011).¹⁷⁷ By late August of 2022, 87% of fentanyl confiscated was done so at Arizona Ports of Entry and not in the field by Border Patrol.¹⁷⁸ Though unprecedented seizures make for dramatic headlines, there is no evidence of less drugs reaching the interior US market.

Investigation and prosecution of narcotics smuggling and money laundering by the Financial Crimes Enforcement Network at the U.S. Treasury Department was also carried out with a minuscule budget of about \$127 million in 2021. The minimalist regulatory inspection regime (and therefore symbolic level of inspection) is reproduced in the minimalist superficial financial scrutiny, both of which continue unabated despite a \$16 billion budget in funding for Customs and Border Protection,¹⁷⁹ and annual Cartel profits of over twice that amount.¹⁸⁰

¹⁷⁶ Gentry, Blake, et al. "Indigenous Language Migration along the US Southwestern Border—the View from Arizona." *Chance* 34.3 (2021): 47-55.

¹⁷⁷ Op cit, Green (2011)

¹⁷⁸ Dangerous trend, 3.1 million fentanyl pills seized at Ariz. border in one month, Danyelle Khmara, *The Arizona Daily Star*, 26 August, 2022.

¹⁷⁹ Keep digging up dirty money, Curt Pendergast, *Editorial Opinion, Arizona Daily Star*, March 20, 2022.

¹⁸⁰ Op cit, *Guardian*, Ed Vulliamy, 2 April, 2011.

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Given the comparatively paltry sums given for investigation and enforcement of financial institutions, there is little exposure to financial risk for US Banks and their Cartel customers alike. This is not an accidental disconnect between this market and regulatory power in the federal executive. Light regulation is a standard feature of neo-liberal governance, and no less so at the US- México border. As David Harvey (2007) has noted:

Deregulation allowed the financial system to become one of the main centres of redistributive activity through speculation, predation, fraud, and thievery.¹⁸¹

Neo-liberal theory holds that less regulated commerce produces better societal outcomes and that certainly includes transnational transfers of capital, regardless of the origin of funds. The border is where narcotics smuggling through ports is lightly regulated and human smuggling is highly regulated. Both are “illegal”, but the border operates in a combination of both open and shadow economies.

Since 2003, a plethora of deployed military technologies and human deterrence strategies known as DHS’s “Consequence Delivery System” have long promised to deter migration at the SW US border.¹⁸² A 2017 GAO study¹⁸³ demonstrated the Sisyphean policy task happily assigned by the Congress to DHS to solve. It tasked DHS with substantially holding back the labor force at the border while reforming the fairly dysfunctional and under resourced interior immigration court and detention system. At the border the current consequence delivery system is increasingly dependent on instrumentalizing violence through migrant expulsions and while indirectly relying on Cartel to violate the human rights of migrants as a deterrence from migrants approaching the northern Mexican border towns.

Outside the logic of the border security complex, the logic of supply and demand for labor provides more explanatory power for understanding the cyclical failure of migration deterrence policies. This view elevates the economic rationale behind border security funding over and above the security rationale. Funding border militarization to improve deterrence has proven to be futile. Under the current neo-liberal model, the main reason for border militarization is to ensure its core economic function as part of the regional neo-liberal economy.

¹⁸¹ Op cit, Harvey , 2007

¹⁸² For the latest version see: <https://www.dhs.gov/news/2022/03/30/fact-sheet-dhs-preparations-potential-increase-migration>

¹⁸³ Border Patrol: Actions Needed to Improve Oversight of Post-Apprehension Consequences, Government Accounting Office (GAO) Jan 12, 2017. <https://www.gao.gov/products/gao-17-66> . The report noted that while CBP reported a 14% recidivism rate, the GAO found a 29% rate, which more closely resembles the reality of circular migration for many laboring families reaching, working in, and then leaving the US labor market. Family separation and reunification is a basic economic motivating factor that is beyond the institutional capacity of a security agency to solve. The economic role of migration, while often ignored in this question of effectiveness, is nonetheless clearly central to its understanding.

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State and non-state violence at the border is specifically used to instrumentalize the economic function of labor. To understand this claim we turn to the specific economic roles favored for border enforcement under neo-liberalism. In this slight, it may actually be more helpful to think of “border enforcement” more broadly as “border governance”.

This conundrum of continually funding a failed public border policy flummoxes most observers unless the relationship of state and private actors for border governance is more closely examined. To discern the rationale behind the conundrum, state and non-state actors are better understood in economic - rather than in the more often cited - political terms. At question is - who runs the border?

State and Non-State Actors

The narcotics and human smuggling cartels are now one and the same. They are aided on the Mexico side by pliant government security forces that are often in their pay. On the US side, despite the great show of border patrol force multiplication, wall building, and deployed surveillance technology from Boeing and the Israeli company, Elbit, smuggling continues. Application of violence is not limited to human smuggling, to the contrary it is market tested in typical organized crime operations which seek to use public security agents (local and or state police in Mexico) to subvert public investigation and prosecution of crimes against citizens who either refused to cooperate with Cartel or became unwitting low level operatives who were eliminated when expected revenues fell short of goals attached to drugs distributed to street dealers or when protection rackets fail to extract enough “Tax”. Extending Cartel operations into local businesses as fronts or as payees of protection are part and parcel of how organized crime operates as a private business and uses the public sphere to ensure their operations are undisturbed by regular judicial proceedings. For example, in a groundbreaking report (Greene Sterling, Baronnet: 2022) about a team of women looking for disappeared relatives in Sonora, Mexico in which the authors commented that:

So far, Buscadoras Por La Paz Sonora has discovered 333 bodies. To Cecilia's knowledge, not a single case has been prosecuted.

The Other Victims, Palabra, Dec. 15, 2022. ¹⁸⁴

On Dec. 2, 2018, as Cecilia Delgado Grijalva’s son Jesus closed his store with a neighbor, both were kidnapped in a truck identified as one typically belonging to Sonoran state police. For several months, Cecilia “frequently got in touch with the state police as well as the Sonora attorney general’s office.” After no results or cooperation, she turned to searching for him herself in clandestine graves. The report identifies these crimes according to the United Nations’ definition of “enforced disappearances . . . [as] facilitated by ... almost absolute impunity,” ¹⁸⁵

¹⁸⁴ The Other Victims, Palabra, Terry Greene Sterling and Marie Baronnet, December 15, 2022, <https://www.palabranahj.org/archive/the-other-victims>

¹⁸⁵ Ibid. Palabra, Dec. 15, 2022.

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Again, violent reinforcement of these two market mechanisms (ensuring the flow of humans and goods) is carried out by parallel paramilitary forces, one “legal” and the other “illegal”, one public, the other private. While being provided security by federal National Guard during field searches, guards who are typically not from local areas under search, the group must also cooperate with the very police force witnesses identified as responsible for his disappearance. Use of local police and Cartel dressed in police uniforms in Sonora is also a common tactic¹⁸⁶, making the burden on survivors of disappearances subject to the ambiguity of private and or state responsibility for capital crimes with impunity of both police and Cartel, a nefarious form of strategic ambiguity. The beginning of the MPP and Title 42 period coincided with the same month of Jesus’s disappearance. By December 2022, The number of documented disappeared persons in Sonora topped 300, while those migrant deaths on the Tohono O’odham Nation (indirect victims of violence through displacement and dispossession) was 330, while migrant deaths in Pima County were 652, for a total of more than 1,200 for the roughly four period of those policies.

Why this matters for the advanced version of the neo-liberal model is due to the economic nature of the violence itself, which is often an affordable cost for businesses-as-usual for both parties involved. Ian Brunton has described “covert actions” not as cover for *plausible deniability* but as “a communicative measure and a tool for ‘strategic ambiguity’¹⁸⁷ as conceived by Cormac and Aldrich (2018).¹⁸⁸ In business terms, violence carried out with impunity signals to the public or would be reformers, who it is that controls the market, and critically - who controls business intelligence about the market, as well. While deaths due to acts of violence are not a proxy for profits, they are a proxy for who has the necessary power to control the market.

The US Congress’s embrace of neo-liberalism was demonstrated not just in the deliberate deregulation of the financial sector, but also in streamlining transnational importation processes at the Ports of Entry. In neo-liberal states, where deregulated financial sectors operate with scant state controls on capital investments and withdrawals, government agencies have proven to be insufficiently monitored for collusion with non-state actors to prevent criminality; criminality non-state actors leverage for profits. One outcome of this model in the US-Mexico Border zone is where migrant suppression operations of both state (CBP) and non-state (Cartel) actors have proven to be mutually beneficial in economic terms. In Sonora, México this extends into state and local security forces beyond the 100-mile zone. It is the function of violence in the border zone to repel any effort to re-shape market access for the businesses who control the market. Also, market control for extortion rackets further from the border are essential for profit making.

¹⁸⁶ Presuntos policías de Agua Prieta habrían colaborado con sicarios para “levantón” en Sonora, 12 de Agosto de 2021, Infobae, <https://www.infobae.com/america/mexico/2021/08/12/presuntos-policias-de-aguaprieta-habrian-colaborado-con-sicarios-para-levanton-en-sonora/>

¹⁸⁷ Misperceptions of Covert Action, December 21st, 2018, Chicago Policy Review, <https://chicagopolicyreview.org/author/bruntonian/>

¹⁸⁸ Rory Cormac, Richard J. Aldrich, Grey is the new black: covert action and implausible deniability, International Affairs, Volume 94, Issue 3, May 2018, Pages 477–494, <https://doi.org/10.1093/ia/iyy067>

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The neo-liberal model then actually extends private economic participation not just in the form of exports and imports for multinational corporations, but in the corrupt use of public officials for private criminal enterprises. Of course, any economic model is subject to attempts at criminality, but neo-liberal governments by design are limited in their scope of regulatory enforcement.

In terms of migrants, US state security forces (Customs Border Protection) expelled migrants under Title 42 directly into Mexico and therefore resupplied private actors (Cartel) with migrants for economic extortion. This mutualism requires no official agreement but rather only tacit cooperation, manifest in the operational sequence of migrants being violently expelled across the border and then subject to violence unleashed by Cartel. Where corruption may make such an exchange more profitable, corrupting CBP agents with Cartel bribes is a relatively cost-effective business expense for Cartel operations.

From a business perspective for employers in the US interior and border Cartel alike, the public targeting of eminent border threats ultimately means migration suppression measures at the border efficiently supply a source of cheap labor and a ready pool of people to extort, respectively. Blurring the lines between temporary surges in migrant crossings and an actual national security threat, or using them interchangeably, maintains popular political support for border militarization funding. Despite conservative claims of support for legal immigration, public business lobbies are generally loath to call for increased general labor quotas, keeping their requests to H-1 visas or various temporary agricultural visas (2A, 2-B, and 3) least a larger labor request causes a large public backlash.

Supporters of neo-liberalism who nevertheless disregard the usurpation of migrants' incomes and lands, can always justify the border militarization project not as an acknowledgment of failed economic development and forced migration, but as a necessary suppression tool. In other words, perpetuating the border as always "in crisis" is good business practice for firms profiting from border militarization and detention. Indeed, as the border militarization industry matures, it became a cash cow trophy for private industry in the later stage of the neo-liberal model for United States capitalism. The other private interests, the Cartels, merely adjusted their business model which greatly benefited from migrant containment in northern México.

Nevertheless, conservatives have rightly identified that the humanitarian conflagration at the border is unsolvable through immigration reform. Given that solving the root cause of migration requires long term bilateral investment in the form of longer-term commitment to foreign aid, the border-in-crisis is beneficial to an array of investors, politicians, and Cartel.

Creating effective economic development in the migration sender states of Meso-America would require bipartisan political stability in both the donor state and in the receiving states. The section below describes why national development for states involved in migration - is deeply challenged.

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Internalizing and Off Shoring Neo-Liberal States

Guatemala is the largest Central American trading partner with the United States. Nevertheless, in June of 2021 Vice President Kamala Harris stood next to the Guatemalan President Giammattei Falla in Guatemala and famously told Guatemalans and other Central Americans, “Do not come, do not come.” To press home the Biden policy message about MPP and Title 42, she referred to immigration to the United States as “illegal”. She identified immigration to the United States as dangerous and driven by “hunger, hurricanes, and pandemic”, stating that smugglers would be the ones to benefit most from their journeys.¹⁸⁹

However, Vice President Harris made no mention of the failed multilateral trade agreements enacted under prior US leadership. Absent from her admonition were references to CAFTA, as the solution negotiated with Guatemalan elites in the post-civil-war, neo-liberal order, touted by previous administrations. Such rhetoric previously served up from the Clintons, Bushes, and Obama administrations no longer even pretends that ongoing migration is explainable as a temporary labor market “adjustment”. Neither did the Vice President suggest that other beneficiaries of the trade pact, corrupt Guatemalan Government ministries and the criminal syndicates organized by former Guatemalan military officers needed stopping. Off the table was any mention of the current Guatemalan President Giammattei Falla’s banning of the UN anti-crime investigation unit, the CICIG. That unit’s criminal investigation led to the jailing of a former standing Guatemalan president and vice president. Harris did not describe the sorry state of this key economic ally, as bearing any relationship to the migration of its own peoples.

In keeping with Guatemala’s subsequent banning of the CICIG, degrading judicial bodies that question state impunity has become *de rigueur* for US trading partners under CAFTA and NAFTA. While deregulation weakened state reporting on illegal international financial transactions used by Cartel operations, state and non-state criminal enterprises flourished in Guatemala long before the civil war ended in 1995. For example, the *Huistas* (a drug clan) had operated in the Guatemala-Mexico border area of Huehuetenango, Guatemalan since the late 1990’s, some 15 years before the signing of CAFTA in 2005.¹⁹⁰ The *Huistas* reach extends far beyond “local police and prosecutors”, but includes members of the Guatemalan congress, and members of the executive branch. A relative of a main *Huista* operative, Freddy Arnoldo Salazar Flores, is accused by the US Treasury Department of storing cocaine.

¹⁸⁹ Kamala Harris tells Guatemala migrants: 'Do not come to US', Vice President Kamal Harris, 8 June 2021, BBC. <https://www.bbc.com/news/world-us-canada-57387350>

¹⁹⁰ US Sanctions Up Ante in Hunt for Guatemala's *Huistas*, Alex Papadovassilakis, Insight Crime, 23 MAR 2022, <https://insightcrime.org/news/us-sanctions-guatemala-huistas/>

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In the run up to the 2019 Guatemalan Presidential elections, CICIG identified that half of all political campaign contributions^{191, 192} came from organized crime and other sources of corruption. Under these conditions, such governments are conducts for graft. Corrupt governments do not govern well, if at all. Corruption in this instance was not originally an administrative state, but rather a military one. Former military officers subverted the state for their own illicit and often violent economic gain. Collusion between non-state actors and state actors in Guatemala is also part of the Mexican Sinaloa Cartel's and Cartel Nueva Generación Jalisco's multinational business model.¹⁹³

Neo-liberalism favors non-state (private) and state cooperation in deregulated spheres of governance. In those spheres, non-state actors are more efficient at maintaining graft networks that operate from outside the government, but networks which use the legal cover of the state to avoid legal penalties. This is why bribes by criminal networks to officials are now commonplace and routine in the Meso-American states. Criminal syndicates seek, just like non-criminal enterprises, a stable business environment. If their marketplace is only minimally disrupted by new politicians requiring bribes, criminal syndicates can better maintain their hegemony in the shadow economy, as well as in the political economy.

Below is an example of what that ultimately meant for ordinary Guatemalans.

"A mother ("A") tried to save her young daughter when the gangs arrived to rape her. The gangs beat and kidnapped the girl, who did not return for nearly a year. When the mother received still more threats, she fled north with her mentally disabled 15-year-old son. The son had the functional development of a 5-year-old. The trip was terrifying. The family tried twice to cross the river, but U.S. officials sent them back both times under Title 42. In Reynosa [Tamaulipas, México; a border town] the mother realized she could not keep her son safe from the endless kidnappings and assaults going on around her. If she tried to cross with her son again, they would both be sent back. If he crossed alone, he would be sent to her family in the United States because Title 42 did not apply to unaccompanied minors.

Like so many other desperate parents, she finally sent him across again, this time on his own. He was found dead shortly thereafter. Initial reports suggest torture and mutilation. Based on my experience, I suspect the gangs approached the boat in which he was a passenger and asked for "claves," or passwords each traveler gets once they have paid the proper crossing "fees" to the gangs. If anyone attempts to cross without such

¹⁹¹ Corruption triumphs in Guatemala's presidential election, June 21, 2019, The Conversation, <https://theconversation.com/corruption-triumphs-in-guatemalas-presidential-election-119076>,

¹⁹² Financiamiento de la política en Guatemala, 6 July de 2015, Comisión Internacional contra la Impunidad en Guatemala, https://www.cicig.org/uploads/documents/2015/informe_financiamiento_politicagt.pdf

¹⁹³ Los Pochos, Guatemala's New Generation of Drug Runners for Sinaloa Cartel, 10 Jan. 2020, Maria Alejandra Navarrete; The Jalisco Cartel's Quiet Expansion in Guatemala, 18 May, 2022, Alex Papadovassilakis; US Sanctions Up Ante in Hunt for Guatemala's Huistas, Mar. 2022, Alex Papadovassilaki.

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payment, they are killed. Had the gangs asked this young man for his password, he would have been unable to answer and therefore killed."

ACLU Document: Affidavit of Jennifer K. Harbury, Re: Impact Of Title 42 On Asylum Seekers In Reynosa, Mexico, August 9, 2021, <https://www.aclu.org/legal-document/declaration-jennifer-k-harbury>, reported by Human Rights First, August 11, 2021.

At the US- Mexican border, the price for being smuggled by a local cartel was too high for that immigrant mother to pay. In this case, in lieu of the Border Patrol, a Mexican cartel controls the border crossing, for most US security resources are concentrated at Ports-of-Entry, not at smaller, less regulated, local rural border crossings. The state protection force is absent, but the violent non-state actor is omnipresent--- and free to apply violence.

This is a logical outcome of the neo-liberal order for migrants; an economic order that disfavors strong administrative governance, both in countries of origin and at the border. An economic order that tolerates non-state violence, it effectively devolves control of a protected market to non-state actors.

Among those who gain from the underlying trade and security pacts constructed along the pipeline are not just thugs operating at the border, but elites who regularly offshore their company's profits. One such business owner was the Guatemalan president of the offshore company, Broadway Commerce Inc., Marllory Chacón Rossell.¹⁹⁴

Another business owner was Harald von der Goltz, the German Guatemalan who, according to a US federal court in New York,¹⁹⁵ set up a shell company in the 1980s.

While Chacón Rossell laundered drug money through Panamá, von der Goltz profited from coffee exports and off shored his family's funds in Switzerland. Chacon Rossell has been linked to her company's lawyer, Francisco José Palomo Tejeda, a former Central America Parliamentarian, member of the Guatemalan Constitutional Court, and defense lawyer for former Guatemalan presidents Rios Montt and Alfonso Portillo. Though later assassinated in Guatemala in June 2015, Mr. Palomo Tejeda initially contacted the Panamanian legal firm Mossack Fonseca which registered the shell company, Brodway Commerce Inc., which laundered Chacón Rossell's ill-gotten funds.

Portillo presided over the Guatemalan Presidency negotiating Guatemala's positions on CAFTA, leaving office in 2004, just prior to the signing of the Agreement 2005. By 2013 Portillo was

¹⁹⁴ Panama Papers Reveal Offshore Account of Guatemala Drug 'Queen', 5 APR 2016, Michael Lohmuller, Insightcrime.org. <https://insightcrime.org/news/brief/panama-papers-reveal-offshore-account-guatemala-drug-queen/>

¹⁹⁵ The trail of the Panama Papers: from Guatemala to South Florida, David C Adams, Univision News, 10 Dec., 2018, <https://www.univision.com/univision-news/united-states/the-trail-of-the-panama-papers-from-guatemala-to-south-florida>

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extradited to the United States on charges of laundering 70 million dollars,¹⁹⁶ and convicted. However, he served only 30% of his sentence before being released to Guatemala.¹⁹⁷ His predecessor, Rios Montt was successfully adjudicated on charges of directing state genocide, but served even less time than Alfonso Portillo. A key military general in the Civil War, President Otto Perez Molina was later imprisoned in Guatemala along with the Guatemalan Vice President Baldetti, for siphoning fees from the national customs agency.

The targeted assassination of Palomo Tejeda is a reminder that criminal syndicates and their military allies alike will openly contest for control of the marketplace against any threat from rivals. Among the Guatemalan elite, vying for a piece of state power can prove to be a dangerous game, but violence is deployed to construct the economic pipeline from which they benefit, in its originating moments.

Economic Model in Duress

In the political economy of the region defined by NAFTA and CAFTA trade partners, political support for the model's basic tenets has started to wane. President Trump's renegotiation of NAFTA into the United States-Mexico-Canada Agreement served a tangible political purpose, to assuage displaced rural and working-class industrial workers in the US with a symbolic recognition of their economic losses under globalization. Its actual economic benefit to the same workers was negligible, but it incentivized a return of some production to the United States from countries to which US manufacturing had earlier decamped. Since the period of trade-led globalization of the 1990's, automation and the development of state-supported renewable energy industries which have reached 20% of energy produced in the US have been disrupting major industries.¹⁹⁸

The neo-liberal disfavoring of state-supported research, development, and investment is also being diluted, in the name of national security, against China. Trump's sanctioning of Chinese imports was rationalized as a response to Chinese state subsidies. It was followed by the Biden Administration's shift to investment in computer chip manufacturing -- indicating a key free-market tenet of orthodox neo-liberal thought is weakening, in a tit for tat dispute. Indeed, geo-political moves indicate that a reassertion of the financial role of the state is on the horizon. For example, Morris Chang, founder of the global leader in semiconductor chip manufacturing, TSMC, upon announcing a multi-billion-dollar investment in a new plant in Phoenix, Arizona, noted that we are seeing the demise of globalization.¹⁹⁹

¹⁹⁶ Archibold, Randal C. (24 May 2013). ["Ex-Guatemalan President Extradited to U.S. in Corruption Case"](#). *New York Times*. Retrieved 25 May 2013.

¹⁹⁷ Portillo served some 19 of 70 months sentenced.

¹⁹⁸ What is U.S. electricity generation by energy source? US Energy Information Administration, 2021 <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> accessed 1/15/2023.

¹⁹⁹ 'Father' of Taiwan's chip industry warns of the end of globalization, 12-12-2022, Vietnam Posts English, <https://vietnam.postsen.com/trends/198385/%E2%80%98Father%E2%80%99-of-Taiwan%E2%80%99s-chip-industry-warns-of-the-end-of-globalization.html>

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However, the discontent with neo-liberalism's distorted redistributive effects, increased immigration being among them, is politically still in play. While liberals have abandoned immigration reform, conservatives are doubling down on criminalizing and scapegoating immigrants. Both ignore any alternative economic paths for investment in human development in the communities and countries of origin for migrants.

Though governance in United States has begun a neo-liberal retreat ideologically, migrant-sending countries remained locked into the trade agreements that fuel economic disparities and immigration. For the economic beneficiaries of border militarization under neo-liberalism to continue to prosper, there can be no disruption in the border-militarization-industry funding.

The border-wall versus immigrant processing debate ignores, conveniently for conservatives, that on the US-Mexico border walls can only partially, if at all, block incursion, and that its exclusionist logic ultimately requires more and more lethal military force. Such violence against migrants will continue to be rationalized, to the extent that migrants are successfully objectified.

The central challenge for the economic model is that as more violence is needed to suppress migration; the migration trade-off may become politically more costly. At some point, violence may become politically unacceptable. Until then, border violence will tend to increase, to sustain the economic interests of known state and non-state actors.

Border violence can take multiple forms: increasingly harsh border controls (lateral transfers along the border, mass expulsions, more checkpoints, and expedited deportations), cartel violence, and the systematic channeling of migrants into the Sonoran desert, in effect a death-trap. These forms of violence, when taken as a whole, amount to a kind of low-intensity warfare. For migrants and refugees hiding in tent camps, in public or informal shelters in Mexico, it is the non-governmental shelters in Mexico that often offer the only protection from the violence meted out on the streets of border towns.²⁰⁰

Under MPP, UN Agencies (UNHCR, IOM, and UNICEF) initially assisted migrants amassed at Matamoros, Mexico and at the US San Isidro POE next to Tijuana, by opening a website for registration of migrants in camps. Within three days, 12,000 migrants registered.²⁰¹ In Sonora, Mexico border towns the United Nations agencies were largely absent. When Title 42 was launched, the same UN agencies then decried the exclusion of Mexicans, Guatemalans, Salvadorans, and Hondurans, and the United States' rejection of regular asylum rights under

²⁰⁰ In Nogales, Sonora, Mexico a family was chased by knife wielding assailants and an Indigenous Mixtec woman was pursued by a cartel member to the front door of a shelter, two blocks from the International border. The cartel member had a restraining order against him in Michoacan State, after four police complaints were registered and was wanted on a separate homicide charge. Interviews conducted by Blake Gentry in Arizona, June, 2022.

²⁰¹ UN agencies begin registering asylum seekers at US-Mexico border, 25 February 2021, <https://news.un.org/en/story/2021/02/1085642>

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the 1951 UN Refugee Convention.²⁰² While UNHCR issued refugee credentials in Southern México, and for a short period at the US-México border, the 1951 Refugee Convention was largely disregarded by the United States and Mexican governments.

UNHCR's decried from afar about the misuse of Title 42 as a breach of international asylum norms, but it failed to forcefully call out the Biden Administration on the routine and systematic denial of Meso-Americans' right to asylum at the US -Mexico border under that program. With this failure of voice, UNHCR fails to support the very international humanitarian norms created by member states at the end of WWII. As the Secretary of Homeland Security Mayorkas has made clear, the US seeks other strategies, to replace Title 42, which will have the same effect.

Essentially, the Biden Administration used MPP (the remain in México program) and Title 42 to retool for faster deportations, by elevating migrant border detention and containment. DHS has already tasked USCIS asylum officers to directly adjudicate asylum claims of border-crossers via video cameras in border patrol processing stations and short-term legal processing centers - in addition to those they already interviewed in long term detention. That rearrangement disallows or highly restricts physical access for legal representation by attorneys. This strategy is not, however, sustainable in current facilities.

Operationally, the new strategy is to frontload adjudication of asylum cases at the border and away from the longer and often dysfunctional and expensive detention and immigration court processes. The reorientation of asylum for adjudication at the border and not in the interior has several long-term implications.

First it reveals a shift in the overall goals of US asylum policy. Immigrants with visas, who are legally admitted, usually arriving by plane or ship, amount to roughly half of all immigrants in the United States without legal status. In 2020, most visa-overstay immigrants came, in descending order, from these the top ten countries: Mexico, Canada, Brazil, Colombia, Venezuela, China, India, Dominican Republic, Nigeria, and Haiti.²⁰³ Some 84% are from countries in the Americas: Mexico, Canada, Brazil, Colombia, and Venezuela.²⁰⁴ Most of these immigrants represent better-educated persons with higher incomes. The United States benefits from their prior training and income, while their public visibility is much less than that of the poorer Meso-American immigrants arriving at the southwest US border. Second, by continuing

²⁰² UNHCR, IOM and UNICEF welcome new pathways for regular entry to the US, reiterate concern over restrictions on access to asylum Joint statement, 14 October 2022, <https://www.unhcr.org/en-us/news/press/2022/10/63497be44/unhcr-iom-and-unicef-welcome-new-pathways-for-regular-entry-to-the-us-reiterate.html?query=US-Mexico%20border>

²⁰³ The highest frequency listing for 2020 is when the two largest classes of over stayed visas are aggregated for "business or pleasure" travelers, and "nonimmigrant students and exchange visitors" via air and sea POEs not transmigrating from Canada or Mexico. Data source: Fiscal Year 2020 Entry/Exit Overstay Report, U.S. Customs and Border Protection, https://www.dhs.gov/sites/default/files/2021-12/CBP%20-%20FY%202020%20Entry%20Exit%20Overstay%20Report_0.pdf

²⁰⁴ Fifty -three (53%) percent applies to the business and pleasure class immigrants only representing over 85% of all visa overstay visitors.

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to bar most nationals from Meso-America, the overburdened immigrant court docket will eventually be eased, which then may increase its processing capacity.²⁰⁵

Allowing visa overstays has a positive economic impact in several areas. It does not require billions of investment in border security. The undocumented workers pay consumption taxes and since they must have a prospective job offer from an employer, most will not be able to apply for a work permit²⁰⁶ would have to qualify labor cost is cheaper for employers than those who cross the border and file for asylum and eventually receive a work permit.

In this context, public disinformation about “illegal” immigrants in the popular press ignores such distinctions, but the *border crisis imagery* remains useful for justifying state violence in the border zone. Scapegoating immigrants and inciting fear of migrant caravans, while ignoring acts of violence in Mexico against immigrants (just outside of US land Ports-of-Entry) are easily reproducible justifications for border militarization, created in response to actions of both public (state) and private (non-state) actors. There is little public outcry in the United States about victimization of migrants in Mexico. That calculation has enabled the Biden Administration to continue expulsions without substantial negative public reaction.

Allowed to permeate the US-Mexico border states, violence is now a key border strategy. Mexican drug and arms trafficking, and the large-scale use of violence associated with organized crime are not yet seen in the United States as products of our predominant economic model’s own making; it is only seen as the result of unwanted, and possibly criminal, immigrants at our doorstep. Though Senate Republicans politically balk at increasing funds related to Biden’s border policies,²⁰⁷ the current administration pledges to continue containment policies that expel migrants rather than detain them.²⁰⁸

Arms for Market Enforcement

The Mexican government rightly points out that Cartels are armed by weapons legally sold in the United States but then smuggled into Mexico by Mexican cartels and their state allies. The Mexican Federal Government allocates only thin resources on the border, to detect such sales, but their “legality” in the US and their “illegality” in México perhaps misses the point. There is

²⁰⁵ The Refugee Brief – 27 May 2022, UNHCR. <https://www.unhcr.org/refugeebrief/the-refugee-brief-27-may-2022/>

²⁰⁶ This is generally true, with several exceptions beyond just extending the visa with a I-539 application; marrying a US citizen, applying for asylum which can eventually lead to a work permit, or converting an F-1 student visa into a H1 B worker visa. See: NOLO.com, Can I Get a U.S. Work Permit If I’m Out of Status (Expired Visa)?, <https://www.alllaw.com/articles/nolo/us-immigration/can-get-work-permit-out-of-status-expired-visa.html>

²⁰⁷ Senate Republicans balk on funds related to Biden’s border move, Caroline Coudriet, April 27, 2022, rollcall, <https://rollcall.com/2022/04/27/senate-republicans-balk-on-funds-related-to-bidens-border-move/>

²⁰⁸ McCarthy calls on DHS Secretary Mayorkas to resign, threatens impeachment inquiry, Emily Brooks and Rebecca Beitsch, 11/22/22, The Hill, <https://thehill.com/blogs/blog-briefing-room/news/3747161-mccarthy-calls-on-dhs-secretary-mayorkas-to-resign-threatens-impeachment-inquiry/>

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a market for guns that is continually fed by US arms manufacturers. The corruption of arms sales, however, is not just a private market matter. For example, the Mexican Army has been reported to be alarmingly unaware of where 30% of its arms are in fact - located.²⁰⁹

The federal Mexican government under AMLO has pursued a prosecution of US arms manufacturers, in US federal court. Their case rests on the foreknowledge of arms manufacturers legally selling their products openly, at conventions such as in Tucson, Arizona²¹⁰ and then having third parties exploit lax US border controls at Ports of Entry. Neither government has invested in effective technology to ascertain the presence of arms passing through US land Ports of Entry. The scale of arms sells, and their effects are deadly.

In 2019, according to Foreign Ministry estimates, at least 17,000 homicides were linked to these weapons.²¹¹

A recent report states that over 200,000 arms are smuggled into Mexico each year.²¹²

Prior to wall building, US media reports implied that illegal arms and shipped into Mexico in the open desert by extensive fence cutting and rural transshipments. But land ports of entry are a more efficient means to export illegal arms from the US, just as they are more efficient for drugs shipped in the opposite direction, in commercial vehicles. By early February, 2022, seventeen state Attorneys General, in a 26-page letter to a Massachusetts federal court judge adjudicating a lawsuit, asking the court to deny the gun manufacturers' request to dismiss a Mexican government suit brought against US arms manufacturers. Among the states the Attorneys General were representing were Connecticut, Massachusetts, Minnesota, Oregon, New York, and Illinois. The companies against which legal action was sought were Smith & Wesson, Barrett Firearms, Beretta, Century International, Colt's Manufacturing, Glock Inc., Sturm, Ruger & Co, and Witmer Public Safety Group.

The case, ultimately dismissed in federal court, illustrates the outcome of the neo-liberal deregulatory dilemma. When the Mexican government moves to cut off arms supplies illegally traded directly across its sovereign border, it is found to be ineligible for such transnational court action, by its major trading partner. The border is one place where the supremacy of

²⁰⁹ See: <https://mexicodailypost.com/2022/10/21/guacamaya-leaks-unveil-more-sedenas-confidential-reports/>

²¹⁰ The Tucson Gun Expo is held annually at the Tucson Convention Center, next scheduled show is on Dec. 17, 2022. The show's posted description is reminiscent of Old West nostalgia which mixes settler-colonial exploits, Indigenous suppression, and modern firearms; "Tucson Expo Gun Show will display products like Modern Firearms, Antique Firearms, Knives, Hunting Rifles, Gun Parts, Indian Artifacts, Indian Jewelry, Antique Indian Art, Mountain Men Collectables and Contemporary Crafts, Old West Memorabilia, Cleaning Supplies, Militaria, Huge Selection of Ammunition, Collectables, etc." <https://10times.com/tucson-gun-shows>

²¹¹ Procuradores de Estados Unidos apoyan demanda de México por armas, Los Angeles Times, Feb. 3, 2022, <https://www.latimes.com/espanol/eeuu/articulo/2022-02-03/procuradores-de-estados-unidos-apoyan-demanda-de-mexico-por-armas>

²¹² "Much of firearms traffic from the U.S. to Mexico happens illegally" June 7, 2022, NPR, Steve Inskeep, <https://www.npr.org/2022/06/07/1103445425/much-of-firearms-traffic-from-the-u-s-to-mexico-happens-illegally>

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corporate rights, over and above the need of states to govern, is made visible. As David Harvey (2007) has indicated,

“There has . . . been a radical reconfiguration of state institutions and practices (particularly with respect to the balance between . . .the powers of capital . . . and executive and judicial power. . .” ²¹³

Under these terms of trade, the illegal sales of US arms going south into Mexico are just as much part of successful commercial business as is the illicit drug trade moving north. The militarization of the border has not been a hinderance to either the volume or distribution networks, of either the multi-national business of arms manufactures or of the narcotics trade. Indeed, the improved US land Ports of Entry have facilitated more orderly and profitable operations for both arms and drug smugglers. They have a highly successful business model.

²¹³ Op cit, Harvey, 78.

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Conclusion

“The nation lacks the exact notion of what the violence was.”

Guzmán, Fals Borda, Umaña, *La Violencia en Colombia*, (1962)²¹⁴

The origin and purpose of border violence was the initial inquiry pursued by the authors of this report. Our findings demonstrate that violence is used by both state and non-state actors. The state, in this case, is the current executive Administration, Congress, and the judicial system, which has intermittently tolerated an extra-legal, administrative immigration policy along the border. CBP is an agency of the state and deploys violence as ordered. Cartels are private armed criminal economic enterprises that profit from the United States' migration filtering and containment policy. We have tried to illustrate our thesis that violence has been economically purposeful for the economic models' beneficiaries.

We now turn to comparing forms of violence against migrants under neo-liberalism shared with preceding forms of violence under settler-colonialism in Arizona territory. In this extended thesis, we examine how in the western United States the territory and state of Arizona have played a significant historical role of human containment. It is our contention that what we know today as neo-liberalism has deep roots in settler colonialism, and that border violence in Arizona (and elsewhere, border wide) has reproduced forms of violence known to earlier colonizers.

It is perhaps audacious and confusing to make such claims. but Settler Colonists have interchanged strategies of conquest for centuries, just as today's neo-liberalism globalized some forms of imperialism. For example, during the massive incarceration of an entire Indigenous people, the Kikuyu in Kenya by British Colonial authorities in the 1950's, British authorities divided Kikuyu into three groups: Blacks, Grays and Whites (Elkins: 2005)²¹⁵ Through a series of draconian measures carried out by force of arms, the British colonial authority subjected Kikuyu who waged war against British rule to torture and murder (Blacks), imprisoned other lesser collaborators and able-bodied adults into prison work camps (Grays), and drove entire Kikuyu villages and urban Kikuyu residents into a rural Indigenous reservation (Whites). While targeting the Mau Mau movement, British authorities systematically carried out violent acts in a system in Kenya called - the Pipeline.

The Pipeline was justified by private British land-owning settlers who helped guide state repression and who directly benefited from its extreme violence. The model for British repression in Kenya was not Rhodesia or South Africa where White governments repressed black liberation movements, but rather British colonial occupation of Malaysia. From the early 20th Century, Malay lands were privatized, then commoditized, and rubber plantations

²¹⁴ Hoyos, Héctor. "García Márquez's sublime violence and the eclipse of Colombian literature." *Chasqui* 35.2 (2006): 3-20.

²¹⁵ *Op it*, Elkins, 12, 15, 211, and 232.

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promoted. Repression of peasant resistance included re-education or reform camps constructed by the British as late as the 1950s.²¹⁶

In contrast, once the American colonists' gained independence, their knowledge of how to contain Indigenous populations could later be applied in the US southwest, by drawing on the over 170 years of settler-colonial practice subsequent to the British defeat. Upon independence the thirteen breakaway colonies carried out the largest and longest-lived campaign, for subjugation of over 500 unique Indigenous peoples, in what became the United States. In the "Arizona Territory", the subjugation of the Apache was planned by Governor Safford in 1870.²¹⁷ Containment strategies applied to the Arizona borderlands are not new.

One leitmotif of settler colonialism has always been its defensive protection of colonists, after a period of offensive dispossession of Indigenous peoples from Indigenous lands. By the turn of the 19th Century on the southwest American frontier, earlier military campaigns on the High Plains and the forced removal of Indigenous peoples from Appalachia, which ended with resettlement into camps and Indian reservations were well in the past. But colonial settlers, then as now, quickly repurposed their traditions of Indigenous displacement and dispossession

In the modern era as well, both Indigenous Kikuyu in Kenya and Indigenous migrants from Meso-America experienced an initial phase of economic deprivation which forced them into a Pipeline, immediately before being subjected to the violence, by state and non-state actors, as their migration feeds a Pipeline. In the era of neo-liberalism, violence concentrated in the transnational pipeline's middle-passage through the US-México border is now targeted against most migrants from Meso-America, not just Indigenous peoples.

Unanswered by this comparison, is whether border violence carried out to support neo-liberalism is distinct and separate in its origins from earlier forms of settler violence. In short, is the violence original to the Arizona borderlands, or is it applied from elsewhere?

The British colonial patriot Winston Churchill famously quipped in WWII, that "In wartime, truth is so precious that she should always be attended by a bodyguard of lies." For Indigenous persons, the ongoing settler colonial experience is more akin to a body of lies surrounded by the "truth" of the colonizers. Below we hope to demonstrate how the dissociation of the settler colonial past, from the modern migration pipeline, reproduces violence under the cloak of neo-liberalism.

²¹⁶ See: Reviewed work of British Colonial Rule and the Resistance of the Malay Peasantry, 1900-1957 by Donald M. Nonini, Reviewed by Badriyah Haji Salleh, *Journal of Southeast Asian Studies*, Vol. 28, No. 2 (Sep., 1997), pp. 440-442, Cambridge University Press.

²¹⁷ Proposed Subjugation of the Apache Indians in Arizona Territory, Jan. 6, 1870, *New York Times*.
<https://www.nytimes.com/1870/01/06/archives/proposed-subjugation-of-the-apache-indians-in-arizona-territory.html>

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Border Militarization under Neo-Liberalism

The US-Mexico border is part of a transnational economic pipeline. The border region stretches over 1,200 miles long and 200 miles deep. Geographically, the border economic zone encompasses six Mexican states (Baja California, Chihuahua, Coahuila, Nuevo León, Sonora and Tamaulipas) and four US States (California, Arizona, New Mexico, and Texas). It encompasses Mexico's two largest states, and the United States' second and third largest states. Under the neo-liberal economic model, massive volumes of international trade and ongoing migration in Mexico coexist simultaneously at the border. The US-México border not only became the economic crown jewel of neoliberalism itself, but has evolved into a model for deploying state and non-state economic forces to maintain and expand the neo-liberal model globally.

This border, by design, has been converted into one of the world's largest and most violent militarized border zones. Border militarization has an integrated legal and physical structure, one that was planned to bolster the United States' leadership of the regional neo-liberal economic model. States that are signatories to the legally binding CAFTA and NAFTA/USMCA trade agreements - uphold its legal architecture.

The model's economic reach requires regulatory efficiency to facilitate high volumes of trade. It accomplishes this by operating relatively weak regulatory monitoring mechanisms. Additionally, the model features the use of third-party offshore supply chains and banking, natural resource extraction, and trade rules that legally empower corporations to maximize profits. The model is responsible for the forced displacement and dispossession of workers from labor markets in Meso-American states, deepening and further catalyzing their out-migration.

Managing migration flows on a bipartisan basis at the US – Mexico border rests on the following factors: 1. The political capacity to both convince the US public that adequate social controls are in place at the border to contain migrants, and successfully project enough of a threat, to continue Congressional funding for border militarization, 2. Public tolerance of state violence (expulsions and deportations) and non-state violence, that enriches investors (smuggling, kidnapping, and extortion of migrants, and the drug trade), and 3. The ability to contain migration flows that meet *but do not exceed* US labor demand in the interior.

Filtering and Containment

Containment, however, does not mean zero or low levels of permitted migration. In 2021, due to the COVID pandemic, as the US workforce was transitioning from working remotely (read: at home) back to workplace employment, there was a national surplus of 1 million job openings. Some 41% of small business reported upward pressure on wages due to a labor shortage, with many workers not returning to work.²¹⁸

²¹⁸ Editorial: Labor shortages in Florida are a reflection of what's happening nationwide, Florida Times-Union Editorial Board, Sept. 5, 2021, <https://www.jacksonville.com/story/opinion/2021/09/05/editorial-laeditorial-labor-shortages-in-florida-are-in-varbor-shortages-florida-various-industries/5616477001/>

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Given that many migrants are undocumented and cannot demand higher wages, they are a readily available labor force which can enter the low wage service industry.²¹⁹ As the market changes, so too does the politically “allowable” number of migrants at the US-Mexico border, regardless of the legitimacy of their claims to asylum. Under neo-liberalism, a militarized border carries out both filtering unwanted, poorer migrants from Central America and Mexico, and filtering in those needed for a domestic work force. Those filtered out at the Arizona border are now more contained outside the US in the adjacent Mexico border zone, as a reserve pool for future filtering. Arizona has unique natural and historical characteristics; it was (and is) a less populated largely desert area. with a large portion of land under federal control.

However, Indigenous migration in the region predates both eras of settler colonialism and modern nation-building in Mexico and the United States. For example, Hopi currently live on three high desert mesas remote from, but historically connected to, migration routes through the lower Sonoran desert. Prehistorically, desert lands in the 13th century were subject to pre-industrial climate change impacts (Cook: 2007)²²⁰ that forced migration of Indigenous peoples and resulted in the establishment of the earliest and oldest continuously sedentary native population in the country, the Hopi. Their migration routes were along a passageway that connects Northwest Mexico with prehistoric trading routes.

This means that migration in this region has greater longevity, than the nation-states now attempting to contain it. The region currently is undergoing long-term impact of climate change in the form of drought. Climate impacts are causing deterioration of agricultural production in Meso-America. Given this regional environmental context, the levels of migration through Arizona are likely to rise, regardless of the use of violence, in Meso-America. The Biden Administration’s strategy for human containment is to block climate migrants in developing countries such as - Mexico.²²¹ As the US service sector’s need for labor ebbs and flows, so too will border policy adjust to allow more and less migrant labor. For just as metering begat the Migrant Protection Program, the Migrant Protection Program begat Title 42, and so on, to ensure that filtering and containment at the militarized border continues.

²¹⁹ The US Chamber of Commerce reports that shortages for workers are most in low skill service sectors of food industry, accommodation (hospitality), and entry level manufacturing industries. Uncited is the agricultural industry which many migrants work in on a regional basis particularly in California’s Central Valley, Florida, Texas, and Southern Appalachian states. America’s Labor Shortage: The Most Impacted Industries, US Chamber of Commerce, 31 October, 2022, <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries>

²²⁰ Cook, Edward R., et al. "North American drought: Reconstructions, causes, and consequences." *Earth-Science Reviews* 81.1-2 (2007): 93-134. Overpeck, J. The challenge of hot drought. *Nature* 503, 350–351 (2013). <https://doi.org/10.1038/503350a>, Report On The Impact of Climate Change On Migration, Oct. 2021, The White House, p. 8, <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>. See also: *Book of the Hopi*, Waters, Frank, 1902-1995.. New York: Ballantine Books, 1963.

²²¹ Report On The Impact of Climate Change On Migration, Oct. 2021, The White House, p. 8, <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>

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Containment and Filtering

In the settler-colonial era, southwestern tribal lands were claimed as part of a Confederate Arizona territory, by Confederate forces in 1861 and then authorized by the Confederacy in 1862. The US Congress's counterclaim was ratified in the Senate in 1863. Both were largely symbolic rival colonization proclamations that came fully ten years after the seminal border-establishing event of the Gadsden Purchase, in 1852. As with other national land purchases, the Louisiana Purchase and Alaska Purchase, The Gadsden Purchase ignored native land use and occupation. All three were meant first of all to keep foreign powers at bay, and additionally to gain control over Indigenous lands in order to contain Indigenous peoples.

Other containment hallmarks of settler-colonialism in the United States were the issuance of a Charter by King George, for the settlement of Jamestown (1607)²²², the Homestead Act (1860), and the creation of "Indian territories" in the colonial and federal eras now residing in Kentucky²²³ (1730's) and then Oklahoma (1839-1907). Classification of Indigenous peoples into subordinate legal statuses occurred under the Curtis Act (1898), the Dawes Act (1887), the Indian Claims Act (1946), and the Indian Termination policy (1943-1972) - to name but a few.

In Meso-America settler colonialism was established by the Spanish Crown under the legal authority of the Catholic Church, based on the Papal Bull, *Inter Caetera*, which established the Doctrine of Discovery (1493). It provided conquistadores with legal cover to carry out atrocities and land usurpation on a large scale. All such "legal" acts of genocide against Indigenous peoples were and are derived from this universal claim. Filtering of Indigenous peoples willing to accept Christianity from those that weren't under the Spanish system came about immediately, as conversion to Christianity was required by Indigenous people, to prevent their own physical elimination.

Understanding how containment and filtering by the US government took place in Arizona requires acknowledgement that The War Department established the Bureau of Indian Affairs in 1824. It was seventy-four years after the Congressional Committee on Indian Affairs was headed by one Benjamin Franklin in 1775. The War Department became the Department of the Interior in 1849. In other words, containing Indigenous peoples first, was key to both waging war and then ending the Department of War. In Arizona, Federal government policy inculcated the federal bureaucracy with the goal of containing and controlling the native population.

Because of its expanse and relatively low border population, Arizona is currently the second largest border zone to receive immigrants at the US-Mexico border. Arizona has played an

²²² First Charter of Virginia (1606) , <https://encyclopediavirginia.org/entries/first-charter-of-virginia-1606/>

²²³ <https://archive.kftc.org/Indigenous-lands-acknowledgment> , A. Gwynn Henderson and David Pollack, A Native History Of Kentucky, Chapter 17: Kentucky, Native America: A State-by-State Historical Encyclopedia, edited by Daniel S. Murphree, Volume 1, pages 393-440, Greenwood Press, Santa Barbara, CA. 2012. https://heritage.ky.gov/Documents/Native_History_KyTeachers.pdf

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outsized role in launching past settler colonies just as it does currently via containment policies against sanctioned populations internal to or arriving to the United States.

Geographically, Anglo Settler-Colonialism in the borderlands is definable as the period since 1850 when Arizona was part of New Mexico Territory, then became the Arizona Territory in 1863 until statehood in 1912. Spanish Settler-Colonialism also took place in Sonora, México but prior to Mexican independence from Spain in 1820. Mexican Settler-Colonialism continued in the northern border region of Sonora in the modern era (Gentry, et al, 2019).²²⁴ But key practices and processes of settler colonialism then in play now transcend those earlier historic periods.

Historically, Arizona territorial officials and the federal government usurped Indigenous lands occupied by twenty-one tribal nations now residing in the State of Arizona through forced separation of families, corporal punishment, military occupation, and ideological indoctrination (Spicer: 1962)²²⁵. Under settler-colonial rule on the eastern seaboard, militias played a key role in the displacement of natives and dispossession of native lands as described by Ortiz (2018). In Arizona Territory, apart from federal Buffalo Soldiers²²⁶ and other transplants, the overwhelmingly larger Indigenous population throughout most of the 19th century, meant that white settlers (Mexican and American)²²⁷ had to choose Indigenous allies for protection, such as the O’odham, to survive attacks by other Indigenous Peoples discontented with their arrival. Direct federal military intervention in Arizona Territory before 1892 was rare.

It is inaccurate though, to ascribe the role of militias as only a past settler-colonial practice given the border is now dominated by a state paramilitary force (CBP) which works in proximity to the private non-state armed criminal enterprise, the cartel. This public-private arrangement mimics colonia-era private militias which once worked with colonial authorities. At the Arizona border, the federal paramilitary arm has now largely (but not completely) replaced the role of private militias, just as they did in colonial states. Immigrants are victims of Cartel violence and of an Arizona based border militia. O’odham are victimized by the Border Patrol; but experience violence and threats of violence.²²⁸

The O’odham, inhabitants of the Sonoran desert, were once steadfastly allied with the United States, against the Apache. They remained so even after the division of their nation by the new

²²⁴ See: Gentry, B., Boyce, G. A., Garcia, J. M., & Chambers, S. N. (2019). Indigenous survival and settler colonial dispossession on the Mexican frontier: The case of Cedagí Wahia and Wo’oson O’odham Indigenous communities. *Journal of Latin American Geography*, 18(1), 65-93.

²²⁵ *Cycles of Conquest*, Edward Spicer, 1962, University of Arizona.

²²⁶ Buffalo Soldiers were in the 24th Infantry of African-America Black soldiers under the US Army assigned to Fort Huachuca in 1892. Finley, J. P. (1993). *The Buffalo Soldiers at Fort Huachuca*. Huachuca Museum Society.

²²⁷ An 1863 estimated census by the US Indian agent classified the Mexican population in Tucson as white.

²²⁸ Author Raymond Daukei’s January 25, 2017 interview with Tohono O’odham Nation Tribal Member Willard Anita. See also: In Plain Sight: Uncovering Border Patrol’s Relationship with Far-Right Militias at the Southern Border, Freddy Cruz, July 29, 2021, Southern Poverty Law Center,

<https://www.splcenter.org/hatewatch/2021/07/29/plain-sight-uncovering-border-patrols-relationship-far-right-militias-southern-border>

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border, with the Treaty of Guadalupe Hidalgo in 1848. That event first split the O'odham north of the Gila River into the United States, and those and south of it into México. After the Gadsden Purchase of 1852, the boundary was redrawn to resemble the current Sonora - Arizona borderline. One result of the final border delineation was that the Tohono O'odham and the Hia Ched O'odham were placed in Mexico, and thereby legally severed from what later became Tohono O'odham Nation, recognized by the United States on its side of the border. The Gadsden Purchase was, in effect, a grand act of O'odham land theft.

But desert lands are less restricted by borders than they are by shifting natural resources, impacted by climate change. The violence of that dispossession of the O'Odham is therefore measurable, by the great deprivation of the O'odham from access to natural resources over generations. Of course, this is just one land dispossession experience of native people. We should acknowledge that the twenty other tribal nations have also suffered similar dispossessions, but lack the space here, to do them justice.

Key to federal containment of Indigenous people in Arizona was the institutional knowledge of anti-Indian containment strategies carried out in western military campaigns against other tribal nations, and in particular their use of displacement camps. From the 1880's through the 1930's, some seventy-five years later, the Indian reservations in the Arizona Territory were carved out of much larger Indigenous territories. Indian reservation governments were established on those truncated territories. After a first cycle of O'odham land reductions and adjustments in the first half of the 20th Century, a second cycle of settler colonialism on O'Odham lands appears in the second decade of the 21st century; under today's neoliberal regime.

A new configuration of public-private paramilitary forces occupy and contain O'odham lands and O'odham peoples, through official acts, similar to those described above. But now a second cycle (Spicer: 1962) of containment has unleashed a level of violence comparable even to that associated with the displacement camps established by the US military in prior western military campaigns, for the purpose of pacification.

Four legacy Settler Colonial practices in Arizona were reproduced by the current public-private paramilitary and militia forces: the violence of on-going encroachment and dispossession, forced separation of extended families, deculturation and forced assimilation. This occurs today along with the transnational subjugation, and atomization of workers. These practices, according to Patrick Wolf (2006), are best described as discontinuous but often cyclical; their maturation depends on the territory in which they are deployed. For it is not just Indigenous Peoples who remember Settler Colonial acts, but also the very institutions that carried them out.

O'odham are themselves placed at risk by the Border Patrol for fully exercising traditional cultural and spiritual practices on adjacent ancestral lands as documented in section III of this report on vulnerable social groups. These lands formerly held by the O'odham Peoples include

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the US federal Buenos Aires Wildlife Refuge, the Cabeza Prieta National Wildlife Refuge, the Quito Baquito Oasis at Organ Pipe National Monument in the United States. Further out, their transborder spiritual practices²²⁹ still resound in two biospheres²³⁰ in Sonora, Mexico, and at Magdalena, Sonora, Mexico. Since 2003 the use of O’odham territory for the federal migrant containment strategy has worsened.

However, since 2003, O’Odham have experienced a cycle of what other Indigenous Nations cumulatively experienced during the Colonial period prior to and after the founding of the United States - full blown Settler Colonialism with a paramilitary occupational force determining their rights to mobility. The continual physical use of O’odham territory for the federal migrant containment strategy means O’Odham land dispossession is on-going.

Since the early 2000’s Central American and Mexican migrants entering O’odham territory were funneled into the Tohono O’odham Nation, which abuts Sonora, Mexico. Under MPP and Title 42, migrants who used those routes were categorically barred from applying for asylum at Ports of Entry at Sasabé and Lukeville, Arizona, and were then contained in northern Mexico border towns, through subsequent rebuffs and expulsions. The federal government’s design for this section of the US-Mexico border effectively weaponizes the O’odham *Jewed* (O’odham

territory) as part of a border security strategy waged against migrants on a federally recognized Indigenous reservation. It has become the final resting place for those who are victims of what low intensity warfare strategist General Woerner (1991) has called, the “pauperization of the lower classes.” The US border strategy contains migrants in crossing areas on the Tohono O’odham Nation where under MPP and Title 42. They died there at an increased rate of 31% higher than the died on the surrounding state and federal lands. The continual physical use of O’odham territory for the federal migrant containment strategy means that it is not just expulsions, kidnapping, and extortion that dispossess migrants of their labor value; ultimately, it can be the final dispossession - that of their own bodies and life.

As mentioned above, governments must complete two initial phases in order to expand control over native populations. They must first convert a good portion of the displaced and dispossessed into demobilized and unprotected workers. After a surplus of undesirable workers are filtered out and contained in Mexican border towns, those remaining must be subject to further containment. The first phase may be identified as the transnational subjugation and atomization of workers. But states must additionally forcibly change the collective culture and identity of suppressed native populations, in order for them to be valuable enough for use in the interior economy of the US.

²²⁹ The O’odham Men’s Salt Ceremony and Journey is through the Pinacate and Grand Altar Desert Biosphere and the Biosphere Reserve of the Upper Gulf of California & Colorado River Delta in Sonora, Mexico, as well as the catholic O’Odham Pilgrimage to the Festival of Saint Francis Xavier, in Magdalena, Sonora.

²³⁰ In Mexico, biospheres are federally designated and land and or sea area given a protective status with identified unique environmental features and recorded cultural uses – often by original peoples.

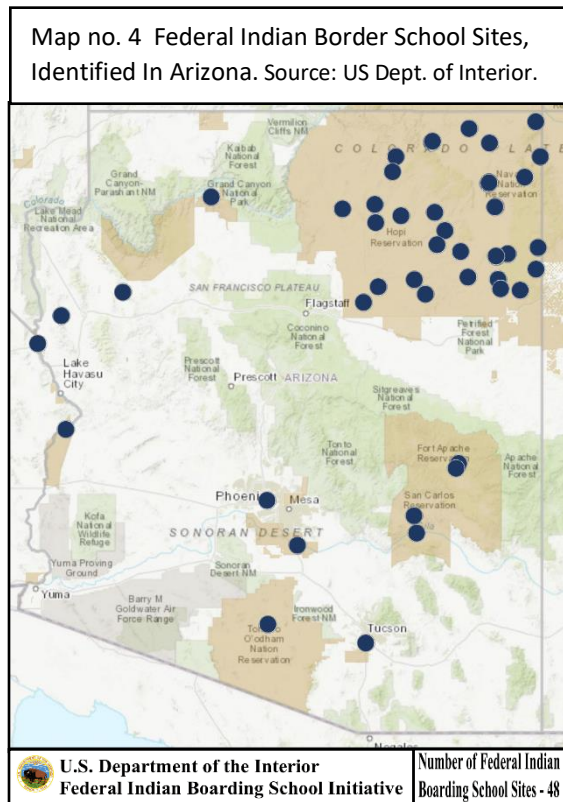
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To identify the practice of the *forced separation* of families as a settler colonial process now used in Arizona against migrants, we must consider prior federal policies sanctioning forced *family separation* - including *separation of extended families* in Arizona territory. Then we can identify how *deculturation and forced assimilation* complete the neoliberal deployment of settler colonial practices at the Arizona border.

Indian Boarding Schools

The Department of Interior's current investigation into Indian Boarding School abuses punctuates a legacy in Arizona of a federal institution that literally "pioneered" the forced separation of families, including extending families. In this report's section on vulnerable migrant groups, the separation of children under the Trump Administration ended, but extended families (non-nuclear families) are routinely separated as a matter of US policy regardless of if a parent resides in the United States, or not. To grasp the reasoning behind forced separations of migrant children from their adult family members, reflecting on the boarding school legacy and the ideology behind it are instructive.

The scale of Indian Boarding Schools may be hard for readers of this age to fathom. According to Assistant Secretary of Indian Affairs, Bryan Newland, over a period of one hundred and fifty years (1819 to 1969), the federal government "operated" or supported 431 independently administered boarding schools in 37 states, former territories, Alaska, and Hawaii. After Oklahoma, Arizona contained the second largest concentration of Indian Boarding Schools nationally, with 51 schools.



Much of the commentary below reflects Adams (2020) extensive documentation of Indian Boarding schools in Arizona. A key figure in Indian Boarding School theory and design was Capt. Richard Henry Pratt who learned to re-mold Indigenous prisoners when serving in the US Army when he accompanied the transport and imprisonment of 73 Indigenous prisoners of plains tribes: Cheyenne, Arapaho, Kiowa, Comanche, and Caddo. Taken from Ft. Leavenworth in Kansas to Fort Marion at St. Augustine, Florida, it was there that he began experimenting in how to "civilize" Indigenous prisoners by employing behavioral modification techniques

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through punishment and reward. It must be emphasized that displacement and dispossession had normally preceded any resulting armed rebellion against federal troops.

Pratt learned to acculturate compliant prisoners by privileging them with day passes into town. It was from the institutional knowledge of containment of Indigenous Peoples in a military prison, that the Bureau of Indian Affairs would construct an institution designed to forcibly separate children from their parents. Most often Indigenous children attended schools off reservation and on reservation not by choice, but by force; as their parents' wishes were disregarded by BIA officials.

BIA administrators were not legally bound to seek parental permission for the forced removal of their own children, though they initially attempted persuasion, but often then resorted to taking the children to meet their enrollment targets. This remains the practice for migrant families when a non-parental relative, like an older sibling, or an uncle, presents at a US land Port of Entry to seek asylum, accompanied by children. The children are sent away, and the adults held without knowledge of where their children went. Several months later children may be reunited with their family, or may become wards of the states to which they were relocated.

The basic sequence of deculturation and forced assimilation for Indigenous boarding school children was that they were first forcibly separated from their parents, and transported to school sites outside their communities, sometimes in the same state.

Second, school staff immediately cut native children's hair, and removed their clothes, thus stripping away sources of material and emotional connection to their own people. It became customary, as a means of promoting the schools' success, to take a before and after photo to show the physical alteration of Indigenous children's appearance.

Third, they required instruction of Indigenous children in a foreign language (English) and , fourth, they actively physically punished them for speaking their own native languages. Fifth, they created a process of mixing Indigenous children from vastly distinct tribal nations while banning the sharing of their unique cultural practices and languages. This helped establish the use of the English language as a means of social control. Sixth, they created a counterpart to the deculturalization process by sending them on the so-called "Outing Program," as laborers.

Pratt established the model for such an "Outing Program" at Carlisle school in Pennsylvania, as a social experiment. But after it was implemented at frontier schools in the western United States, such as in Arizona-- where expendable laborers were in short supply-- it devolved into a semi-skilled cheap labor force for the households, farms, and ranches of European -American settlers. Capt. Pratt once remarked to his superior officer, *"You know, and I know that frontier 'outing' is and must be a flat failure."* Success for Pratt was the complete conversion of

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Indian children into Anglo-educated and acculturated citizens, not merely as workers.²³¹ The program sent Indigenous youth to white homes for menial labor in preparation for work in a new economy, divorced from their tribal areas.²³² The outing program varied in duration, and assigned occupational tasks depending on gender and location, all determined for the children by non-native school authorities.

In the late 1890s and early 1910s, eugenics was a widespread, popular current in the ideology of human improvement. Based on explicitly biased racial values, it provided justification for forced acculturation of groups thought to be inferior. An administrator like Pratt thought of himself as a progressive thinker, since he actually wanted to transform Indigenous children, instead of eliminating them. White superiority was championed and institutionalized at a programmatic level to deculture and assimilate Indigenous children. The outcome of the “Outing Programs” in the west, where the vast majority of Indian children attended school, was to prepare Indian students to be part of an atomized, mobilized labor force in the United States.

The decade of the 1890’s produced disastrous results for these reformers. Indian boarding schools were struck by epidemic disease as were did other American Institutions, with devastating effects. Epidemics of tuberculosis, pneumonia, trachoma, measles, mumps, and influenza ravaged the boarding schools at a time when public health standards were non-existent, and took a high toll of human life in the United States.²³³ Let us consider what forced separation meant for the parents of Indigenous children and their extended families; both in that time and for migrant children today.

Some of our Children die without us seeing them.

Shoshone Bannock headmen’s petition letter to
Washington of 7 Oct. 1895

The father, R.Z.G., was separated from his then 9-year-old daughter, B.Z.E., around Nov. 15, 2017. R.Z.G. and his daughter B.Z.E., who are part of the Mam Indigenous tribe in Western Guatemala, had presented themselves to agents on Nov 13 at a legal port of entry in Nogales, Arizona, seeking asylum.

²³¹ Education for Extinction, p. 180. David Wallace Adams, University Press of Kansas, 2020.

²³² Summary of the Outing Program display in exhibit of [Away from Home: American Indian Boarding School Stories](#), Heard Museum. Visited 28 August, 2022. Source for actions taken at boarding schools, Asa Daklugie, Chiricahua Apache, 1886, survivor taken from Ft. Marion to Carlisle boarding school “as a prisoner of war”. Heard Museum, 28 August, 2022, see also:

²³³ Ibid. Adams, 2020, 135.

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They were taken to a windowless, locked and “overcrowded” room . . . made “almost entirely of cement.” Two times a day, the officials would give them burritos . . . sometimes. . . burritos ... still frozen, [and] officials would throw them on the floor.

On the second day of their detention, agents transferred [them] to another facility. . . officials told R.Z.G. that he “needed to go with them because he had court.” “R.Z.G. walked over to the door of the room and B.Z.E. jumped up to go along with him. But as soon as R.Z.G. walked out of the room, the official closed the door behind him before B.Z.E. could follow her father. R.Z.G. saw B.Z.E. through the window of the door and heard her screaming ‘Papá, Papá!’ Flailing and crying inside the room, B.Z.E. begged to go with her father. Two officials grabbed R.Z.G. and began to cuff his hands and feet. R.Z.G. asked the officials, ‘Why are you taking me away? Why are you separating us?’

*The Nation, August 1, 2019.*²³⁴

Dené (Navajo), Hopi, Ute, Shoshone Bannock, Kiowa, Spokane, Sac and Fox, Crows, Mescalero Apache, and Lemhi are but a few of the tribes where for various reasons parents refused to send their children to boarding schools. Enforcement took several forms, beyond corporal punishment, at the schools. For example, in 1900 in Fort Defiance, Navajo parents pulled children from the school due to an abusive superintendent. Mr. Wadleigh. Superintendent Wadleigh then called in federal troops.²³⁵ Hopi refused to enroll students at Keams Canyon Boarding School, established in 1887. Hopi parents’ refusals were met with Federal troop interventions in 1890, 1891, and 1911.

At Hotevilla in 1906, the Hopi Village Chief Youkeoma, resisted the taking of eighty-two children by armed troops, and was arrested and then imprisoned at Fort Huachuca in Southern Arizona. By 1911, another raid, replete with house-to-house searches, extracted fifty-one girls and eighteen boys. Chief Youkeoma knew what other resisting parents also knew, that 46% of 150 school-aged children had died from bronchial pneumonia and measles, and the village did not want the others disappearing into a faraway boarding school.²³⁶ As resistance grew over time, maintaining social control at schools required more guards. By 1877, less than 1% of all

²³⁴ ‘Why did you leave me?’ In new testimonies, migrants describe the ‘torment’ of child separation, Nawaz, Frazee, and Oh, Aug. 1 2019, material is from Court Filings submitted by Southern Poverty Law Center and the private law firm Covington and Burling. <https://www.pbs.org/newshour/nation/why-did-you-leave-me-in-new-testimonies-migrants-describe-the-torment-of-child-separation>

²³⁵ Ibid. Adams, 2020, 235-236.

²³⁶ Ibid. Adams, 2020, 244-250.

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federal employees working at Indian Boarding Schools were in charge of law and order. Twenty years later, 24% of all personnel were employed to socially control Indigenous children.²³⁷

The deaths of four Indigenous Mayan children and a youth, under MPP and Title 42, echoes the practices of an earlier time in Arizona Indian boarding schools. Banning, or refusing to allow Indigenous peoples to communicate in their primary languages brought about child death-- in both eras, and under the administrative agencies of the time. What is strikingly similar is the nonchalant stance of US federal officials, in the face of preventable child deaths, in both periods. Official impunity, then as now, shields federal officials from legal penalties for their violation of the rights of Indigenous children. Child neglect is a crime. The lack of standards for protecting Indigenous rights means that CBP agents' neglect, which led to five child deaths, has functions as one more form of border violence. The abuse of exposing O'odham Children to migrant deaths should be deemed a possible crime under federal statutes.²³⁸ This underlines how successive administrations having been asleep at the wheel, in terms of regulating federal agencies. For example, the US Department of Health and Human Services was found in 2015 to have failed in its regulatory capacity to ensure that states upheld child welfare protections, including in Arizona.²³⁹

The legacy of Indian boarding school was not just the use of Arizona for human containment. The lessons learned from those government programs would be useful for containment of other peoples.

Japanese American Internment

Arizona in 1942 was the location of the largest concentration of imprisoned Japanese, under the Wartime Civil Control Administration in the United States.²⁴⁰ The camps operated during WWII between 1942-1945. The infrastructure to hold Japanese Americans, however, was not new.



²³⁷ Ibid. Adams, 2020, see table 3.1 Number of Indian field service employees 1877-1897. 66.

²³⁸ See: 18 U.S. Code § 1169 - Reporting of child abuse in Indian Country, see: section C, (1) A ii: "such condition is not justifiably explained or may not be the product of an accidental occurrence." Child psychological trauma may fit that legal condition.

²³⁹ Federal government failing to protect children, report says, Holbrook Mohr, January 27, 2015, AP, <https://apnews.com/article/49059298ea2f4ef39f193bf09556d199>

²⁴⁰ BrieAnna J Frank, 5 things to know about Arizona's World War II internment camps, Jan. 30, 2017, The Republic, azcentral.com .

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Though the resettlement or concentration camps were newly fenced, many buildings had already been erected. The filtering and containment measures used on Japanese Americans to forcibly relocate them to Arizona were already familiar to Indigenous people in Arizona. Under the War Relocation Administration, the Bureau of Indian Affairs mandated that Japanese concentration camps be built within tribal reservations.

The two main Japanese American Internment camps in Arizona were located at the Gila Reservation and Colorado River Tribe Reservation.

Colorado River Tribe (Poston, AZ)	13,000+
Gila Indian Reservation (Gila Res., AZ)	<u>18,000</u>
	31,000+

Chronologically and programmatically boarding schools were a historical antecedent to Japanese internment (1942-1945). But in a few locations, the armed concentration camps and the Indian boarding schools actually operated concurrently. Today, the CBP uses the Tohono O'odham Nation's land as a migrant catchment area, while O'odham children attend BIA schools in Sells, Arizona. The Border Patrol is in effect the new Indian field service employees of yesteryear, not tasked with corralling runaway Indian students, but rather corralling O'odham into not assisting (without fear of reprisal) migrants who struggle under duress on the reservation.

The significance of this serial use of Indigenous territories for filtering and containing racial minorities, was that because the Bureau of Indian Affairs of the Department of the Interior had institutionally gained such knowledge through on-going historical colonization, it was able to apply it in the modern era. Across both time periods and contained populations, it established legal authority over the populations, it maintained armed enforcement of the contained

populations, it set up social control programs for deculturation and forced assimilation, it kept operational know how, and it possessed land and a built infrastructure useful for incarceration.

Indian Termination

The permanent director of the War Relocation Authority, Dillon S. Meer ²⁴¹, had not only administered the internment camps of interned Japanese Americans in Arizona, but also wholly supported the resettlement of Japanese Americans into non-Japanese American communities, under the Wartime Civil Control Administration, as prisoners were released. He instructed Japanese American men to seek work in large urban areas and to disuse their Japanese language. This was a near direct replication of the method used by the Indian Boarding School's Outing Program.²⁴²

²⁴¹ For Meer's role in Japanese American internment camps and Indian Termination Policy, see: https://en.wikipedia.org/wiki/Dillon_S._Myer

²⁴² The Japanese American Evacuation Claims Act of July 2, 1948, ultimately compensated Japanese American citizens with a total of \$36,974,240. ²⁴² But unlike the Japanese Evacuation Claim however, Indigenous families displaced from their homes were never compensated.

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For Native Americans however, starting in the 1950s, the post-war legacy of the Japanese internment camps echoed throughout Indian Country, as a threat larger than that of the boarding schools program. Dillon Meer became the newly appointed Director of the Bureau of Indian Affairs. Along with certain key members of Congress, Meer became the principal architect of an accelerated Indian Termination policy which had roots in the 1940s, but was still popular in Congress.

At the outset of their internment Japanese Americans were filtered on a generational basis (as first or second-generation native born, or foreign born) using protective and paternalistic rationales by government agents. These steps were taken to disallow inter-generational contact. In boarding schools, children were already forcibly separated from their parents or grandparents. Under Indian Termination, Indigenous Nations were categorized by prioritizing them into lists for legal termination. Legally it took an act of Congress to dismantle tribal governments and Indigenous reservations, but the Indian Termination policy drew on the same deculturation strategy and resettlement model, initiated in the Boarding Schools' Outing Program and then refined by the Japanese Americans resettlement program, producing a minority population readied for labor exploitation far from home.²⁴³ After successfully terminating three Indigenous nations, President Eisenhower accepted Meyer's resignation in 1953.

The containment and resettlement strategies favored by the federal government wove a common thread. Milton Eisenhower (Dwight D. Eisenhower's brother) was appointed by President Roosevelt to head the War Relocation Authority which was tasked with Japanese relocation. Milton Eisenhower attempted to forestall property losses of Japanese Americans by requesting Western Governors put a moratorium on mortgage payments on their homes. Western state governors rejected his request, and those citizens were then displaced to gathering centers. Once interned, they were unable to pay their mortgages. They forcibly lost their jobs and businesses, and the paltry wages paid in the camps were insufficient to make payments. They were then dispossessed of their properties.

Indigenous families in Arizona territory were once dispossessed of their land and made to live on reservations in prior generations. Indian boarding school children, in subsequent generations were forcibly separated from their families and tribal lands. Just like the Japanese Americans, they were physically displaced from their homes. Under colonialism, the collective property of Indigenous nations in Arizona Territory was usurped. Under modernity, Japanese Americans had their individual private property confiscated. Both peoples underwent dispossession – due to forced relocation. The lasting legacy of colonization in Arizona Territory now informs the current occupation of O'odham lands by federal paramilitary forces. How, we

²⁴³ With inadequate space to elaborate further here, the main strategy of Indian Termination policy was to offer urban employment in exchange for land dispossession. Nevertheless, half, or more of tribal members who enrolled, returned to their tribal communities. See: Native Peoples Concepts of Health and Wellness, National Institutes of Health, <https://www.nlm.nih.gov/nativevoices/timeline/488.html>, accessed 9 September, 2022.

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can ask, is the model of colonization present in the modern US-Mexico border militarization model?

MPP and Title 42 policies and practice have greatly concentrated migrant deaths on the Tohono O'odham Nation. Their deliberate implementation demonstrates that the federal government is knowingly sacrificing migrant lives. It achieves that only by denying tribal sovereignty in order to control labor along the border while capital flows go unrestricted.

CBP agents, enforcing MPP and Title 42 policies, deny migrants the right to apply for asylum in a humanitarian manner by expelling them in a militarized border zone. The Cartel, a private enterprise engaged in human smuggling which operates under free-market rules, has unleashed waves of violence against immigrants in the Northern Mexican border zone - fed to them by CBP's expulsions of migrants under MPP and Title 42. Part of the transnational Pipeline's economic operation are the profits extracted by Cartel from migrant families who pay ransoms from afar. At the militarized border, physically controlling a displaced, mobile, and transnational migrant population safeguards against a resistant population. Migrant caravans seen in this light are a threat to an established order where the regional neo liberal economic model first atomizes workers from their communities and nations, and then safeguards its model through migrant suppression as a tradeoff that must not be challenged.

The willingness to subject Indigenous people on the Tohono O'odham Nation to communal trauma is also required by the bipartisan neoliberal state to manage the negative outcomes of its economic model. The willingness to use or tolerate violence, and its use to victimize disparate, vulnerable communities of LGBTQ, unaccompanied minors, Indigenous migrants, and Tohono O'odham, are all detailed in this report.

Despite 28 years of social upheaval under the neoliberal model in Meso-America and its extension to the US-Mexico border involving millions of displaced, undocumented workers and the brutal extraction of natural resources, this regional model benefits the upwardly mobile and well-endowed social classes on both sides of the line. Politicians and multinational businesses, "legal" and "illegal", adeptly manage the international tradeoff of human rights for profits.

The brutality of past colonial containments of subaltern groups was often denied at the time they took place. Questioning modern policies as remnants of past violent suppressions is unpopular, but it is a necessary task for restoring human rights at the militarized border. Current immigration policy remains officially unidentified and unnamed as a repressive, militarized response to unarmed migrants simply seeking to survive. From an Indigenous perspective, today's neoliberalism has internationalized long-held practices of settler colonialism.

For example, the Indigenous Language Office documented 29 Indigenous languages spoken as a primary language and encountered on the US-Mexican border, but ignored by CBP over a six-year period of 2014-2019. Border militarization continues to require blunt processing protocols

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that deny Indigenous peoples as a race, as representative of multiple cultures, and as peoples who speak primary languages other than Spanish. The Department of Homeland Security has proven unable to recognize and legally process vulnerable groups of migrants using paramilitary tactics because to maintain a militarized border, it must eschew humanitarian approaches which are in contradiction to the economic model's goal of filtering and mass containment.

The operational design for filtering and containment of Indigenous people at the US-México border is starkly similar to the mass incarceration of the Kikuyu in Kenya under British rule, over seventy years ago. However, for migrants at the US-Mexico border, the Pipeline starts in their countries of origin (Mexico, Guatemala, Honduras, and El Salvador) and continues in brutal and violent middle passage of the border zone; and for some, they end up in interior US labor markets. In Kenya and at the US-Mexico border, the Pipelines were constructed with care and precision by a British colonial government and a US neo-liberal government respectively. Both delivered violence to complete the dispossession of natives which started with the usurpation of their lands.

Modernity may mask neoliberalism's origins, but after nearly fifty years of these policies in the Americas, governments still struggle to completely eliminate "the native" in Abia Yala.²⁴⁴ The processes of displacement, dispossession, forced reeducation, and elimination through the institutional atomization of tribal nations, have all reappeared in the current era, in the border zone, albeit identified publicly only by the euphemistic nomenclature of official violence, as *illegal migrants*.

The state of Arizona, in its omission and silence about the violence created in the militarized border zone is a direct benefactor of the strategic production and use of violence to impose a regional economic model. International commercial traffic courses through the state. For example, Arizona is the location of the largest private trucking firm in the United States.²⁴⁵

The US government strategically uses Arizona to operate a transnational economic pipeline which knowingly displaces, dispossesses, and then atomizes workers—now as in the past. DHS fails to prosecute illegal militias on federal public lands, and Arizona Governor Doug Ducey failed to investigate and prosecute an illegal militia in Arizona. This demonstrates the bipartisan appeal of the neoliberal model's private and public spheres, even while Republican border governors ostentatiously make a show of shipping immigrants from Phoenix, Arizona and San Antonio, Texas, north to Washington D.C., NYC, Martha's Vineyard, and elsewhere.²⁴⁶

For states in the neoliberal regional economic model, human rights of migrants are now, as the property and lives of native populations and Japanese Americans were once, negotiable,

²⁴⁴ Abya Yala is an ancient Kuna/Guna Indigenous word for the Americas.

²⁴⁵ Swift Transportation is located in Phoenix, Arizona.

²⁴⁶ "The Border Has Come to D.C.": GOP Governors Have Successfully Created a Migrant Crisis in Washington, Eric Lutz, August 3, 2022, Vanity Fair. <https://www.vanityfair.com/news/2022/08/gop-governors-created-a-migrant-crisis-in-washington>

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redefinable, and transferrable, as tradeoffs that embolden international commerce or free trade.

Multinational firms operating in the border zone, including Cartels, long ago diluted a basic tenet of sovereign nation-states, that economic sovereignty is now duly measured at the border in terms of allowable trade. International free trade treaties bereft of the rights of workers produced the need for a repressive legal coda to filter and contain the publicly unwelcomed trade-off produced by their model, migration in excess of US labor market demand.

US Banks lobby for and receive ever-more-lax financial regulatory controls, in a weak regulatory environment which allows them to effectively and “legally” launder Cartel money. Lest we underestimate the economic power of their business partners, the cartels conduct business with affiliates in some 30 states of the United States.²⁴⁷ The billions they produce in profits are not made out of a conspiracy theory; they are exactly what the economic system was designed to do. The mutualism of state-protected commercial activity and private Cartel enterprise at the border encourages their confederation, because without the other, each one’s economic power is significantly diminished. The US Border Patrol, without native permission, has desecrated Cocopah²⁴⁸ and O’Odham tribal lands, while routinely traversing the Tohono O’odham Nation; having killed individuals without sanction on federal tribal lands as previously documented. They perform the role assigned to them by the state, suppression of migration.

The neoliberal model in the militarized border zone is so successful that its state and non-state progenitors are financing new operations in other border zones, globally (Miller: 2019).²⁴⁹ Politicians in the US Congress accede to public calls for racially charged and economically profitable repression against migrants. In that role, the state has undermined fundamental international and domestic human rights standards.

Other countries also engage in similar practices. For example, Rohingya people were burned out of Rakhine State in Burma and forced to exile in neighboring Bangladesh, while multinational oil companies profit from government contracts.²⁵⁰ Muslim Uighurs in China’s Western province of Xinjiang are internally displaced by Han Chinese, and forced into labor and reeducation “centers” under orders of the national government, where they involuntarily work

²⁴⁷ A [2021] new DEA map shows where cartels have influence in the US. Cartel operatives say, 'it's bulls---', Business insider, Apr 12, 2021, Luis Chaparro, <https://www.businessinsider.com/cartel-operatives-criticize-dea-map-of-cartel-influence-in-us-2021-4>

²⁴⁸ Tribe: Arizona built border barrier against its wishes, Elliot Spagat, KDH news- Associated Press, Sep 2, 2022. https://kdhnews.com/news/politics/tribe-arizona-built-border-barrier-against-its-wishes/article_2d6758e6-da76-5f5f-bd79-b01683624055.html

²⁴⁹ See: Empire of Borders, Todd Miller, Verso, 2019.

²⁵⁰ Revealed: how world’s biggest fossil fuel firms ‘profited in Myanmar after coup’, Dominic Rushe, Nick Mathiason, and Diarmid O’Sullivan, The Guardian, 1 February 2023, <https://www.theguardian.com/world/2023/feb/01/myanmar-oil-gas-companies-profits-regime-coup>

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in assembly plants.²⁵¹ These acts of state-directed genocide reside in the shadows of those countries' borders, just as Indian Boarding School gravesites, Japanese American internment camps, and Indian termination, reside like living ghosts in the former Arizona territory.

However, the violent results of MPP and Title 42 reside in the bright sunlight of Arizona's militarized border zone, yet go unnamed. In the past, militarization of the frontier accomplished the unfinished business of displacement, dispossession, and forced assimilation of Indigenous peoples. But now all migrant workers are atomized at the border. Uncontested, the purpose of border violence is to keep migrants in the Pipeline out of sight, and out of mind.

²⁵¹ See: Myanmar: Mass Detention of Rohingya in Squalid Camps, October 8, 2020, Human Rights Watch, <https://www.hrw.org/news/2020/10/08/myanmar-mass-detention-rohingya-squalid-camps>
Who are the Uyghurs and why is China being accused of genocide? <https://www.bbc.com/news/world-asia-china-22278037>

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Appendix I: Types and Counts of Violence

Summary Table 1. Aggregate v Disaggregate Counts, and Counts of Profiteering.

<u>Disaggregated Data Counts of Acts of Violence⁺</u> n ² = 7228	<u>Responsible State And Non- State Actors</u>	
Illegal removal / Expulsion	3720	US Border Patrol
Disappearance	73	Cartel
Kidnapping (2,346 / Extortion 195+)	2,541	Cartel
Labor Exploitation / Trafficking	8	Cartel
Sexual assault	7	Cartel & local Mex. police
Rape	64	Cartel & local Mex. police
Robbery	234	Cartel & local Mex. police
Assault / Beatings	124	Cartel & local Mex. police
Threats	158	Cartel & local Mex. police
Armed Mob threats	19	Cartel and criminal gangs
Shootings	16	Cartel
Murder	5	Cartel
Torture +electrocution	14	Cartel
Armed Break In	3	Gang and local Mex. Police
Police Harassment	1	Local Mex. Police
Mexican Police Assault	212	Local Mex. police
Mexican Police Extortion	95	Local Mex. Police
Total acts of violence	7,294	
<hr/>		
Aggregated cases of violence not counted:	6,290	
<hr/>		
cases of violence disaggregated and counted:	7,294 (n ¹),	7,228 (n ²)
<hr/>		
Total Acts of Violence (n²= 7,228):		
	Cartel + Police = 3508	48.5%
	Border Patrol expulsions =3720	<u>51.5 %</u>
	Total: 7228	100%

Sources: Reports of Human Rights First, Oct. 2021, y Jan. 2022, Interviews completed by The Office of Indigenous Languages, Nov. 2021–March 2022. (ILO frequency counts of disaggregated data used from Human Rights First Dec. 2021 report).

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Disappearance (73)

A 19-year-old Honduran woman with a high-risk pregnancy who was initially denied humanitarian parole in December 2021 went missing by the time CBP reconsidered its faulty decision. The woman who was eight-months pregnant and experiencing severe bleeding, had been denied medical treatment in Ciudad Acuña and attempted three times to enter the United States to seek protection. Each time she was expelled by DHS to Ciudad Acuña under Title 42. By the time CBP reversed its initial parole denial following advocacy by Charlene D’Cruz, an attorney with Lawyers for Good Government, the woman had disappeared and remains missing as of January 2022.” are counted given her baby was by then born, if she was alive, and if not, her pregnancy carried an additional life.

Charlene D’Cruz, attorney, Lawyers for Good Government, Human Rights First, 1/13/2022

ILO Observations

One category of violence is the *disappeared*. And we address it first out of respect for those families who have lost family members to violent acts in the border zone, and beyond.

Seventy-two people were reported as disappeared. The places of their abductions ranged from Reynosa, Tamaulipas, to Ciudad Acuña and Piedras Negras, Coahuila, to Juarez Chihuahua, to Tijuana, Baja California. This large border area which covers five of six northern Mexican border States over a distance of 1,780 miles, or a 39 hours’ drive. This stretch of territory encompasses 99% of the Northern Mexican Border. In addition, at Nogales Two Mexican women reported disappearances, and in Yuma, a Guatemalan family of four (wife, husband two children) and a Salvadoran family of four (wife, husband two children), and a single Honduran woman were reported disappeared (Source :ILO interviews, see page 17).

In over one third of disappearance cases (36%) Mexican police were involved in, refused to document disappearances or human rights violations requested immigrant victims, or their encounters with immigrants preceded subsequent disappearances.

Atomized migrants without social ties in the shadowy world of border migrant stash houses (which are not publicly registered shelters) are not publicly accounted for - other than in the ledgers of smugglers. While their human losses are deeply aggrieved by their surviving family members, they are considered a loss of profits by smugglers who carry out kidnapping, unsuccessful extortion, and then death.

Even where control operations result in enforcers of rival smuggler operations murdering scores of immigrants, such acts are the exception, not the rule. The bottom line is that it is bad for business. Therefore, the reported number of disappearances are only reported by surviving witnesses. It is reasonable to assume the number of disappeared is a fraction of the true

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number of those - whose lives were snuffed out by smugglers. That fraction is roughly – only one fifth of all disappeared were reported murdered.

Another perspective on disappearances is that the disappeared - are persons who were murdered, but whose remains were hidden. Those responsible have several motives. When a person is disappeared, there is no evidence of the crime which provides deniability by the perpetrators if they are later investigated. Often however, this is not the major motive of perpetrators given if any remains are found at all, and rarely are they found, it is improbable that the victim's identity can be established. Without being able to identify possible next of kin (family) to conduct a DNA test to ascertain a positive identification, a crime is not publicly acknowledged.

If disappearances and murders were considered together, ninety-two murders were carried out, but only 19 were recognized publicly as murders. In other words, just 21% of “disappeared” immigrants are publicly acknowledged as victims of this final form of violence. That means that, approximately, only one in five murders are confirmed.

The other strategy for the disappearance of victims in protracted conflicts is oriented to creating fear in the environment where the murders take place. On the individual level it can atomize witnesses, or would be witnesses, thereby foreclosing an investigation by self-silencing witnesses. On the communal level, fear creates a collective miasma, it erodes public confidence in public institutions and reverts authority and power to the perpetrators; a power harnessed for further violence and bloodshed that first tolerates, and then over time, solidifies a way of life under a lawless state.

Unlawful expulsion (3720)

ILO Observations

Fifty-one percent of all unduplicated acts of violence recorded by Human Rights First by January, 2022 were expulsions by US Customs Border Patrol. Expulsions under Title 42 generally apply to Hondurans, Mexicans, Guatemalans, and Salvadorans. Other nationalities have been delayed in processing while awaiting in Northern Mexican Border Towns. This count includes several multivariate counts (2,511: 8/17/2021; 363: Sept. 13, 2021; 679: Dec. 23, 2021;) that state all immigrants in the groups were expelled regardless of the nationality. ILO considers the reason Non-Title 42 asylum seekers were not allowed to access Ports of Entry for seeking asylum was due to MPP or the use of metering at POEs, or both. Metering was a practice established around Oct. 2016 under the Obama Administration.²⁵²

Expulsions are the root of multiple victimizations through the use of violence. The use of Title 42 (discussed elsewhere) was a collaborative state act of violence given the prior knowledge of

²⁵² Judge rules 'metering' of asylum seekers is unconstitutional, Clara Migoya, Arizona Republic, Sept. 3, 2021, <https://www.azcentral.com/story/news/politics/border-issues/2021/09/03/judge-rules-metering-asylum-seekers-unconstitutional/5719466001/>

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the Trump and Biden administrations of the on-going violent victimization of immigrants at the hands of Cartel.²⁵³

This expulsion of asylum seekers were carried out after immigrants legally presented to plead for the right to asylum in the United States. Many of them had already been victimized before entering the US. Their expulsions created exposure of immigrants to social conditions of great personal insecurity, crime, death rape, disappearance, and murder, etc. And for many, they experienced re-victimizations.

A Honduran asylum seeker is stranded in danger in Tijuana where Mexican immigration agents turned him over to a cartel that held him hostage in horrendous conditions for days following his expulsion under Title 42 to Mexico. He told Human Rights First that the kidnapers beat other migrants in front of him, killing one, and that he was only released after his family paid ransom. The man had fled threats in Honduras by gang members who murdered his father.

January 13, 2022, [Human Rights First](#).²⁵⁴

A 59-year-old asylum-seeking grandmother from Honduras was kidnapped soon after DHS expelled her to Piedras Negras in summer 2021. When Human Rights First researchers last spoke to her in October 2021, she remained in danger in Mexico unable to request asylum.

October 19, 2021 Human Rights First.²⁵⁵

Three Nicaraguan political dissidents, whom DHS twice expelled to Mexico in August 2021, have been strip-searched and robbed by Mexican government officials on multiple occasions. In mid-August 2021, DHS turned them over to INM officers who verbally abused them and deprived them of food in detention, forced them to strip naked, and stole their money and valuables. In late August 2021, Mexican police boarded a bus that the three were riding near the border with Yuma, Arizona, forced them off the bus, strip-searched them, and stole their money. The dissidents remain in danger in Mexico, unable to access the U.S. asylum process . .

October 21, 2021 Human Rights First.²⁵⁶

A 19-year-old Honduran woman with a high-risk pregnancy who was initially denied humanitarian parole in December 2021 went missing by the time CBP reconsidered its faulty decision. The woman who was eight-months pregnant and experiencing severe bleeding, had

²⁵³ See: DHS Announces Operation to Target Criminal Smuggling Organizations, April 27, 2021, <https://www.dhs.gov/news/2021/04/27/dhs-announces-operation-target-criminal-smuggling-organizations> , and Written testimony of CBP Paul Beeson, Director of DHS Joint Task Force – West for a House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing titled “A Dangerous and Sophisticated Adversary: The Threat to the Homeland Posed by Cartel Operations”, February 16, 2017 , <https://www.dhs.gov/news/2017/02/16/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime> ,

²⁵⁴ See: <https://www.humanrightsfirst.org/resource/shameful-record-biden-administration-s-use-trump-policies-endangers-people-seeking-asylum>

²⁵⁵ See: <https://www.humanrightsfirst.org/resource/illegal-and-inhumane-biden-administration-continues-embrace-trump-title-42-policy-attacks>

²⁵⁶ Human Rights First, *ibid.*

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been denied medical treatment in Ciudad Acuña and attempted three times to enter the United States to seek protection. Each time she was expelled by DHS to Ciudad Acuña under Title 42. By the time CBP reversed its initial parole denial following advocacy by Charlene D'Cruz, an attorney with Lawyers for Good Government, the woman had disappeared and remains missing as of January 2022.

January 13, 2022, Human Rights First.²⁵⁷

ILO Observations:

- Prior to their initial border crossing at the US-Mexico border, families were routinely kidnapped and then extorted for additional funds beyond the amounts originally paid to smugglers. Reports of local Mexican police in Mexican border towns selling immigrants to Cartel members demonstrate the cooperation and collaboration among affiliates and affiliates of Cartels operating in Mexico – including local Mexican police.
- There are cases of families being separated and unaccompanied minors striking out on their own given other family members were held against their will in border stash houses.
- There was no emergency intervention phone number for police in most border cities or towns where national Mexican police or National Guard could intervene and suppress such brutality. While the National Commission of Human Rights in Mexico (Comisión Nacional de Derechos Humanos, CNDH). *While CNDH has a toll-free number to call for human rights violations in two border cities, Juarez, Chihuahua, and Reynosa, Tamaulipas, no such number is registered for Tijuana, Piedras*
- *Piedras Negras, Matamoros, or Nogales, all locations of persistent human rights violations where no field office exists.* For Mexico's second largest state of Sonora only an address (but no phone number) is published for CNDH in the Sonoran capital city in Hermosillo. Hermosillo is four hours distance from the major border town of Nogales. Sonora is a traditional stronghold of the Sinaloa Cartel. Notably, This lack of investment in a minimum of infrastructure by the Mexican federal government demonstrates the lack of interest in the defense of human rights in the Mexican border towns where consequential Cartel presence is well known. [Note as weakness of neoliberal governments].
- For many immigrants, their re-victimization upon expulsion, *which for Central Americans was paramount to deportation to a third country*, was common. Under United Nations 1951 Convention and Protocol on the Status of Refugees and the 1967 Protocols this official US practice constitutes the gravest violation by the United States.

²⁵⁷ Human Rights First, *ibid.*

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The principle of non-refoulement is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return (“refouler”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

UN Convention and Protocol
Relating to the Status of Refugees,
1951, p.3

In August 2021, Coahuila police assaulted and robbed a Honduran woman who was waiting in Piedras Negras for an opportunity to request U.S. asylum. When she told the officers she would report them, they said, “that won't get you anything here. We are the law.”

Human Rights First, 8/23/2021

- The full brunt of the expulsions on individual migrant border crossers often resulted directly in targeting expelled immigrants on the streets of Mexican border Cities. Routinely, the single men were arrested in the Sásabe, Arizona border area and then laterally transferred by the US Border Patrol and expelled thereafter at Douglas, Arizona into Agua Prieta, Sonora, Typically, expulsions included single males being expelled at 2 AM. At that time there are no civil protections available for migrants except a border aid station. These actions heighten the fear of and danger of attack against immigrants.
- Expulsions by the CBP and BP that ignored medical conditions included pregnant women or women with infants. The United States’ refusal to join the UN Convention on the Rights of the Child, repeatedly rejected by conservative voices who deplore the intervention of the state in the life of families, condemn immigrant child to inhumane conditions - nevertheless.

Kidnapping (2,346) and Extortion (195)

US Customs and Border Protection “expelled a 15-year-old Guatemalan boy and his asylum-seeking mother to Ciudad Juárez where they had been kidnapped in February 2021. [When] The woman tried to explain the danger she faced, U.S. immigration officers told her that they didn’t care because “the president is not giving political asylum to anyone.” CBP expelled the family to dangerous Ciudad Juárez at night during a snowstorm after they were held in CBP custody for days without food or water.”

Human Rights First, 4/20/2021

<https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum>

Most of the families initially find their way to the small park diagonally across from the international bridge [at Reynosa, Tamaulipas, Mexico]. Over two thousand migrants are there now, including elderly

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persons, pregnant women, injured persons, and numerous small children. Human rights networks have provided portable toilets and tents, and local pastors provide food and water as often as possible, but the conditions are terrible. Not surprisingly, the gangs raid this small encampment every night, kidnapping many and dragging them away to waiting vehicles. A local police car is parked there regularly, but the officers either look the other way or drive off when the kidnappers arrive.

(ed. note: identified city taken from ref. document cited below)

ACLU Document: Affidavit Of Jennifer K. Harbury, Re: Impact Of Title 42 On Asylum Seekers In Reynosa, Mexico, August 9, 2021, <https://www.aclu.org/legal-document/declaration-jennifer-k-harbury>,

ILO Observations

Kidnappings were reported by HR1st with and without *extortion*. Given that some kidnapping counts also stated extortion (attempted or completed) in a kidnapping narrative, kidnapping was counted by ILO discreetly and separately from the extortions carried out and reported in the same narrative. Other discrete cases of extortion alone were added to this type of violence. This method was used throughout where narratives identified both types of enacted violence attributable to all persons in the narrative described as victimized. Where narratives identify a family, a standard number of (2) two was assigned unless family members were separately identified, and then a count of total family members identified was reported. The disparity between kidnappings and extortions is that all kidnappings reported did not necessarily include a description of extortion. The overriding reason Cartel engages in kidnapping however is to extort immigrants.

Kidnapping was a common border-wide practice of cartels. According to the Mexican Immigration Institute since 2018, 4 of 10 victims registering their experiences with the Mexican government's Instituto Nacional de Inmigracion (INM) were kidnap victims. The majority of kidnapping and trafficking victims were Guatemalans, Hondurans, El Salvadorans, and Nicaraguans according to the National Commission of Human Rights of Mexico, the CNDH.²⁵⁸

Labor Exploitation / Trafficking (8)

ILO Observations

The less reported accounts of labor trafficking versus sex trafficking may not reflect the true number of either form of current cross border trafficking . A previous 2012 Amnesty International report pointed out that labor trafficking is less investigated than sex trafficking by US authorities.

In México five of the eight victims were subject to a third type of trafficking, sold as human assets by police to Cartel in Reynosa, Tamaulipas, México. This practice was used by

²⁵⁸ Al menos 27 nicas secuestrados en 30 días, Dic 27, 2021, Nicaragua Investiga (NI). <https://nicaraguainvestiga.com/nicaragua-investiga/>

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confederated police for smugglers to then extort funds from migrant families while they were held captive.

ILO Observations

The relatively few reports of trafficking in the Mexico Northern Border area may be considered a change in the pattern of human rights violation in comparison with (In Hostile Terrain, AI report) for immigrants entering into Texas from Mexico due to the relatively more profitable practice of extortion carried out in a shorter timespan than trafficking. Trafficking is less profitable in the short term given it exploits human labor and or sex trade which requires on-going longer-term coercion and threat. The business model of Cartels in Nuevo Leon and Tamaulipas states appears to reflect their less stable status, and therefore able to extend their criminal activity into the United States. Kidnapping for immediate extortion is more profitable activity with quicker returns and larger cash flows. This appears to demonstrate a shift in business strategy away from previous periods under the Gulf Cartel.

Rape (64)

In February 2021, a Guatemalan woman who had been expelled by CBP to Mexicali after attempting to seek asylum was raped in Tijuana. The woman, who was fleeing severe domestic violence with her six-year-old daughter, had relocated to Tijuana to attempt to seek asylum at the San Ysidro port of entry, which she found closed to asylum seekers due to the Trump and Biden administrations' misuse of Title 42. The woman reported to Human Rights First that Border Patrol agents told her that "the new president isn't taking anyone" and that she should present herself "legally" even though ports of entry were, and remain, closed to asylum seekers in violation of U.S. law, which guarantees access to asylum to individuals who cross the border away from a port of entry.

Human Rights First, 4/20, 2021

ILO Observations

More instances of rape against women and child immigrants were carried out by Cartel members than others who carried this crime. However, rape was also carried out by local police in Tijuana, Baja California and Reynosa, Tamaulipas. Rape victims also reported rape, sexual assault, and beatings in accounts taken in Del Rio, Texas, Eagle Pass, Texas and San Isidro, California which portrayed a pattern of Mexican police as perpetrators of rape in corresponding Mexican border towns.

This count includes 26 women held in Ciudad Juarez. One woman who was a rape victim but escaped the facility, later reported on the capture of 25 other victims.

The use of rape is a tactic consistently employed in order to extort even more funds from family members who are the

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victims of extortion. Of the 62 single counted cases for rape, 36 persons or 58% were also victims of kidnapping.

Among the 64 acts of rape, three were children. Several victims were raped multiple times. For such accounts, ILO counted three acts of rapes, given descriptions employed “multiple” in situations of gang or group rape of a single women.

One of the children was an unaccompanied minor. The other two children were victimized in a refugee camp. Two others targeted were self-identified as Transsexual women, and a Lesbian. A disabled Honduran women with a year and a half old baby was gang raped in Juarez, and was threatened with murder if she reappeared in Juarez, Chihuahua, Mexico.

This includes family members, often child and spouses, who were kidnapped as well. The actual number of cases of rape associated with kidnapping is likely significantly higher given the circumstances of capture may have been temporary and not considered kidnapping by those victimized, though threats to their lives were used, and the places of capture may have been in public. Missing data does lend itself to determining nuanced counts of nationalities of targeted victims, however, for the 25% that reported nationality, Hondurans surpass other nationalities reported. Central Americans in general were prominent. In several cases, Black Honduran women reported this crime.

In a mass kidnapping and extortion case, 26 women were victimized.

ILO discerned from accounts that 37 witnesses were present during the acts.

ILO Observations:

- Rape was an instrument for victimizing women and child immigrants. It was commonly used in tandem with extorting the distant relatives of families whose adult and child victims were kidnaped. The combined use of kidnapping and rape was extensively used to increase the amount of funds extorted from victims’ family members back home.
- Rape was used on occasion as a means to intimidate and threaten indirectly spouses, and to subject their children to witnessing their parents being held and sexually attacked without intervention. This experience will have long term traumatic effects on children and their parents. Post-Traumatic Stress Syndrome, depression, suicide ideation, and other effects are probable effects of children having been exposed to the victimization of their parent(s). It was also used as a tool to threaten family members or others to not resist the rapists actions carried out in front of them, also serving as a threat of intent against possible future victims if they protested or acted against the perpetrators.
- There are several thousand other victims of rape not counted here but compiled in accounts as aggregated data indicating cases where four to six types of violence are lumped together; one of which is rape. That total number of aggregated incidences of violence was 6,290²⁵⁹. Prior

²⁵⁹ This figure is for the January , 2022 release of the Human Rights Report, which has published more recent versions since them.

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reports of rape from Reynosa, Tamaulipas in the 1980's stated that over 50% of Central American immigrant women were raped at the border town. The survey was conducted by social work students under the direction of Arturo Solis.²⁶⁰ If that finding from a prior survey is considered a baseline, and then applied in this period of border violence, over 3,100 cases of rape were probable.

Sexual Assault (7)²⁶¹

"A young Trans woman ("F") went through hellish persecution in her homeland. The gangs beat her so severely that she fled in early 2019. She made it to Reynosa, but U.S. officials sent her back under the MPP program. F tried to go back to the border for her immigration court appointment in Laredo, but the local gangs pulled over the bus and dragged everyone off. Eventually she got away, but she had missed her hearing. A few months ago, she tried again to cross the Rio Grande but was sent back to Mexico. This time the gangs beat her and raped her. Worse yet, she now has HIV from her assailants."

Human Rights First, 8-11-2021.

ILO Observations

Sexual trafficking, and sexual assault reported in Matamoros, Juarez, and reported from Del Rio, Eagle Pas/Piedras Negras, and San Isidro / Tijuana. One person attacked had epilepsy, and a second person reported as Lesbian. As with rape, vulnerable individuals from social classes which often experience discrimination became victims of Cartel and local police. Sexual assault was defined as any unwarranted or consented physical contact and included an element of coercion by the perpetrator.

If an application for such a victim is made in the United States, and was somehow able to receive an exception to MPP and Title 42 and given an asylum interview, they must:

... have suffered "substantial physical or mental abuse" as a result of being the victim of certain criminal activity. The criminal activities include rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful

²⁶⁰ Solis eventually founded the Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos, A. C. (CEFPROD HAC) in 1990. Archival material is available at Fondo Documental «Arturo Solís». Archivo hemerográfico y documental del Centro de Estudios Fronterizos y de Promoción de Derechos Humanos A.C., Colegio del Frontera Norte, Av. Fuentes de Verónica s/n, entre Av. Revolución y Av. Independencia, Col. Ciudad Industrial, C.P. 87499, Matamoros, Tamaulipas.

²⁶¹ "Sexual assault takes many forms including attacks such as rape or attempted rape, as well as any unwanted sexual contact or threats. A sexual assault Usually occurs when someone touches any part of another person's body in a sexual way, even through clothes, without that person's consent." National Center for Victims of Crime,

<http://www.victimsofcrime.org/our-programs/dna-resource-center/sexual-assault-kit-backlog-reduction/about-sexual-assault> , accessed 5/20/2022.

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criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of these crimes. The criminal activity must have violated the laws of the United States or occurred in the United States or one of its territories or possessions.

Victims of Trafficking and Violence Protection Act of 2000.²⁶²

Any attempt to solicit a U-Visa as a victim of the crimes listed above for nearly all victims of sexual assault in Mexico is that their victimization in México is not provable in the United States, and therefore they are not eligible for a U -Visa.

Robbery (234)

Haitians (200) accounted for 85% of all robbery victims. Most accounts indicated local Mexican police harassed, threatened, and robbed them. One man was robbed by police who threatened him with a pistol to his head, and others were threatened by knife wielding police officers.

The appearance of Haitians in Mexico as immigrants has persistently produced reports of their victimizations. Given the resident Afro-Mexican population is small and mostly contained in one coastal region, Haitians appear as foreign nationals to Mexican officials who often work to discern, for example, the difference of two Maya nations from Chiapas, Mexico from 22 other Indigenous Mayan Peoples who migrate through México. After Haitians, Hondurans (8) outnumbered Salvadorans (3) and Guatemalans(2), and Mexicans (2) as victims of robbery in a 2:1 ratio.

ILO Observations:

- The pattern of immigrant robbery by local police appears at first glance to be mostly of connivence, however, is it a persistent pattern of preying on immigrants in the border towns of northern México.
- Several accounts of police subsequently turning over immigrants who were robbed by the same police indicate this act of violence of Affiliates is tolerated by Cartels as within the boundaries allowed for affiliates.
- Given scant reports of police acting as kidnappers and extortionists of immigrants, however, cases reported suggest that those operations are normally reserved by *fiat* for members of the Cartel.
- This form of collusion between local police and Cartel posits violence as a cost throughout the border zone since at least January, 2019, for Cartel operations. It is a

²⁶² PUBLIC LAW 106–386—OCT. 28, 2000, <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>.

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three-step process. Cartel tolerates police engaging in petty robbery against migrants. That collaborative police violence then effectively curtails the rights against further criminal acts, since immigrants cannot appeal to police to protect them from criminal acts, thus converting officers from adherents to the law, to state criminal actors. Then Cartels either receive immigrants from them directly or later encounter them and kidnap and extort *carte blanche* without police intervention.

The local Mexican border town police in this structure work as enforcers of the border zone as a violent place where Cartel is allowed to operate in kidnapping and extortion *carte blanche*. These two forces, one a state security force, and one the other, a non-state security force, work in tandem and constitute one half of the border violence complex of violent actors.

It is highly unlikely that this is the extent of the criminal relationship, but rather a quota or regular fee is paid to the police to work under this arrangement, least they assert their own criminal network, as once thrived in Matamoros under the Mexican federal Judicial Police (Policia Judicial) in Tamaulipas state.

Assault (121)+ Beatings (3) = 124

ILO Observations

On the Street

Assaults on public streets were the most common places where such crimes were carried out. Most often assaults preceded robberies, kidnapping, and extortion. Assaults with fists, a machete, knives, setting fire to immigrant tents with immigrants inside, and whippings. Northern Mexican border towns where assaults were most commonly documented include Tijuana, Nogales, Juarez, Nuevo Laredo, Piedras Negras, Ciudad Acuña. Single accounts were reported for assaults in Monterrey and Saltillo for immigrants who fled the border area to avoid violence, and one in Sonoyta, Sonora. Hondurans were most identified nationality, followed by Mexicans and Haitians. Vulnerable social groups who were victimized included: LGBTQ, Lesbian, Gay, and Trans identified individuals, Haitians, Afro-Hondurans, teenagers (including unaccompanied minors), and children.

Vulnerable social groups accounted for over one fifth (22%) of all assaulted immigrants.

Armed Break Ins (3)

A Guatemalan asylum seeker who has been blocked from requesting asylum at a U.S. port of entry was attacked while pregnant in Tijuana in January and February 2021 by the gang that threatened to kill and dismember her in Guatemala if she refused their sexual demands. The woman narrowly escaped the gang while they ransacked the place in Tijuana where she had been staying and beat her partner, who subsequently

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disappeared. The woman suffered a miscarriage in March 2021 because she was too terrified to leave her home to seek prenatal care after the attack.

Margaret Cargioli, attorney, Immigrant Defenders Law Center. HR First, 4-20, 2021.

In the account below, an immigrant and her son resided in the Mexican interior, in Mexico's second largest metro area, Monterrey, Nuevo Leon, Mexico. Monterrey is 136 miles or over two and half hours from the border, or the same distance from Tijuana, Mexico to Los Angeles, California.

A pregnant Afro-Honduran woman decided to send her six-year-old son across the border alone after DHS expelled the family in April 2021. The mother spent months in Monterrey waiting for the opportunity to request U.S. asylum and reunite with her son. Mexican police violently raided and robbed the apartment she shared with other migrants on multiple occasions. She suffered a miscarriage due to the stress of her living conditions and her son was deeply traumatized by the separation, according to Taylor Levy, an attorney assisting the family. Human Rights First, 8/20/2021.

ILO Observations

Where border violence poses too great a threat, some immigrants seek temporary refuge outside the border zone in Mexico's interior. Some are able to rent temporary residential stays in houses or hotels in the border zone. Break ins in the border zone are infrequent largely due to Cartel already knowing where migrants are residing and their status as paid or non-paid clients.

Threats (158)

ILO Observations

Threats were largely associated with acts of kidnapping and extortion, more than with any other type of violence. Most victims were Central Americans, and most perpetrators were Cartel, but Mexican police also carried out threats.

In the near border area, such as on the street or in unregulated or protected refugee camps for persons not yet expelled by the US Customs and Border Protection or Border Patrol, in Northern Mexican border towns, 49.6% of all threats recorded occurred.

Nineteen percent (19%) of threats occurred in association with ongoing kidnapping and extortion *prior to immigrants approaching US Ports of Entry* or entry onto US soil. After immigrant expulsions by US authorities, 31% of all threats were received by migrants. Most threats were carried out in the throes of extortions while being kidnapped.

In regard to the last threat type, one mass kidnapping of 27 persons without expulsion was not counted but considered an outlier given it was an unusual event. If counted, it would increase

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those preyed upon before expulsion under MPP and Title 42, to 39% of all threats, surpassing threats after expulsions.

Shootings (16)

ILO Observations

Fifteen persons, mostly families, experienced kidnapping in which shootings or armed threats to shoot – occurred. Six persons were shot at (and one murdered) before expulsion from the US while in Mexico, while two were shot after expulsion. Two incidents happened in vehicles approaching Reynosa and Juarez were shot at. Four expelled family members witnessed a boy being shot on the street.

Six were shooting victims associated with expulsions by US immigration Officers, one with smuggling. Mexican Immigration officers robbed one family after expulsion by the US, and Mexican police were reported to have robbed or assaulted many Haitians (196) with guns or knives.

Murder (5)

"A mother ("A") tried to save her young daughter when the gangs arrived to rape her. The gangs beat A and kidnapped the girl, who did not return for nearly a year. When the mother received still more threats, she fled north with her mentally disabled 15-year-old son. The son had the functional development of a 5-year-old. The trip was terrifying. The family tried twice to cross the river, but U.S. officials sent them back both times under Title 42. In Reynosa, the mother realized she could not keep her son safe from the endless kidnappings and assaults going on around her. If she tried to cross with her son again, they would both be sent back. If he crossed alone, he would be sent to her family in the United States because Title 42 did not apply to unaccompanied minors. Like so many other desperate parents, she finally sent him across again, this time on his own. He was found dead shortly thereafter. Initial reports suggest torture and mutilation. Based on my experience, I suspect the gangs approached the boat in which he was a passenger and asked for "claves," or passwords each traveler gets once they have paid the proper crossing "fees" to the gangs. If anyone attempts to cross without such payment, they are killed. Had the gangs asked this young man for his password, he would have been unable to answer and therefore killed."

Jennifer Harbury, ACLU Legal Document,
8/11/2021. Human Rights First Report, Dec. 2021.

ILO Observations

All victims appeared to be murdered by Cartel members. Murders were carried out on a border bridge, in a car, at a hostage house, on the street, and at the Rio Bravo /Rio Grande river. Victims included a man and his niece in Reynosa, a Haitian man in the Center of Tijuana, Baja California,

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two boys in Reynosa, Tamaulipas and thirteen immigrants in Chihuahua State, and an unidentified smuggler.

Three were murdered as part of a kidnapping, and thirteen were murdered as two rival Cartels battled for possession of immigrants in Chihuahua. It is worth noting that disappearances are likely also murders, but categorized as unknown, since evidence of homicide is purposefully hidden.

Torture (13) + (1) Electrocution = 14.

UN General Assembly adopted the right against Torture in the Universal Declaration of Human Rights (UDHR) in 1948: “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Acts of Torture are a jus cogens norm of international law, thus it is binding on all States. It is never justifiable under any circumstances. The United Nations further codified Torture in the Convention Against Torture in 1984. Article three states:

1. No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

In February 2021, a young woman who was kidnapped in Mexico, held hostage for weeks, repeatedly raped and tortured by her captors, trafficked into the United States, and then dumped in Phoenix, was not found to have a fear of Mexico under the Title 42 torture screening. CBP expelled the woman to Mexico after she was taken to a hospital for evaluation of the sexual trauma she suffered, according to the Florence Immigrant and Refugee Rights Project.

Florence Project, Human Rights First report,
<https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum>

DHS twice expelled a Honduran asylum seeker to Mexico even though he had been kidnapped near Reynosa in March 2021 by a cartel that continues to hold his mother five months later. The man escaped the kidnappers but continues to receive videos and photos of his mother being tortured by her captors who are demanding a \$10,000 ransom. The man

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told Human Rights First that cartel members are searching for him in Reynosa and that he fears that they will kill him for escaping.

Human Rights First, 8/23/2021

ILO Observations

After disappearance and murder, torture is the highest form of crime committed for the ongoing practice of period Title 42 (as of this publication), the graduation and practical extension of MPP given Title 42 it is selectively applied against Meso-American immigrants (Mexicans, Guatemalans, Salvadorans, and Hondurans). It is also stipulated that states have the responsibility to not return immigrants to states that they have grounds to believe exists “a consistent pattern of gross, flagrant or mass violations of human rights.”

Of the 13 disaggregated accounts, five were cases where torture occurred because immigrants could not apply at Ports of Entry under MPP since a severe quota system was used and they were then victimized in northern Mexico border towns. In three other incidents, immigrants were tortured while they were waiting to approach the border to cross. The remaining three cases were of individuals who were tortured, but had subsequently made it to the border and told officials, but were expelled nonetheless under Title 42. The border zone was widely known to subject innocent immigrants to torture, and therefore should have been considered a source of persecution against immigrants who demonstrated credible fear when interviewed by border agents. Torture occurred in the context of not being allowed to be interviewed under MPP while for asylum while waiting and incredibly were expelled even when they had been tortured before requesting asylum at the border.

Many more cases of torture are found in the aggregated data of Human Rights First, and technically, kidnap victims who were extorted were also torture victims when physical and or psychological coercion was used.

Mexican Police assault (212)

ILO Observations

Immigrants who sought out the opportunity to apply for asylum at US Ports of Entry at the SW border but who were not allowed to be interviewed under MPP, were frequently assaulted by local Mexican police on the streets of border towns where they were refouled into Mexico. Refoulment occurs when and if an immigrant attempts to visit a US land Port of Entry and are not allowed to speak with an immigration officer to apply for asylum. Such assaults accounted for 34% of disaggregated accounts of police brutality.

Immigrants who entered the United States but not at a Land Port of Entry under Title 42 and were physically expelled upon entry into the United States under Title 42, accounted for 65.5% of immigrants assaulted by local Mexican Police after expulsion.

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If 196 additional aggregated cases of, “robbery, assault, Police Assault” are counted, then under Title 42, then 95.5% of all disaggregated Mexican police assault cases occurred under Title 42.

Mexican Police extortion (95)

Two Nicaraguan women reported that 23 Nicaraguan asylum seekers who had been traveling with them were kidnapped in Reynosa in July 2021. Police at a checkpoint handed the group, which included the women’s partners, over to a cartel extorting family members in the United States for ransom. Some of the group remain kidnapped, while at least one of the kidnapped asylum seekers has gone missing after his family paid ransom to secure his release.

Human Rights First 8/23/2021

ILO Observations

The knowledge of local police regarding immigrants was used to extort immigrants for money. The common issue for 59 of 64 (92%) of police extorted victims was that they could not enter the US at a Port of Entry to request asylum under Title 42. The narrative reports bear this out give the time frame in which the incidents occurred in the border towns where police extortion took place, for example most frequently in Reynosa.

Some 5 of 64 (8%) of victims attempted entry into the US outside of land Ports of Entry because instead of being turned back at a Port of Entry (never having been given physical access to enter the POE), immigrants crossed into the US outside a POE. Asking for asylum under that circumstance is also a legal form of asking for asylum under international and US standard immigration law.

Lastly, the pattern of confederated police turning over immigrants to Cartel for kidnapping and extortion is exemplified by one case in the Reynosa area cited above.