

Asylum in Dispute: Violent Restraint Strategies During the Donald Trump Administration

El asilo en disputa: estrategias violentas de sujeción durante el gobierno de Donald Trump

Nohora Constanza Niño Vega¹

ABSTRACT

This paper identifies the Trump administration's violent practices toward Central American and Mexican asylum-seeking families as a defensive response to the legal framework that grants them this protection tool in their relationship with the State. Through in-depth interviews and participant observation with migrant families in Tijuana during 2017-2020, it is concluded that the various measures implemented sought to limit asylum as a right and to configure an illegal subject based on suspicion, criminalization, and trauma. In this way, it was sought to reverse the character of legality that protects asylum seekers and rebuild a dominant vertical relationship of racialized subjection. The analysis seeks to contribute to migration studies by understanding the tension between the legality of asylum and the Trump administration's actions to disrupt this framework.

Keywords: 1. asylum, 2. illegality, 3. issue, 4. Central America, 5. Mexico.

RESUMEN

Este artículo identifica las prácticas violentas del gobierno de Trump frente a las familias centroamericanas y mexicanas solicitantes de asilo como una respuesta defensiva al marco de legalidad que les otorga esta herramienta de protección en su relación con el Estado. A través de entrevistas a profundidad y la observación participante con familias migrantes en Tijuana durante los años 2017-2020, se concluye que las distintas medidas implementadas buscaron limitar el asilo como derecho y configurar un sujeto ilegalizado a partir de la sospecha, la criminalización y el trauma. De esta manera, se intentó revertir el carácter de legalidad que ampara a los solicitantes y reconstruir una relación vertical dominante y de sujeción racializada. El análisis propone abonar a los estudios de las migraciones a través de la comprensión de la tensión entre el carácter de legalidad que otorga el asilo y las acciones del gobierno de Trump por alterar este marco.

Palabras clave: 1. asilo, 2. ilegalidad, 3. disputa, 4. Centroamérica, 5. México.

Received: October 21, 2021

Accepted: February 17, 2022

Available online: July 30, 2022

¹ Programa Investigadoras e investigadores por México-El Colegio de Sonora, Mexico, nohoranio@gmail.com, <https://orcid.org/0000-0002-6654-9536>



INTRODUCTION²

Recent reports from international agencies indicate that forced migration has grown because of the unfavorable situations of global politics. Such situations become increasingly violent regions, internal armed conflicts, intensification of political persecution, climate change effects, and by and large, problems related to the States' impossibility to provide their citizens with security. As a consequence, this lack of security has produced an increase in forced migration, which looks for international protection by means of figures such as asylum for Mexican and Central American individuals who reach the border with the United States.

According to Migration Data Portal (2021),³ it is estimated that by the end of 2020, the United States hosted 1.27 million refugees and asylum seekers, and according to the UN High Commissioner for Refugees (UNHCR), 432 700 people, that is to say, 79% of the population forcibly displaced from Guatemala, Honduras and El Salvador was in the U.S. As stated by the same source, by 2020, out of the new 250 800 individual asylum applications in the country, 60% came from Latin American countries: 16% from Guatemala; 13.43%, Honduras; 13.23%, Venezuela; 10.32%, El Salvador; and, 6.93% from Mexico (ACNUR, 2021).

It may be said that as of 2018, the mobility of Central American migrant people and families toward the United States—by means of migrant caravans—turned into the evidence of extreme violence situations experienced in Central American countries such as El Salvador, Honduras and Guatemala. This situation forced thousands of individuals to flee from their places of origin and resort to caravans as a resource to collectively accompany themselves to face insecurity and risk, in their countries and over their journey in Mexico (Varela Huerta & McLean, 2019; Paris & Montes, 2020). Furthermore, since 2016, border cities such as Tijuana have received hundreds of individuals, who owing to situations of violence in territories such as Michoacán, Guerrero, Oaxaca, and Chiapas, have been forced to migrate to the U.S. looking for asylum (Pérez & Castillo, 2016).

For forced Central American and Mexican migrants who suffer various ejecting violences, asylum becomes a protection tool that puts them at a different place before the State as compared with historic migrants out of economic reasons.⁴ The government's construction of these historic migrant subjects as *illegals* comes into conflict with the status of legality that asylum grants the

² This article has been benefited from support for the project “*Co-construyendo seguridad humana en México: una metodología y plan de acción de las comunidades hacia el Estado*” [Co-building human security in Mexico: a methodology and action plan from the communities to the State], funded by Fondo de Cooperación Internacional en Ciencia y Tecnología (Fonciacyt) and United Kingdom Research Council through Newton Fund. Also, from the National Science Foundation (NSF), Human-Environment and Geographical Science Program Award #1951772.

³ Migration Data Portal is an initiative started in 2017 by Global Migration Data Analysis Centre of the International Organization for Migration (OIM).

⁴ Even if Guatemala and El Salvador already had a background in refuge and asylum due to the conflicts in the 1980's, which displaced thousands of people, truth is that its evolution has produced a recent history of migration that assimilates them into the notion of migration out of poverty and economic reasons.

asylum seekers. As for the asylum seekers, this figure shields and protects them in the context of humanitarian international and refugee law.

However, during Trump's administration these were aggressively addressed, devising and setting up a terror governance by means of a number of measures such as waits, separation of children from their families, incarceration in detention centers, the euphemistically called *voluntary returns* of those who entered to apply for asylum, as well as the *threat* of a possible removal for those who acted as *sponsors*⁵ for the requesters. All of these were forms that materially and emotionally affected migrant individuals and families for the purpose of making them desist from their intention to request asylum so that once they were detained, asked to be deported, or force them to take extreme measures to cross and surrender themselves to the Border Patrol and thus, make them illegals. With these measures, Trump's administration intended to symbolically revert the status of legality of the asylum seekers, and by doing so, make irregular, criminalize and contest the search for protection. In this sense, asylum turned into an emotional and material battlefield at the border.

The Context of Central American Migration toward the United States

The various changes in the economic, social, political and environmental conditions in Guatemala, Honduras and El Salvador have marked their history of migration toward the U.S. The internal wars and their intensification in the 1970's and 1980's produced an ejection of about 129 000 individuals looking for refuge and asylum (Castillo, 1999; Castillo, 2000; Puerta, 2004; Morales, 2008; Carrasco, 2013; Rodríguez, Barrón, Fernández de Castro and Rivera, 2014; Cortés, 2018). In 1980, those who escaped usually reached the Mexican border in Chiapas, and from there traveled to the northern border by bus; there is a calculation of more than two million Central Americans toward the U.S. over such period (Carrasco, 2013).

In like manner, the flow of people searching for refuge enabled the creation of migration networks, which later, in the 1990's,⁶ allowed the integration of transnationalized labor markets and the displacement of people toward the United States as a part of "the redefinition of family and community strategies to survive" (Castillo, 2000, p. 138; Morales, 2008).

As we have mentioned, there are several factors that incite migration. In recent decades, economic crises, natural disasters, insecurity and megaprojects have turned into weighty reasons to push Central Americans to move from their places of origin and look for a safe life in the U.S., considering their high victimization crossed by class, ethnicity, gender, criminality and impunity (Paris, 2016; Cortés, 2018; Selee, 2020). These situations have influenced the increase in asylum requests, reason why it is understood that by 2015, 29% of the asylum requests in the U.S. came

⁵ One of the demands in the asylum request is to have a sponsor in the U.S. who can support them while they carry out their process.

⁶ Due to the changes produced by the introduction of neoliberal policies that propitiated the agricultural crisis, the increase of informal market and labor, unemployment and the ejection of peasant population toward the cities and abroad.

from these Central American countries (ACNUR, 2016) and by 2020, it increased to 39.75% (ACNUR, 2021).

In 2014, as pointed out by Paris (2016), the number of Central Americans detained at the southern border of the U.S. was higher than that of Mexicans, with 53%, as well as the participation of women, adolescents and children (henceforth, AC) arrested, which changed from 13% in 2013 to 29% in 2014. In the period from 2009 to 2016, at the southern border of the U.S., 225 351 unaccompanied migrant AC were detained, with a participation of 54.41% of Central Americans and 44.14% of Mexicans (Rivera, 2018). Among the reasons that stirred this AC movement, there were insecurity and criminality in their countries of origin, precariousness, social inequality, and the processes of family reunification as well (Varela Huerta, 2015; Rivera, 2018).

It is the story of Francisca, a Salvadoran woman queuing in El Chaparral in Tijuana to request asylum in 2017; for her, the asylum request became her defense against the insecurity she had experienced in her country. She owned a business in El Salvador, and there she was harassed by Maras' members, whom she had to provide for free with some products she used to sell. When they or their partners visited her business, she knew she had to give them everything they wanted. This situation turned into tiredness, and because of this, she thought of running away as a possibility. The event that triggered her departure was that these armed actors started to approach her 11-year-old daughter so that she would be the partner of one of them. Protecting the life and integrity of her daughter forced her to look for asylum in the United States. For her, her country did not ensure their security, however, in transit over Mexico and hearing the news about the levels of violence experienced in this country, she reinforced the idea that her only possibility to survive was the U.S.

In Tijuana, it was her fifth day when very early in the morning, after having breakfast in a shelter for migrant population, she walked some blocks to reach the entrance of El Chaparral and wait for her turn. In those days, U.S. authorities let between 20 and 50 people cross a day. This was the reason why, in spite of being in the waitlist where Mexican and Central American families and individuals registered, it was also important to be in the first places of the long line in this place for pedestrian crossing, as occasionally U.S. authorities did not pay attention to the list and let cross those in the first places of the line. Just like Francisca, there were also Guatemalan and Honduran mothers with their children playing in El Chaparral while they waited for being selected at the entrance.

Selee (2020) mentions that over the fiscal year 2019, there were 607 000 detentions in the U.S., which made it evident this persistent exodus due to the violence of Maras, climate change effects, and the economic and social inequality in those countries. A report by Doctors without Borders (Médicos sin Fronteras, 2020) states that 45.87% of the migrants interviewed in 2018 had at least one event related to violence as one of the reasons to migrate, while 36.4% of them had been victims of internal forced displacement in their own countries. As well, 57.3% expressed they had been exposed to situations of violence by Mexican authorities and criminals in their transit toward the United States.

In like manner, according to official data, 60% of the apprehensions at the southern border of the U.S. in the fiscal year 2019 corresponded to family units or unaccompanied AC, with an increase of 300% as compared with the immediately previous year (U.S. Customs and Border Protection, 2019). This datum reveals a new more familial component, with a noticeable presence of women and children in this forced migration that seeks international protection.

*The Historical Migration between Mexico and the United States
and the Recent Search for Protection*

For its part, Mexican migration toward the U.S. has a long history that produces a complex bilateral relation between these countries. According to Durand (2016), there have been several perspectives that intend to understand this relationship; some focus on poverty, unemployment, lack of incomes and opportunities in Mexico, and employment and competitive wages offered in the United States.

This author (2016) carried out a characterization of migration from Mexico toward the United States in which he defined five stages of the migration process. The first is proposed to run from the end of the 19th century to 1920, characterized by hiring modalities that produced semi-forced workforce by means of processes that created debt for the workers. The second stage was marked by mass deportations related to the economic crises of 1921 and the Wall Street Crash of 1929. The third period comprises the Bracero Program from 1942 to 1964, which corresponds to the validity of a bilateral agreement to meet the demand for Mexican workers in times of war; it was characterized by the legal and temporary entrance of workers. Later on, the fourth period is proposed from 1965 to 1985, with an increase of undocumented individuals, the introduction of women and urban migrants into the migration dynamic. For Verduzco (1995), changes in the migration policy favored the increase of migration toward the U.S.; while over the period from 1940 to 1960, regular migration of Mexican people reached 10% of the total migrants to the U.S., their participation was about 14% between 1960 and 1980.

The fifth stage is defined by the Immigration Reform and Control Act (IRCA). This stage was characterized by enabling the possibility of amnesty and legalization for 2.3 million undocumented workers, albeit it was followed by the legal persecution of migrants enabled by proposal 187/94 in California, the 1996 federal Law against illegal migration (IIRAIRA), the Patriot Act after 9/11, and the 2005 migration reform. Finally, the stage after 2007, in which one notices the decline of the movement of Mexican people toward the U.S. to become the forced migration dynamics that have been recently observed.

The history of Mexican migration emphasized the functioning of labor demand, poverty, wage competitiveness, family reunifications, cultural strategies in the places of origin and transnational links as some of the factors with an influence on mobility. However, it is necessary to mention that after 2006, the so-called war against drugs launched by Felipe Calderón's administration has had the increase in murders, disappearances, rapes, threats and extortions in a large part of the national territory as consequences. Such violences have victimized civil population and pushed Mexicans toward the United States in the search for protection.

During this time, there were forced displacements in various Mexican states that have been related, on one side, to the direct intervention of organized crime trying to gain territorial control of drug markets and people smuggling; while on the other, to its participation in the resolution of land conflicts, political affairs, mining enclaves and megaprojects, which in the contexts of accumulation via dispossession, resort to massacres and threats for the appropriation of land (Pérez & Castillo, 2016; Durin, 2019; Ernst, 2020; Harvey, 2005).

The figure of homicides in Mexico in 2020 has been unprecedented, reaching 36 579 casualties, with a particularly heavy incidence in the states of Guanajuato, Mexico, Michoacán, Jalisco, Baja California, Chihuahua, and Guerrero (Instituto Nacional de Estadística y Geografía [Inegi], 2021). According to the Internal Displacement Monitoring Center (IDMC), in 2020, violence in Mexico propitiated 9 700 new cases of forced displacement, to reach a total historic record of 357 thousand people (IDMC, 2020).

In particular, 2016 is referred by key actors in the attention to migrant population at the border as the year in which the flow of Mexican individuals and families searching for international protection in the U.S. is noticed in the number of asylum requests, given the amount of people who arrived. Ever since, they have settled in bridges and ports of entry, taking care that U.S. migration authorities allow them to *surrender themselves* (as expressed by those who reach the border) to begin with their asylum-seeking process.

A few steps outside Padre Chava's social diner, located some meters away from El Chaparral port of entry in Tijuana, one of the first encounters with an internally displaced family from Michoacán, which had reached the border, took place in December 2017:

"We're from Michoacán"—said the men in this numerous family—, "we are here for asylum" —a boy says. They were four adult men and two young ones, four women and six children. They pointed out that criminal actors had broken in and burn down their homes and threatened their families; they told us: "the army, ministerial police, and the police as well are with them. When someone in the army wanted to act, they got him removed". The men of this family told us that they are part of Michoacán's community police and pointed out: "we are no criminals, we're not like them and because of that we're here, to try to request asylum. Part of our family has passed because we're many". They were threatened in August, ever since they have been far from their hometown moving from one place to another. There, "*Los Viagras*"⁷ worked hand in hand with the authorities: "they deal in drugs, but kidnappings are the *most* [frequent]. Everything you see there are *levantones* [colloquial word for kidnappings]; those with some dough [money] are victims of kidnapping".

These men who partake of community police found out they can request asylum in the U.S. because one of the bosses of the community police was already in that country undergoing such process and via a Facebook contact, they were able to learn that they could apply for it as well. They told us in a hurry: "we have to leave now; they told us that 50 would pass, yesterday it was 60, so God providing, it is our turn today to cross to request asylum" (Field diary, December 15, 2017).

⁷ Name of the criminal group they referred as the perpetrators of the burnt and threats.

In the case of the displaced population that has reached the border with the United States, key informants told us that before 2016, Mexican adults arrived with no companions, they were running away and looking for asylum, though after such year, the dynamic changed. Hundreds of families arrive in the border, mostly women with children and adolescents who are escaping from Michoacán and Guerrero, particularly:

Sitting in El Chaparral, next to the long line of people who wait for their turn to request asylum, I had the chance to talk to a lady and her 16-year-old son, a daughter of 15 and children of 11, 10 and eight years. They were displaced from a town near Acapulco. Her husband was killed because he refused to work for the groups that control such area; they generally ask the population to work growing or selling drugs for them. Ever since, she has been on her own with her children. She used to take them to school on foot, but the children noticed they were being observed. Seemingly, they were after her oldest boy to recruit him, the mother points out, and also because of that they decided to leave. She found out through her sister who lives in the U.S. and the television that they could request asylum, and with the money her sister sent her they were able to afford the plane tickets. The mother says: “people think we’re here because we like it, as if we enjoyed being in the cold. We came here because it is dangerous there, those with some means are extorted, and if they don’t pay, they kill them.” While we were speaking, on a number of occasions, pain became evident in her eyes, as she recalled the situations that they had to live: the loss of her husband, their escape, the uprooting and now the wait (Paola, field diary, December 14, 2017).

The histories behind each family and people in the line and in the waitlists⁸ are heartbreaking: murders, threats, disappearances, attempts of forced recruitment of adolescents, among others. These are part of the pain they carry with their belongings and those same histories are their hopes to become eligible for asylum in the U.S. This is the new dynamic of forced migration in Mexico in which, the historic migration of relatives who largely crossed the border irregularly⁹ has helped them to make a decision to search for international protection. In March 2018, in the context of the first caravan, we had the chance to take a look at the list and we glimpsed the presence of about 300 Mexican people from the state of Michoacán who had enlisted over the last month.

In recent years, there has been an effort to hide forced migration, configuring it as a part of the historic migration toward the United States related to economic reasons. In this sense, asylum request is criminalized by the U.S. government denying their condition of victims of violence. At once, this overlapping context has worked for the Mexican government to ignore internal forced displacement.

⁸ Informal lists recorded in a notebook of minutes in which the turn number, name of each of the family members and the state they are from are written down. In 2017, these lists were informal and implemented by the population itself. Later on, in 2020, in conversations with key informants, it was expressed that these notebooks were provided by Instituto Nacional de Migración of Mexico and controlled by them.

⁹ In 2008, it was considered that 56% of the Mexican population had a relative living abroad, of which 97% lived in the U.S.

Asylum: Between Protection and Contention

Asylum is an international protection tool that offers assistance for those who are escaping from their home countries due to circumstances that put their lives and integrity at risk. Hamlin (2014) points out that the modern concept of refuge that comes from the Geneva Conventions has WWII as a background; it aimed for the recognition of the States' obligations to protect the victims of persecution who abounded in Europe back then. Under this Convention, the signatory countries committed to not returning any requester to territories where their lives or liberty are under threat (principle of non-refoulement).

Such principle, in international law, may be interpreted as a voluntary suspension of the States' sovereignty in the protection and surveillance of their borders in order to offer protection to requesting individuals; moreover, no punishment is expected for the irregular entry, as long as they appear with no delay before the authorities and a good reason for the entry is demonstrated. However, this is not so in practice (Dauvergne, 2008).

In the United States, racialized dynamics of migration restriction have persisted as of 1882 with the Chinese Exclusion Act and the Immigration Acts between 1921 and 1924, which intended to categorize people eligible to immigrate, setting quotas on the basis of national origin, and annual restricted admissions. And despite the endeavors toward an integral reform regarding asylum in the debate on the coding of the Immigration and Nationality Act of 1952 introduced the retention of the deportation of an alien subject to physical persecution, refugees were not included under full protection; neither were there many accomplishments in protection over the next decades, only the promulgation of a fragmentary law such as the Refugee Relief Act of 1953 and the Refugee-Escapee Act of 1957, "in such manner that parole was the executive resource with which the asylum and refuge crisis was addressed" (Wasem, 2020, p. 249). Wasem points out that from 1940 to 1980, refuge and asylum in the U.S. were guaranteed by a series of partial laws that depended on the requesters' ejection places. This way in the U.S., the main interest to offer protection was ideologically marked by the Cold War, which favored protection in a selective manner and defined by an administrative exercise of executive orders (Rottman, Fariss & Poe, 2009; Salehyan & Rosenblum, 2008).

Eventually, late in the 1970's, consensus for the promulgation of a comprehensive law on asylum was reached. The development of the law intended to decrease this power in the executive aligning with the process proposed by the international system and in this way, avoid such ideological framework of asylum determination. After this law, the country adhered to the facultative Protocol and followed the Convention Relating to the Status of Refugees, including dispositions on asylum and uniform procedures for its treatment. Asylees were defined as foreign nationals in the United States or at the ports of entry if they met the definition of refugee (Wasem, 2020; Hamlin, 2014).

Wasem pinpoints that little attention was paid to asylum¹⁰ since there were few requests a year. However, in the 1980's and 1990's, asylum requests from Central America and the Caribbean increased. The attention exhibited the differenced treatment given to Cubans and Nicaraguans regarding asylum seekers from Haiti, El Salvador and Guatemala, keeping a logic of political benefit over the humanitarian. As of the 1990's decade, asylum requests at the U.S. border surpassed those of refuge, therefore, the refuge policy had the conditions to be combined with border security, owing to the suspicion that they were actually economic migrants who were cheating to use this tool (Hamlin, 2014; Wasem, 2020).

By 1994, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) subsumed the asylum program into a revision of the control of illegal migration. With this, the focus of asylum was oriented toward a policy of greater control and border restriction, producing variations in the process such as reduction to a year of the term to request asylum, changes in the reasons to obtain it, elimination of labor rights, and the detention of requesters while reclamations were investigated and that the processing of applications at the border would be carried out in the presence of an immigration agent, whose behavior and decisions could be based on stereotypes (Estévez, 2018; Hamlin, 2014; Jubany, 2017).

It may be understood that asylum was then subjected to a context of restrictive policy that was a response to the globalization process that compromised the sovereignty of the Nation-state. The law on migration became the place to resist the international regulation on Human Rights and global convergence when this incidence capability of the Nation-states was reduced in other areas (Dauvergne, 2008).

In recent years, after the hardening of migration policies at the Global North, asylum seekers are considered unauthorized migrants and strategies that promote the restriction of the access to the territory are adopted. The treatment of asylum seekers is placed under suspicion, they are forced to demonstrate they are not economic migrants or terrorists who try to take advantage of the protection tool. Owing to this, proceedings emphasize the *actual* fulfilment of the conditions to apply for asylum: when there are fears of being persecuted, lack of willingness or incapacity of the government of the country of origin to offer protection from pursuers, and that this persecution is motivated by race, nationality, religion, political opinion or belonging to a determined social group (Estévez, 2018).

Hamlin (2014) points out that when asylum seekers call for protection, and once they start the revision process, there is a change that goes “from the global to the particular, from ideals of international law to the everydayness of bureaucratic decision-making of functionaries who have their own practices and conceptions of procedural justice” (p. 15). In this way, asylum may turn into a tool opportunistically used according to the geopolitical context at the time, moving away

¹⁰ In the U.S. System, refuge is understood as a form of protection granted to those who suffer persecution on the basis of their race, religion, nationality, belonging to a social group in particular, as well as political opinion, and are a humanitarian concern for this country. Asking for the refugee status has to be made outside the U.S. For its part, asylum is a form of protection granted to those who meet the definition of refugee, either in the country or asking for it in a port of entry at the border.

from the treaties and subsuming into the logic of national politics, which may follow decisions of ideological nature.

The asylum policy was subordinated to security concerns and irregular migration prevention as of the 1970's, when an important number of asylum seekers started to arrive in the U.S. In this sense, for some time now, asylum has been in tension between State sovereignty—materialized in border control and punitive actions that come from such control—and the moral obligation of offering refuge, from a humanitarian standpoint, for those escaping from violences exercised against them (Hamlin, 2014; Wasem, 2020).

It is so that in the United States the figure of asylum, in spite of being promulgated in various international treaties, is a tool contingent upon its own regulations and proceedings, in which domestic policies prevail over what was agreed by means of the Convention and the Facultative Protocol, selectively defining who is enabled to access them. The application of defensive asylum¹¹ for asylum seekers who are waiting at border cities in northern Mexico is an instance of the differenced modes to address the international protection framework. The ones that enter as asylum seekers are subject to an expulsion process, and they have to make use of asylum as a tool to stop such process, thus displaying that sovereign power is above the moral obligation of attention and protection. In this way, not only do asylum seekers cross geographic, but also political and law borders.

The proceedings inside the system to grant asylum have also meant important problems, since the starting point is not humanitarian protection, but suspicion. The system pays close attention to the motivations of the pursuer and not to the graveness and effects of the persecution, in addition to leaving the burden of proof of these motivations for the asylum seeker. Furthermore, the demand for a credible, persuasive testimony based on demonstrable facts has also become a significant element that may deny cultural conditions, fear and trauma, which affect the asylum seeker's testimonial statement, as well as the conditions of escape that could hinder the collection of evidence.

As exposed in this text, asylum has been subject to the restrictive framework of migration control, which places the asylum seeker under permanent suspicion. However, even under these conditions, as a protection instrument incorporated in international law, it provides forced migrants who arrive at the border to ask for it with a legal status. And it is such position of legality the one disputed by Trump's administration, violating the figure by means of all the measures adopted over his term such as the configuration of the metering system,¹² the Migrant Protection Protocols

¹¹ Affirmative asylum is the process started in advance by the aliens who entered regularized, are already in the country and are not undergoing a removal process; this application is made in the U.S. Citizen and Immigration Services (USCIS). Whereas, defensive asylum is requested in removal processes and is utilized as a defense against deportation before an immigration judge.

¹² Developed during Obama's administration to address Haitians and stressed by Trump's, it consisted in the creation of waitlists, restricting the processing of asylum requests.

(MPP),¹³ detentions and separations of family members, and the threat of removal for the sponsors. All of them turned into strategies of a dissuasion policy, but mainly into punishments for the asylum seekers, subjecting them to a sovereign power with capacity to decide who is allowed to ask for asylum, how, when and where. In this way, these measures also managed to propitiate irregular crossings with a view to illegalizing the asylum-seeking individuals and families, who would have the right to enter via the ports of entry to ask for such protection measure, as exposed below.

Fighting Asylum: The Tension Between Asylum Seekers and Trump's Administration

It has been mentioned there is a history of mobility of Central American and Mexican individuals and families toward the United States with their own particularities and fluctuations in magnitudes and intensities over time. Some authors have pointed out that the ways in which the U.S. government responds to these movements are framed in economic crises and their relation with political dynamics –pressures from electoral campaigns– from which migrant individuals turn into scapegoats as they are pursued and removed (Fernández, 1984; Gabriel, 1998; Schiavon, 2010; Villafuerte & García, 2017).

Adding to the political electoral conditions and the ideologic dynamics about the granting of asylum, and more recently, the effects of September 11 attacks, the panorama of migration was subject to national security policies. This made borders be seen as threatening spaces even by U.S. citizens, who saw in migrants the presence of the strange and aliens configured as criminals. In this way, also for migrants, the border became the final obstacle to access the security that had been taken from them. In September 2006, President Bush signed the act that decreed the construction of the border wall, adding to the securitarian dynamic in the sphere of migration; and during Trump's campaign and administration, the antiimmigrant issue was presented openly and centrally. This was the reason why, by means of an executive order, on January 25, 2017, he proposed securing the border by means of the construction of a wall (Wasem, 2020).

As Sayad (2010) points out, migration as a social problem is built in the State in a creation work from which migrants begin to socially exist. Therefore, the way migrants are discursively built produces particular representations in which they are observed and governed, also influencing how the recipient society defines them, and the very process of self-definition as well. The illegality which has been the official way in which migrants have been built “speaks us about a legal status and its relation with the State, but also points at a spatialized sociopolitical condition” (De Genova, 2002, p. 422). This means that the representation built upon the issue of the illegality of certain nationalities is independent from their administrative status and relates to historical processes of production of these *illegal migrants* in migration regimes of specific Nation-States.

¹³ The Migrant Protection Protocols, as this migration policy of Trump's administration is formally known, also called “Stay in Mexico”, forces non-Mexican alien asylum seekers from the Americas to wait in Mexico for the hearings in immigration courts in the U.S.

Over this history of Central American and Mexican migration toward the U.S., the notion of illegality tied with the idea of crime has been established by the U.S. government. In this relationship, migrants are considered threatening individuals, invaders, enemies of the *taxpayers*,¹⁴ and the government enforces the civil actions stipulated in the law to punish them; the governance of migration puts forward *illegality* as a juridical status in relation with the State, and at once, provides them with a predominant political identity (De Genova, 2002). This author points out that illegality is configured by actual practices of denial, exclusion and subjugation that cross the daily lives of migrants, while their evading of the law needs the “spectacle of enforcement” (2002, p. 437) that the government effects at the border with its devices—the wall, border patrol, censors, metering, and removals.

Before this configuration of migrants as *illegals*, asylum seekers impose a different relationship to the State. Their crossing of the U.S. border takes place in the context of asylum as a resource to protect their lives in a survival action in the face of the insecurity conditions they experience. Protected under humanitarian and refugee international law, asylum seekers put pressure on the U.S. government to answer with a discursive and practical logic of the *legal*, in the place where they have been permanently criminalized, giving rise to a demand that proposes not only *legal* entry, but also the protection they are entitled to as asylum seekers.

Moreover, in this recent change of Central American and Mexican mobility, in which people and families arrive in the border looking for the legal mechanisms to *surrender themselves* and seek asylum, not only does a transformation of the relation with the U.S. government operate, but also a new way to call themselves, an identity transformation regarding their conationals who have historically migrated. For the interviewed women, being there waiting for their turn is a signal for the U.S. government that their intention is neither to break the law nor infringe its state sovereignty, but quite the contrary, to abide by the humanitarian law that favors them. They are not *illegals*. They say:

We are here because we want the U.S. government to provide us with protection, security and peace, which we cannot have in our hometowns, where authorities, which are also corrupt and collude with criminals, are unable to protect anything, instead, they do us more harm (Mariana, personal communication, January 20, 2018).

It would be expected that the asylum process as a protection tool helps break the forms of racialization, marginalization and removal with which they have been treated. However, as previously observed, asylum has been subject to U.S. domestic policies defined by political, ideologic, racial, and classist interests that do not match with the humanitarian spirit it comes from. This logic was furthered during Trump’s administration, in what we call here a counteroffensive that intended to delegitimize asylum requests and illegalize the relationship of the asylum seeker with the State. The various executive orders implemented over his administration were enacted to

¹⁴ A euphemism that replaces the idea of the white law-abiding citizen, and which avoids making the white domination of those who judge visible.

showcase decisive actions against asylum seekers, in a dispute that tried to make them desist and force them to look for irregular ways in order to turn them into *illegal* subjects.

The actions implemented by Trump, e.g., the criminalization of Central American migrant caravans and the increase in waiting times at the Mexican border, are forms of restrictive control for asylum seekers. To do so, he resorted to rhetoric, which on the one side, spoke of crisis, the overrun and collapse of the migration system due to the magnitude of requests, and on the other, emphasized the alleged abuse of the asylum figure and incredulity regarding the realities of violence exposed by the asylum seekers. That is to say, asylum seekers are placed under suspicion and sentenced for resorting to the framework international law provides them with.

Following Wasem (2020), we can point out that these actions of former President Trump group into three lines: a) policies that abandoned the legal principles, particularly that of non-refoulement embodied into the setting into motion of MPP; b) those that blocked the entrance of asylum seekers, metering and the latent threat of persecution against sponsors; c) those that criminalized the asylum seekers, from family separations, detentions and the increase of time spent in detention centers. All of them were force-realignment strategies to exercise power, and material and emotional domination upon them.

Once in the U.S. for their credible fear interview, other control and violence strategies are set into motion against the requesters. Among them, family separation and control of their bodies—spatially and temporarily—in detention centers, which were designed for the purpose of emotionally wearing and undermining them, intending that reclusion and the impossibility of controlling their own pace ended up forcing them to ask for deportation.

The story of María Teresa, a young Mexican mother displaced from Michoacán who arrived in Tijuana with her two sons of six and seven years of age and her husband, tells us about these situations. In the interview she tells that she insisted a lot to her family—desperate by the wait they were undergoing, and which lasted three months—that the intention was to enter *legally by means of surrendering themselves at the port of entry*.¹⁵ This was because over this waiting time increasingly long, other asylum seeking families were crossing the border with the assistance of guides so as to “surrender themselves” to the border patrol and with this, speed up their processes. For her and other women, this reference to the asylum request becomes an inflection point regarding their particular crossing background in comparison with other relatives who, in previous years, were forced to do so supported by guides.

For her part, Marcela, a Guatemalan mother with her 11-year-old daughter, also intends to enter legally. They crossed the desert through San Luis Río Colorado in Sonora, making use of a guide, expecting that upon detention at the border they were able to seek asylum to avoid the waitlists:

When migration caught us, we were going up that little hill where the patrols were already. We surrendered ourselves so that they took us and let us in, I mean to have the chance to

¹⁵ One of the interesting aspects in the context of production of illegality is the subjective process by means of which an individual assumes himself or herself as such, which is evinced in the conversations that permanently propose surrendering at the port of entry.

enter legally and not being illegally in the country (Marcela, personal communication, October 17, 2019).

Marcela and her daughter were returned to Mexico, to Mexicali, Baja California, and moved to Tijuana to a shelter while they found out what to do, since they had been already some months at the border. For her, the wait became a source of uncertainty, so when she knew that a friend had traveled to another border city in Coahuila and learning that she was on the U.S. with her sponsor, she made the decision to do the same; in less than a week, she was in Coahuila with her daughter to try an unauthorized crossing and surrender expecting to expedite her process, as she was under MPP. She and her daughter crossed, but did not have the same luck as her friend and were returned to Mexico to wait for their process. For Marcela, remaining in this country waiting for her appointment at the immigration court made her afraid given the violence witnessed in Tijuana and the uncertainty of looking for a job with no family or friendship networks to help her look after her daughter.

For their part, the organizations that accompanied these requests fostered the fear that mobility and crossing with guides to surrender to border authorities and request asylum—as a way to shorten waiting times—were utilized against them in the asylum request process, pointing out that they had acted outside the law. Six months later, resigned to wait in Tijuana for her third hearing in the court, Marcela finally was able to go to her sponsor and start the asylum process. The practice of attempting to shorten times crossing and surrendering to the Border Patrol was implemented by other asylum seekers, nevertheless the results were removals.

While Marcela waited in Tijuana with her daughter, Blanca, who had made friends in the shelter, they had to painfully experience the departure of one of these friends and her family toward Guatemala because the waiting times were so long for them that they had no chance of remaining there. It is a story similar to others the workers of the shelter told us about; they have to witness the sadness and disquiet of the families when these have to desist and return.

The waitlist and delayed times in the processing of applications became a strategy that produced subjective effects on people, of desperation and silent subjection to the State, transforming the wait into an experience of power. In this way, as pointed out by Auyero (2013), it is a tempography of domination as a form *impregnated with uncertainty and arbitrariness*. Although Marcela acts before the wait and moves between border cities intending to cross and shorten times, truth is, she eventually follows the dynamics of the government that made her cross irregularly with a view to stressing the preponderant political identity of the *wetback / undocumented / illegal*, the imposition of the law at the border, and besides adding the permanent fear that such entrance prevents her from accessing her asylum request process.

Moreover, she as well as other Central American and Mexican women were challenged and affected by Trump's declarations, as he mentioned that there was a clear intention of adult migrants of using their children as *human shields*, not only to face migration authorities, but also to facilitate the process. Such declarations produced suspicion in the authorities and citizens in the face of the increase of women with children waiting to request asylum. However, what is true is that seeing the possibility of undergoing a safe process abiding by the law—as we have

seen that María Teresa and Marcela emphasized regarding the legal nature of their entrances in the US by means of asylum—the best for them was to bring their children and not leave them under the care of relatives. And in some cases, children are the main reason for the mobilization, in order to protect them from the actual directly-impending threat of being recruited and abused by criminal actors.

Besides, in the context of these punitive strategies, there is that of the well-founded fear asylum seekers produce in their sponsors or the recipient communities. In many a case, they are relatives who entered the country using guides and are irregular, therefore, in the context of the removal regime under Trump, the fears of being arrested increased. In the case of María Teresa, her sponsor was a brother-in-law, and despite, at first, he ensured he would take care of them, the following months were difficult because he was no longer sure of keeping his word due to the fear that via his asylum-seeking relatives, he was identified and deported. This was another concern for them in Tijuana, since her process and effort of remaining in the wait depended on the actual fear expressed by her in-law.

Once this fear was temporarily overcome, and after undergoing the entire proceeding for the credible fear interview and authorized to carry on with the process, María Teresa and her relatives were banned from working in the U.S. In this way, in this context, individuals and families are forced to become a burden and indebtedness for their sponsors because of such support, or else, make room for the asylum seeker to commit this *infringement*, with which they are at risk that it operates against the asylum-seeking process. Although there are social supportive programs for such condition, the asylum seekers also implicitly assume that making use of such supports may undermine their possibilities of asylum since they are seen as a *burden* for the U.S. social system. Additionally, her family was not welcomed by the migrant community where she had arrived to live, since for them this family attracted the presence of migration agents who did not wandered around previously, so they became a problem for those who were irregular.

In this sense, the governance of the migration that covertly circulates in these asylum processes is supported on suffering, emotional and material torture as forms of domination and subjection to emphasize that the State is not willing to give up this stance before the legal context the asylum seeker proposes. All these actions intended to take away the legal character of this figure from the asylum seekers, trying to strip them from the protection to violently possess them, that is to say, the development of a systematic effort to subject them to State domination.

AS A CLOSURE

The strategies of Donald Trump's administration toward asylum seekers such as the increase in waiting times and the waitlist, long detentions, family separations, criminalization of mothers for the crossing of unaccompanied AC, the Migrant Protection Protocols are pointed out as a distancing from international humanitarian law. They intended to deny, block, and criminalize the possibilities of requesting asylum, becoming an instance of the way, not covert any longer but direct, of disputing the command of forces in the relation the State maintains with the asylum seekers.

Permanent uncertainty became a logic and practice of dissuasion and punishment toward asylum seekers who, looking for protection by means of the figure of asylum, revert the historic relation of racialized and excluding subjection that operates in the migration and asylum policy in the United States. In this way, asylum openly became a battlefield at the border, detaining and prolonging the process, producing tensions, desperation and fear, for the purpose of making them desist from resorting to such protection figure. And, once starting the process in the U.S., the proceedings and dispositions of the bodies and times of the asylum seekers in detention centers, family separations and producing fear in their sponsors keep pointing at the imposition of punishment to force them to give up.

With these strategies, it was intended to dispossess them from the condition of being subjects of protection before the State, undermining their political nature and suspecting of the use of these legal figures that protects them. Hence, in addition to escaping from the violences proper to their places of residence, asylum seekers are forced to endure the institutional violence of the governance of migration that takes place in the everyday practical dispositions of the Asylum law and the specific administrative measures developed under Trump's administration for the purpose of violently subjecting them once again by means of the figure of the illegalized individual.

Translation: Luis Cejudo-Espinosa.

REFERENCES

- Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR). (2016). *Tendencias globales. Desplazamiento forzado en 2015, Forzados a Huir* [Working paper]. Retrieved from <https://www.acnur.org/fileadmin/Documentos/Publicaciones/2016/10627.pdf>
- Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR). (2021). *Tendencias Globales. Desplazamiento Forzado 2020* [Working paper]. Retrieved from <https://www.acnur.org/60cbddfd4.pdf>
- Auyero, J. (2013). *Pacientes del Estado*. Buenos Aires: Eudeba.
- Carrasco, G. (2013). La migración centroamericana en su tránsito por México hacia los Estados Unidos. *Alegatos*, 83, 169-194. Retrieved from <http://alegatos.azc.uam.mx/index.php/ra/article/view/187>
- Castillo, M. (1999). Tendencias y determinantes estructurales de la migración internacional en Centroamérica. In A. Silvia Monzón (Coord.), *Antología del pensamiento crítico guatemalteco contemporáneo* (pp. 183-208). Buenos Aires: CLACSO.
- Castillo, M. (2000). Las políticas hacia la migración centroamericana en países de origen, de destino y tránsito. *Papeles de Población*, 6(24), 133-157. Retrieved from http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-74252000000200007

- Cortés, A. (2018). Violencia de género y frontera: migrantes centroamericanas en México hacia los EE.UU. *Revista Europea de Estudios Latinoamericanos y del Caribe*, 105, 39-60. Retrieved from <https://www.erlacs.org/articles/abstract/10.18352/erlacs.10321/>
- Dauvergne, C. (2008). *Making people illegal: What globalization means for migration and law*. Cambridge: Cambridge University Press.
- De Genova, N. P. (2002). Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology*, 31(1), 419-447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>
- Durand, J. (2016). *Historia mínima de la migración México-Estados Unidos*. Mexico City: El Colegio de México.
- Durin, S. (2019). *¡Sálvese quien pueda! violencia generalizada y desplazamiento forzado en el noreste de México*. Mexico City: Centro de Investigaciones y Estudios Superiores en Antropología Social.
- Ernst, F. (2020, May 7). La guerra de cada día: Guerrero y los retos a la paz en México. *Open Democracy*. Retrieved from <https://www.opendemocracy.net/es/la-guerra-de-cada-día-guerrero-y-los-retos-a-la-paz-en-méxico/>
- Estévez, A. (2018). *Guerras necropolíticas y biopolítica de asilo en América del Norte*. Mexico City: Universidad Nacional Autónoma de México.
- Fernández, R. (1984). Las reformas a la inmigración y su impacto en la frontera México-Estados Unidos. *Estudios Fronterizos*, 1(4-5), 69-87.
- Gabriel, J. (1998). *Whitewash: Racialized Politics and the Media*. New York: Routledge.
- Hamlin, R. (2014). *Let me be refugee. administrative justice and the politics of asylum in the United States, Canada, and Australia*. New York: Oxford University Press.
- Harvey, D. (2005). *El “nuevo” imperialismo: acumulación por desposesión*. Buenos Aires: Consejo Latinoamericano de Ciencias Sociales.
- Instituto Nacional de Estadística y Geografía (Inegi). (2021, July 27). *Datos preliminares revelan que en 2020 se registraron 36 579 homicidios* [Press release]. Retrieved from <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/EstSociodemo/Defcioneshomicidio2020.pdf>
- Internal Displacement Monitoring Centre (IDMC). (2020). *Global Internal Displacement* [Map]. Retrieved from <https://www.internal-displacement.org/database/displacement-data>
- Jubany, O. (2017). *Screening Asylum in a Culture of Disbelief: Truths, Denials and Skeptical Borders*. Switzerland: Palgrave MacMillan.
- Médicos sin Fronteras. (2020). *Sin salida: La crisis humanitaria de la población migrante y solicitante de asilo atrapada entre Estados Unidos, México y el triángulo Norte de Centroamérica (TNCA)*. Mexico City: Médecins Sans Frontières.
- Morales, A. (2008). Centroamérica: los territorios de la migración y la exclusión en el nuevo siglo. *Foreign Affairs: Latinoamérica*, 8(2), 27-36. Retrieved from

<https://revistafal.com/centroamerica-los-territorios-de-la-migracion-y-la-exclusion-en-el-nuevo-siglo/>

- Paris, M. D. (2016). Políticas migratorias restrictivas y violencia institucional contra los migrantes. *Ecuador a Debate*, (97), 85-102.
- Paris, M. D. & Montes, V. (2020). Visibilidad como estrategia de movilidad: el éxodo centroamericano en México (2018-2019). *EntreDiversidades. Revista de Ciencias Sociales y Humanidades*, 7(1), 9-36.
- Pérez, B. & Castillo, M. (2016, October 31). La crisis (no contada) de los desplazados en Tijuana. *Animal Político*. Retrieved from <https://www.animalpolitico.com/verdad-justicia-y-reparacion/la-crisis-no-contada-las-los-desplazados-tijuana/>
- Portal de Datos sobre Migración. (2021, July 10). *Datos migratorios en América del Norte*. Berlin: Centro de Análisis de Datos Mundiales sobre la Migración/Organización Internacional para las Migraciones. Retrieved from <https://www.migrationdataportal.org/es/regional-data-overview/datos-migratorios-en-america-del-norte>
- Puerta, R. (2004). Entendiendo y explicando la migración hondureña a Estados Unidos. *Revista Población y Desarrollo: Argonautas y Caminantes*, 2, 63-84.
- Rivera, C. (2018). Del tránsito ininterrumpido hacia la deportación. Niños, niñas y adolescentes centroamericanos viajando solos hacia Estados Unidos. *EntreDiversidades*, 11, 9-36. Retrieved from <http://entrediversidades.unach.mx/index.php/entrediversidades/article/view/108/221>
- Rodríguez, E., Barrón, Y., Fernández de Castro, R., & Rivera, L. (2014). *Migración Centroamericana en tránsito por México hacia Estados Unidos: Diagnóstico y recomendaciones*. Mexico City: ITAM.
- Rottman, A., Fariss, C., & Poe, S. (2009). The path to asylum in the US and the determinants for who gets in and why. *The International Migration Review*, 43(1), 3-34. <https://doi.org/10.1111%2Fj.1747-7379.2008.01145.x>
- Salehyan, I. & Rosenblum, M. (2008). International relations, domestic politics, and asylum admissions in the United States. *Political Research Quarterly*, 61(1), 104-121. <https://doi.org/10.1177/1065912907306468>
- Sayad, A. (2010). Colonialismo y migraciones. *Empiria. Revista de Metodología de Ciencias Sociales*, (19), 259-262. Retrieved from <https://www.proquest.com/openview/5a43e14ebe07ab9c83550379c943f21b/1.pdf?pq-origsite=gscholar&cbl=1596377>
- Schiavon, J. (2010). La migración México-Estados Unidos: Entre intereses, simulaciones y opciones reales de política. In J. Durand & J. Schiavon (Eds.), *Perspectivas migratorias. Un análisis interdisciplinario de la migración* (pp. 221-254). Mexico City: CIDE.
- Selee, A. (2020). Un año de cambios profundos en la política migratoria entre Centroamérica, México y Estados Unidos. *Fundación Carolina*, 2, 1-11. Retrieved from <https://www.fundacioncarolina.es/wp-content/uploads/2020/01/AC-2.20.pdf>

- U.S. Customs and Border Protection. (2019). *U.S Border Patrol Southwest order Apprehensions by Sector Fiscal Year* [Report]. Retrieved from <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions-fy2019>
- Varela Huerta, A. (2015). Buscando una vida vivible: la migración forzada de niños de Centroamérica como práctica de fuga de la “muerte en vida”. *El Cotidiano*, 194, 19-29. Retrieved from <https://www.redalyc.org/pdf/325/32542592003.pdf>
- Varela Huerta, A. & McLean, L. (2019). Caravana de migrantes en México: nueva forma de autodefensa y transmigración. *Revista CIDOB d'Afers Interancionals*, (122), 163-185. <https://doi.org/10.24241/rcai.2019.122.2.163>
- Verduzco, G. (1995). La migración mexicana a Estados Unidos: recuento de un proceso histórico. *Estudios Sociológicos*, 13(39), 573-594.
- Villafuerte, D. & García, M. (2017). La política antiinmigrante de Barack Obama y el programa Frontera Sur: consecuencias para la migración centroamericana. *Migración y Desarrollo*, 15(28), 39-64. Retrieved from http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-75992017000100039
- Wasem, R. E. (2020). More than a wall: The rise and fall of US asylum and refugee policy. *Journal on Migration and Human Security*, 8(3), 246-265.