

Asylum and Mass Detention at the U.S.-Mexico Border during COVID-19

Jeremy Slack

University of Texas at El Paso

Josiah Heyman

University of Texas at El Paso

ABSTRACT

The Trump administration has used the COVID-19 crisis to achieve many long held goals on the U.S.-Mexico border. This has created a volatile and potentially lethal situation for asylum seekers, migrants, and border residents alike.

KEYWORDS: *borders, asylum, migration, COVID-19, U.S.-Mexico border*

COVID-19 HAS FULLY EXPOSED THE DANGER and violence enacted at the U.S.-Mexico border. The Trump administration's approach toward immigration continues, broadly aiming to end immigration and asylum for people from Latin America and from other countries passing through Latin America. The public health emergency strengthens the powers of the executive branch, already extreme at the border, and provides rhetorical cover in terms of fear of the outside, even if that is inapplicable in this situation. The Department of Homeland Security has worsened existing harmful practices while failing to take steps to protect asylum seekers. There has been no significant move to release individuals from custody, while the Border Patrol has suspended asylum and rapidly returns everyone apprehended at the border.

Connected to border policies, mass detention of mostly single adult asylum seekers,

but also family units, in unsanitary conditions creates a potentially lethal cocktail of confinement and lack of medical attention. For years, scholars and advocates have documented conditions of neglect and lack of medical care, resulting in deaths in detention even in non-pandemic conditions (Moore & Schmidt, 2019). There are about 38,000 migrants in immigration detention, most of whom are seeking asylum. In places other than Dilly and Karnes City, Texas, and Berks, Pennsylvania, which are family detention centers, detained asylum seekers are mostly single adults. Some have served a criminal sentence prior to immigration detention, but the vast majority are simply seeking asylum. The procedure has long been opaque for deciding who immigration authorities place in detention while seeking asylum and who is given a "Notice to Appear" and released to live and work in their destination while their case is decided, for the duration of trials that

span years. Despite government obfuscation, we learn of more and more detainees as well as employees testing positive for COVID-19 (O'Neill, 2020). Reports of lack of sanitation, crowded conditions, and health risks trickle out. While immigration judges can offer some individuals bond, those who have presented themselves at the port of entry to apply for asylum and those who were previously part of the so-called "Migrant Protection Protocol" (MPP, also known as Remain in Mexico) can only be granted parole by ICE. There is no reason that the vast majority of asylum seekers could not be released to reduce or completely eliminate this detained population.

Additionally, recent changes to asylum policy have created a transborder infrastructure that will exacerbate the outbreak. People in MPP must cross the border at 4 AM multiple times, be taken into CBP custody, be held in processing, appear at trial, and be returned to Mexico at night. This can spread the outbreak back and forth between Mexico and the United States. Despite the initial suspension of all non-detained asylum hearings, MPP was originally classified as detained, even though the vast majority of the 60,000 individuals placed in the program live in precarious shelters or makeshift camps along the border. These hearings were recently cancelled; however, asylum seekers must still line up at 4 AM to check in and receive a new court date. The chaos and uncertainty take a toll in these terrifying times.

Other anti-asylum border practices also create or worsen the potential for epidemic catastrophe in Mexican border cities. For example, in "metering," asylum-seekers who

come to ports of entry are physically blocked from stepping into U.S. territory and making applications; only a few or even zero are allowed in per day. After several years of this practice, thousands of people are waiting in Mexican border cities. Now, no asylum applications are being accepted at ports at all. The waiting MPP and metered populations live in a diverse but almost always crowded set of dwellings, including migrant shelters, hotels, and open-air encampments. Tragically, these are ideal settings for the spread of COVID-19.

All new individuals apprehended outside of ports will be immediately removed despite claims of fear of persecution. It is unclear how controversial programs such as HARP/PACR (Humanitarian Asylum Review Process and the Prompt Asylum Claim Review) will fit within this schema. HARP/PACR¹ is a rapid asylum review taking only a few hours, with no access to an attorney, that includes women and children (Shepherd, 2020). With asylum completely suspended, there is likely no reason to maintain these programs; however, if this crisis drags on and the Trump administration has trouble justifying complete denial of any new asylum claims, they may become the norm. Despite these changes, which are in-line with Trump's goals from the beginning, logistical hurdles will further complicate rapid removal and potentially spread more disease.

Mexico has declared that they will not accept foreign nationals who are not in MPP, although there are conflicting reports about whether or not this is happening, with some preliminary observations seeing new people put into MPP (all of whom are non-Mexicans). If the goal is to deport people to their

home countries, this will create problems as individuals often wait weeks or more in detention before flights are arranged. Deportation to less common countries (i.e., not Mexico or Central America) is particularly difficult as ICE typically waits for a full flight before sending people home. This makes it unlikely that detention centers will be emptied and could prolong the crisis around COVID-19 as individuals would wait in custody in unsanitary conditions for long periods before being flown back to countries all over the world, spreading the disease there--which only adds, of course, to the often terrible conditions that asylum seekers flee in the first place. Guatemala initially resisted deportation flights from the United States but was pressured to accept them. After they capitulated, a man who tested positive for COVID-19 was flown from the United States to Guatemala City (Curtis, 2020). There are reports of dozens more individuals with COVID-19 being deported.

Unaccompanied minors are an important vulnerable population whose risk is worsened by recent border policy changes. Previously, the U.S. government held them in Office of Refugee Resettlement shelters until they could be reunited with sponsors. Unaccompanied minors have high grant rates for asylum; however, Trump administration policies such as background and immigration checks on everyone in the household discouraged reunification with sponsors. This slowed the process down and left a bottleneck of children in detention that still exists to some extent when compared to the situation under previous administration. Now, a new border policy returns unaccom-

panied minors to home countries, unless a U.S. border or Refugee and Resettlement officer detects signs of trafficking (Misra, 2020). This means refoulement of people, even children with serious asylum claims. Their treatment is a clear instance of COVID-19 being used as an excuse for the administration to do what they have long sought to do: to close the door on migrant minors.

In all of this, COVID-19 threatens the advocacy and aid infrastructure for asylum seekers. Lawyers are working from home, but their clients often have little or no internet or telephone access (already a problem, now exacerbated by COVID-19). Disease risk in detention centers and the cessation of visits hamper their work with detained populations. Mexican restrictions on border crossing hamper their work with people relegated to Mexico. While the numbers of asylum seekers have decreased substantially, the pandemic has all but eliminated the infrastructure of short-term volunteer assistance to released people (a few days of shelter and meals, some clothing, help contacting sponsors and obtaining cross-country transportation). In the unlikely event that the DHS does release people en masse from detention, a difficult scenario will emerge along the border, with thousands of people in the streets with no support and limited travel options to arrive at their destinations.

The Mexican government's role in this is cryptic. Given that Mexico currently has far fewer known COVID-19 cases than the United States, the Mexican government has accepted, perhaps even encouraged, modest restrictions on legal entry imposed by both governments. In order to cross the border,

travelers must have an “essential” reason, but most activities are defined as essential. Mexico’s policies toward MPP and rapid removal of third-country nationals from the United States to Mexico appear to defer to U.S. goals, but the scope remains unclear. Mexico’s own domestic situation will also take some time to unfold, as they are behind on the epidemiological curve of COVID-19 spread, but the national public health response appears limited, while the economy is closely tied to the United States, especially on the export-intensive, densely populated northern border.

A possible overall decline in border migration merits discussion. A global depression would likely have two effects. One is the depletion of resources (local and from remittances) used to pay smugglers—Central Americans and their U.S. kin have recently paid upwards of \$10,000 for transit to the United States. The other is a reduction in labor market incentive for migration. That is not to say that the migration about which we write is purely economic. There are multiple motivations, combined in complicated ways. Nevertheless, the COVID-19 “coma” likely will slow unauthorized as well as legal border crossing. On the other hand, if there is less economic damage in the United States than in Latin America, we could see undocumented labor migration escalate. Undoubtedly, the manipulative DHS public affairs machine will take credit for any drop-off—that their drastic no-entry policy has finally triumphed over unauthorized migration—but the reality will resemble the rapid migration decline seen after the 2007 great recession.

The logistical difficulties in realizing a long-held Trump goal of eliminating asylum may in fact worsen physical and structural violence along the border. We worry about the potential for escalation of deterrence through brutality and social cleansing. Chaos and extreme circumstances often coincide with social cleansing, such as killings by the police and military during the drug war in Ciudad Juárez, Mexico (Molloy, 2013), or the use of Brazilian sporting events as cover for mass murders by the police (Costa Vargas, 2013). Akin to disaster capitalism (Klein, 2007), extreme circumstances (famine, drought, social upheaval) facilitate authoritarianism. Borders are particularly apt for the politics of fear (Heyman, 2012) as nationalism and racism symbolically categorize the inside as a vulnerable but protected home and the outside as the source of all threats. COVID-19 belies this, as the threat is as fully inside as it is outside the enclosing border (Billé, 2020).

It is not hard to imagine a future where the United States, after devastating losses, has the novel coronavirus under control but the disease continues to spread rapidly in Mexico and Central America, thus providing a convenient scapegoat to justify Trump’s white whale: the border wall. If the wall does little to slow migration, especially by asylum seekers looking to be arrested and then to enter the legal asylum-seeking process, what potential solutions exist aside from escalation in state violence (e.g. shoot-on-sight policies akin to those in the former East Germany)?

This outbreak not only demonstrates the brutality of our immigration detention system but provides ways to complete exist-

ing enforcement trends including border closures, limits to asylum seekers' rights, and additional travel bans. Indeed, as we write, Trump has proposed a 60-day halt to most legal immigration²—Steven Miller's cherished fantasy—with a shift to heavily controlled non-immigrant contract labor

migration. While some restrictive policies may have been effective at slowing the early spread, we are well past that now. These measures will serve as a dramatic precedent for limitations on human mobility, targeting the most vulnerable, and setting up future draconian restrictions.

NOTES

- 1 HARP applies only to Mexican families and PACR applies to both single adults and families from Central America.
- 2 Adjustment of status to legal permanent residency of temporary residents already inside the country, permanent residency for spouses and minor children of U.S. citizens, immigration of family members of U.S. armed service members, and immigration of health care workers continue to be allowed.

REFERENCES

- Billé, F. (2020). Containment. *Somatosphere*. <http://somatosphere.net/forumpost/containment/>
- Costa Vargas, J. H. (2013). Taking back the land: Police operations and sport megaevents in Rio de Janeiro. *Souls*, 15(4), 275-303.
- Curtis, C. (2020, March 31). Man recently detained in Florence deported, then tests positive for COVID - 19 in Guatemala. *Arizona Republic*. <https://www.azcentral.com/story/news/politics/immigration/2020/03/31/man-detained-florence-arizona-tests-positive-covid-19-after-deportation/5100810002/>
- Heyman, J. M. (2012). Constructing a “Perfect” Wall: Race, Class, and Citizenship in US-Mexico Border Policing. In *Migration in the 21st Century* (pp. 163-184). Routledge.
- Klein, N. (2007). *The Shock Doctrine: The Rise of Disaster Capitalism*. Picar.
- Misra, T. (2020, March 30). *CBP turns back unaccompanied children, citing COVID-19 fears*. CQ Roll Call. <https://www.rollcall.com/2020/03/30/cbp-to-turn-back-unaccompanied-children-citing-covid-19-fears/>
- Molloy, M. (2013). The Mexican undead: Toward a new history of the ‘drug war’ killing fields. *Small Wars Journal*, 9(8), 29.

Moore, R., & Schmidt, S. (2019, May 12). *Inside the cell where a sick 16-year old boy died in Border Patrol Care*. ProPublica. <https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care>

O'Neill, K. (2020, April 8). *Two staffers test positive for COVID-19 in jail; ICE detainees released*. NBC News 10. <https://turnto10.com/news/local/two-staffers-test-positive-for-covid-19-at-jail-ice-detainees-released>

Shepherd, K. (2020). DHS reveals new details of secretive asylum programs PACR and HARP. *American Immigration Council*. <https://immigrationimpact.com/2020/03/11/dhs-asylum-programs-pacr-harp/#.XqH6b9NKiRs>