COVID-19, asylum seekers, and migrants on the Mexico–U.S. border: Creating states of exception

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Abstract
The COVID-19 pandemic illuminates possibilities for creating states of exception while simultaneously destabilizing the Mexico–U.S. border through the politics of fear. Specifically, the Migrant Protection Protocols (MPP), Zero Tolerance Policy (ZTP), COVID-19 CAPIO, Asylum Cooperative Agreements (ACA), and Title 42—using the pandemic under an arcane section of U.S. law to immediately expel asylum seekers and refugees, in particular—highlight the formation of a state of exception consistent with the work of Agamben. They also document how the politics of fear is used to reinforce hegemonic narratives targeting asylum seekers while attempting to reinforce political agendas that lean toward a specific brand of nationalism using the lens of public health as a context. The U.S. government under the Trump administration, and the Biden administration to a lesser extent, constructed these policies aimed primarily at refugees and asylum seekers from El Salvador, Guatemala, Honduras, and Mexico, thereby violating laws and international treaty obligations.

KEYWORDS
Agamben, asylum seekers, child separation, COVID-19, Homo Sacer, human rights, immigration policy, migrant protection protocols, narrative analysis, pandemic, politics of fear, state of exception, Title 42, U.S.–Mexico border security, United States, zero tolerance policy

Related Articles
Correa-Cabrera, Guadalupe. 2013. “Security, Migration, and the Economy in the Texas–Tamaulipas Border Region: The ‘Real’ Effects of Mexico’s Drug War.” Politics & Policy 41(1): 65–82. https://doi.org/10.1111/polp.12005.
Creating states of exception (Agamben, 2005) has never been easier than it has during the COVID-19 pandemic. A state of exception is understood to be similar to a state of emergency (including martial law) based on a sovereign power’s ability to transcend the rule of law using the logic of a public good. A state of exception is conceptually problematic in the United States, particularly due to the common use of the word sovereign. The word sovereign is most often associated with a monarch, or a related position that possesses some sort of supreme political power. Given the nature of the U.S. Constitution, most scholars and many practitioners are justifiably taken aback when faced with narratives that employ such concepts explicitly. Yet, this does little to hinder its use as a plot device in public policy. During this pandemic, where people are sensitized to fear generally, and the politics of fear more particularly, we find that at least in practice some political leaders have pursued, and continue to pursue, policies that create states of exception to achieve specific economic and political ends through the use of specific narratives and plot devices.

In such a context, where narratives of fear and uncertainty loom large (Sementelli, 2020), asylum seekers can embody the latest target of hegemonic oppression. This strategy is not novel. Notably, in the context of the urban studies literature, minorities were used as tools to manipulate group behavior for political and economic gain. In particular, fear of minorities was historically used to drive people from cities into the suburbs (Frey, 1979). Throughout current U.S. administrations, similar narratives have been updated to present a variety of fear-based stimuli including invasion, contamination, and crime to drive policy implementation. Additionally, elements of older narratives, including the residues of the welfare queen narrative (Cassiman, 2007), for U.S. domestic political consumption do not just linger but also thrive as they are associated with, and applied to, Central and South American asylum seekers. The single difference is the location of the threat. Where the “welfare queen” could be identified as an internal threat, asylum seekers are external. This in turn shifts the fear of the other (Haldrup et al., 2008; Sementelli, 2020) externally.

This distinction is important as it reveals some of the subtext and strategies being used by contemporary hegemonic efforts. Specifically, it is apparent that the underlying goal is to shift the focus of consumers/clients/voters outward, but the reason for this is left for others to consider. It is logical to assume that the Trump administration’s Zero Tolerance Policy (ZTP), for example, represents a governmental decision to serve and protect consumers/clients/voters, while ousting potential freeloaders and enabling business growth at the expense of refugee children. It sounds like a classic free market narrative. It is not a new strategy, nor is it particularly insightful. In many respects it reflects narratives of neoliberalism, simultaneously enabling hegemons to dismantle social, political, and economic protections of the state.1

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1The authors agree with Brown’s (2019, p. 1) assessment that captures the “ruins” of neoliberalism in which “hard-right forces have surged to [undermine] liberal democracies across the globe,” essentially undermining the democratic state. The endpoint of neoliberalism essentially “means … the rise of white nationalist authoritarian political formations as animated by mobilized anger of the economically abandoned and racially resentful…” that have brought about “more that three decades of neoliberal assaults on democracy, equality, and society” (p. 8). States of exception and “othering” are part and parcel of neoliberalism along with other manifestations.
Creating states of exception and shifting public focus externally allow for political narratives to propagate influencing public policy. Over time, hegemonic actors can repackage the targets of narratives, effectively changing what people fear to maintain the sort of sovereign authority warranted by a state of exception without the need to be subject to the rule of law. Essentially, the fusion of Agamben (1998, 2005) with the commodification of fear (Sementelli, 2020) creates continuous possibilities, and opportunities, for hegemonic oppression that follow the creation of states of exception.

This article is arranged to facilitate a qualitative analysis of the creation of states of exception in the context of policies and actors along the Mexico–U.S. border. We begin with the methodology, laying out the case for using David Boje's narrative approach (Boje, 1995, 2001, 2008) combined with policy insights gleaned from Deborah Stone's (2012) work on policy paradox. We supplement those scholars' methods with a more critical approach engaging Yanow's (1996) and Merleau-Ponty's (1962/2009) work among others. The next two sections contextualize the creation of states of exception through ZTP, Migrant Protection Protocols (MPP), and Title 42, utilized during the Trump and Biden administrations to effectively hinder, if not halt completely, the border crossers. We then deal with the application of theory to the concept of “the state of exception” with regard to the problematics of policies selected by recent presidential administrations involving questions of human rights and sovereignty. The implementation of Title 42 provisions to migrant-child separation is analyzed thereafter. We conclude with a discussion of U.S. border security policy and the implications for human rights of migrants, asylees and refugees, hegemonic actors, as well as sovereignty issues in the state of exception.

METHODOLOGY

This research uses the narrative case study approach developed by Boje (1995, 2001, 2008) to begin to understand how immigration policy and states of exception are linked. Consequently, we also employed Boje's (2006, p. 29) conceptualizations of plot, fragmented narratives, and the preference for in situ consideration of the fragments. Boje's approach captures fragmentation of narratives from multiple sources quite well, making it appropriate for this case. It is particularly adept at uncovering hegemonic influences often buried in narratives. This situates Boje (1995, 2001, 2008) as being more applicable in this case than either Stone (2012) or Yanow (1996), who provided both contextual and methodological support for this article. We obtained these narrative fragments using a snowball sampling frame that focused on selection from legitimate and recognized investigative journalist news sources across the political spectrum. This included, but was not limited to: The New York Times, Washington Post, NBC News, CBS News, MSN.com, and National Public Radio alongside agency documents that emerge from United Nations Human Rights Office of the High Commissioner, Legal Information Institute, as well as narratives from research centers including Pew, and recently published biographies related to the subjects in question.

Using Boje's narrative approach allows us to reveal both the policy “plot” as well as the underlying themes and their consequences. Moreover, employing Boje consciously limits the possibility of counterfeit coherence and other weaknesses that often plague both qualitative

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2Commodification used here refers to how things are transformed from nonmarket to market goods and services intended to stimulate exchange. In the case of commodified fear, fear (most often of the other) is used to stimulate purchase decisions/exchange decisions to alleviate fear. A common example would be how a fear of theft can stimulate the purchase of an alarm system. Writ large, fear narratives can be used to stimulate policy “purchases” that benefit hegemons—and accentuates neoliberalism as the dominant global paradigm.

3In this case, plot refers to both the sequence of events in a narrative as well as the alternative definition referring to secretly making plans.
and quantitative narrative approaches. Analyzing fragmented, composite narratives can reveal underlying hegemonic action as well as the narrative justifications for it. It is not necessarily a coherent “story,” but it does not have to be. Rather it needs only to be persuasive to have policy implications.

The three general “plots” that emerge from this analysis included: the invasion plot, the alien other, and disease vector. Each of these plots is used to “other” migrants and their families to create opportunities for homo sacer to emerge. Upon the emergence of homo sacer, the political, ethical, and economic consequences of policy decisions are altered to reflect the priorities of the narrative storyline rather than the more “objective,” or at least collectively understood, processes set up in the international community. In this policy analysis, one might also ground the aspects of the narrative evaluation in the context of Stone's (2012, p. 150) market rationalization and polis policy paradox—especially when referring to the concept of security—and the effects of surveillance, borders, and imprisonment (see Table 1).

Adapting Stone's (2012) paradox of security to contextually ground a policy analysis focusing on migrants, refugees, and asylum seekers coming to the Mexico–U.S. border still requires a critical lens beyond what either Stone or Yanow (1996, p. 380) proposed. Stone notes that “policy analysis is a political argument,” although it lacks explicit ties to critical policy. Despite these limitations, Stone (2012) and others help supplement this application of Boje’s critical narrative analysis. Additionally, we concur with Correa-Cabrera and Garrett [on Maurice Merleau-Ponty] (Correa-Cabrera & Garrett, 2014, p. 243) who state:

human beings-in-the-world perceive what they want oftentimes in terms of preferences for policy outcomes and through political action move towards the desired ends using post hoc rational-scientific explanations. Merleau-Ponty's [1962/2009] phenomenology of perception theory as applied here is critical to coming to grips with understanding the motivation behind policy decision-making. We submit that this insight has significant relevance for understanding the promotion of public policies by government officials undertaken in the name, or under the guise, of an all-encompassing science.

In summation, the methodological approach of this article draws heavily from the work of Boje, Stone, Yanow, and Merleau-Ponty to help us critically analyze stories and narratives supplied by border and security policy experts and policy makers.

| Table 1 | Deborah Stone's “Paradoxes of Security” (adapted) |
|---------|--------------------------------------------------|
| **Positive effects** | **Negative effects** |
| Surveillance can increase security by detecting threats to security | Surveillance can create lack of confidence in government, distrust, and hostility to government, thereby increasing threats to security |
| Borders create physical protection from outside threats | Protective borders increase psychological insecurity by symbolizing danger and heightening awareness of outside threats |
| Imprisonment [detention centers for border undocumented border crossers] can increase security by incapacitating criminals [migrants or homo sacer] and deterring potential criminals [migrants or homo sacer] | Mass imprisonment [detention] as conducted in the United States can indirectly increase crimes by ex-convicts [repeat unauthorized border crossers, or homo sacer] and destabilize communities [in the United States and abroad] |

*Source: Based and adapted from Stone (2012, p. 150).*

*Note: Brackets were added as a supplement to Stone's original analysis.*
CONTEXT

Scholars have recently addressed aspects of the pandemic and its effects on public administration and the implementation of policy, assessing the “other-ness” of migrants, asylum seekers, refugees, and citizens and the state of exception, also referred to as a permanent state of siege that occurs in representative democracies as they become permanent if not prominent policy areas (Agamben, 2005). During the pandemic, it relates to political leadership in the Trump era. Particularly related to our discussion of the state of exception is the work of Santis (2020). Additionally, Garrett (2020a, 2020b) presented incremental policy and programmatic steps taken by the Trump administration arguably to halt undocumented migrants and asylum seekers, effectively preventing homo sacer (Agamben, 1998) from entering the United States primarily through the Mexico–U.S. border, beginning with the MPP or “Remain in Mexico” policy slowing down entry by asylum seekers, refugees, and other migrants coming to the United States across the Mexico–U.S. border.

The ZTP, offered by the Trump administration, was designed to prohibit both attempted “illegal” entry as well as eventual “legal” entry into the United States through a state port of entry by the so-called “aliens” (or alien others) attempting to seek refuge and make an asylum claim. Narratively, ZTP also represents a commitment to criminal immigration enforcement—tantamount to an invasion—under the Trump administration’s policy. The primary impact, however, relates to family separation, prosecution of people with no prior or limited criminal history, and expansion of the U.S. Department of Homeland Security’s (DHS) 2005 Operation Streamline. The advent of COVID-19 changes the environment around existing policies and their narratives by invoking a little-known power of the Center for Disease Control (CDC). Essentially, the administration gives the U.S. Border Patrol (USBP) the authority to act on behalf of the CDC to ban and expel the entry of people or things that might spread infectious diseases under provisions of Title 42 (Lind, 2020), creating the disease vector plot device discussed later in this article. Questions arise about the legality and the existing precedents that might conflict with the administration’s decree. However, this makes a great deal of sense in the context of sovereignty and states of exception where situations allow for hegemons to exert power beyond what is understood as normal or legal through the establishment of sovereign power (Agamben, 2005).

More explicitly, one might argue that the USBP and Operation COVID-19 CAPIO (U.S. Customs and Border Protection [U.S. CBP], n.d.; Lind, 2020) impact policy processes by repackaging fear narratives to support the creation states of exception by enabling the development of sovereignty. First, it grants the USBP unchallengeable authority over migrants. Second, it raises questions about the precedents of law in general, and immigration law in particular. If a state of exception has been created, then the CBP-created COVID-19 CAPIO program is above legal challenge. Arguably, the decision point will rest on litigation of the priority of the Refugee Act of 1980 over an executive order. Third, this has the potential to redefine the scope of power of the presidency potentially creating a sovereign with all of its associated problems.

The creation of states of exception helps to illustrate the institutional problems of both the politics and perceptions of fear on the border (Correa-Cabrera et al., 2014; Correa-Cabrera & Garrett, 2014), lending support to arguments that fear has become not only monetized (Sementelli, 2020) but also commoditized and marketed as a political tool for hegemonic action while driving the consumption of promoted goods and services. In the context of the COVID-19 pandemic, this becomes a tantalizing political opportunity for an executive branch to consolidate power even under a system where political power is shared.
Zero tolerance policy—Hotel rooms

It is always a mistake to try to explain something by opposing Mafia and state: they are never rivals. Debord (1988, p. 67)

As stated above, the COVID-19 pandemic created the possibility for states of exception to emerge. The narrative of a national emergency certainly meets the criteria for the creation of a state of exception. Consistent with Wolin (1990), the president determined the priority for action retaining the decision-based logic. Consistent with Humphreys (2006), the narrative of necessity supersedes other institutional structures. In the context of the COVID-19 CAPIO, both criteria are satisfied illustrating the creation of a state of exception (Agamben, 2005; Garrett, 2020a). More importantly, the ZTP program remained active during the Trump administration (Garrett, 2020a, 2020b), moving migrant children into places with extralegal spaces and vendors including unlicensed childcare providers (Dickerson, 2020). A single consequence of these actions includes the more than 666 migrant children who have been separated from their parents, whose parents cannot be found as they were deported (Miroff, 2020; Rampell, 2020). These actions also illustrate a shift away from the Flores agreement of 1997, moving children from cages into hotels, violating human rights laws in favor of narratives of safety, thereby reinforcing arguments that states of exception are being created and situations where “executive sovereignty” can further develop to the detriment of democratic processes. Specifically, to further legitimize the practices, border patrol agents were informed that:

No longer could they be held indefinitely in hard-core detention facilities: They had to be released quickly to a family member or guardian or, if that was not possible, transferred speedily to a licensed care facility that did not operate like a jail. A subsequent interpretation of the agreement limited the time most migrant children could spend in detention, generally to no more than 20 days. (Jordan, 2019)

As illustrated above, the practices of the operation titled COVID-19 CAPIO continue to reveal the creation of a state of exception. Specifically, it runs against the Refugee Act of 1980 (Lind, 2020), allowing border patrol agents to turn away refugees before they can make a case for asylum. It is important to note that these decisions are being made by officials without the legal training or expertise while they are enforcing operational goals. The impact of this operation appears in Figure 1.

Per Schmitt’s argument (Humphreys, 2006; Wolin, 1990), the executive made the case that the southern land borders to the United States needed to be closed, while migration and asylum seekers alongside most refugees were forced to stay in Mexico due to the COVID-19 pandemic. Although this is an enticing narrative using the disease vector plot device, the reality of the situation when the policy was implemented is a bit different. As of September 22, 2020, the United States had 22% of the total number of COVID-19 cases, 21% of the deaths worldwide, while Mexico had reported less than 1% of the global total of deaths and 2% of global cases. Moreover, Garrett (2020a) illustrated how the United States through the CBP and USBP knowingly returned COVID-19-infected migrants to Mexico through the MPP and to Guatemala via the Asylum Cooperative Agreement (ACA) program with El Salvador, Honduras, and Guatemala. Prior to the end of March 2020 there were few cases and deaths due to the coronavirus in these countries. Despite the influx of COVID-19 migrants, the northern triangle countries of Guatemala, Honduras, and El Salvador had comparatively much lower rates of cases and deaths than the United States. Consistent with Wolin (1990), such actions illustrate that decisions do not need rational justification when moving toward a state of exception. Figure 2 illustrates the disparity undermining the logic of the executive narrative that the
southern border needed to be closed other than for commercial and other authorized travel to protect public safety (see Figure 2).

This underlying lack of logic lends support to the creation of a state of exception, consistent with the general understanding of Schmitt (2006) and Agamben (2005) more generally. As we have been alluding to so far, the migrant and refugee problem at the southern border is really a problem of sovereignty, of legal form, and institutional reach. However, even though the practices themselves eventually might be contested in court, refugees and migrants are effectively no longer allowed to traverse the Mexico–U.S. border despite the fact that the COVID-19 pandemic in the United States was substantially worse than in Mexico and the northern triangle countries of Central America. Briefly, from a public health standpoint, these people were

| Migrant Category                        | # of Migrants Expelled from U.S. |
|-----------------------------------------|----------------------------------|
| Unaccompanied Minors:                  | 8,800                            |
| Migrant Families with Children:        | 7,600                            |
| Total # of Migrants including Single Adults: | 159,000                        |
| Expelled to Mexico Directly:           | 7,000 Migrant Families           |
|                                        | 6,500 Unaccompanied Minors       |
| Center for Disease Control (CDC)       |                                  |
| Order Implementation Allowance for Undergoing Regular Immigration Proceedings after Crossing The Border: | 1,600 Migrant Family Members |
|                                        | 1,500 Unaccompanied Minors       |

**FIGURE 1** Operation COVID-19 CAPIO results—mid-March 2020 to September 11, 2020, by the numbers (Montoya-Galvez, 2020)

| Country               | # of Cases | % Total | # of Deaths | % Total |
|-----------------------|------------|---------|-------------|---------|
| United States*        | 6,892,200  | 22%     | 200,118     | 21%     |
| Mexico*               | 697,663    | 2%      | 73,493      | 0.8%    |
| Guatemala             | 85,681     | 0.003%  | 3,124       | 0.03%   |
| Honduras              | 72,075     | 0.002%  | 2,204       | 0.002%  |
| El Salvador           | 27,798     | 0.001%  | 812         | 0.001%  |
| Global Total          | 31,374,300+| 100%    | 965,600     | 100%    |

**FIGURE 2** COVID-19 cases and deaths in Mexico, United States, Guatemala, Honduras, and El Salvador—September 21, 2020 (World Atlas, 2018). Source: The New York Times (2020)
safer in the northern triangle than they were in the United States. This reinforces an irrational narrative of fear that the United States is under siege thereby justifying the suspension of U.S. laws and international treaty obligations reinforcing the establishment of a state of exception.

**Human rights for refugees, public policy, and sovereignty**

Narratives do not emerge in a vacuum, and illness narratives are particularly impactful (Hydén, 1997). The United States has a long history of discrimination of migrants coming from Mexico and the northern triangle countries. Using narratives of illness and infection simply help to contextualize conscious choices and create a state of exception. Another way for a sovereign to consolidate power emerges from the creation of a homogeneous medium (Schmitt, 2006) that emerges from a clear understanding of the other. Regarding asylum seekers and migrants crossing into the United States, “Trump's policy has created a humanitarian catastrophe at the border” particularly invoking the attention of “UN High Commissioner for Human Rights Michele Bachelet (2019) who openly criticized the United States for the conditions under which people, and in particular children, have been detained” (Mills & Payne, 2020, p. 403). One of the easiest ways to identify this develops from an examination of xenophobic nationalist rhetoric (Mills & Payne, 2020, p. 402). More specifically, targeting specific groups of people as scapegoats for the country's problems creates the homogeneous medium essential for the creation of a state of exception (Schmitt, 2006) by allowing for the emergence of sovereignty, which of course is problematic for both democracies and federal republics.

The emergence of sovereignty is not without consequence. As discussed among mainstream scholars of Schmitt, there is an explicit tension between modern liberal constitutions and sovereign authorities. Schmitt (2006), of course, proposes that sovereignty adds the stability necessary to governance states of emergency. However, the underlying critiques of Schmitt's discussion of sovereignty particularly focus on the aspect that there is no guarantee of either benevolence or competence in a state of sovereignty. This is also highlighted by the humanitarian issues at the border including what has been identified as a “humanitarian catastrophe” (Bachelet, 2019) demonstrating neither competence nor benevolence.

Narratives are also impacted by emotional state. Fear of illness, and commodified fear in general (Seaton, 2001), contextualize and reinforce the creation of states of exception rather elegantly, while reinforcing the consumption of commodified, monetized, and marketed policy solutions. This is particularly true in areas like the southern border where commodified narratives are commonplace. Dunn (2009, p. 221) notes that border enforcement fetishism reigns on the Mexico–U.S. border. DHS and its component agencies aggressively pursue commodified fear narratives leading to funding opportunities that legitimize their operations simply by illustrating that they are a priority for funding so they must be both legitimate and important. Another recurring issue within a state of exception emerges from the lack of practical oversight, a problem often present in modern liberal constitutions. For example, in 2020, the U.S. Government Accountability Office (2020, p. 1) cited CBP for taking emergency medical supplies and hygiene funds and illegally rerouting them for other purchases:

CBP obligated some of these funds for consumable goods and services, like food and hygiene products, as well as medical care goods and services such as defibrillators, masks, and gloves. However, CBP obligated some of these funds for other purposes in violation of appropriations law. For example, CBP obligated some of these funds for goods and services for its canine program; equipment for facility operations like printers and speakers; transportation items that did not have a primary purpose of medical care like motorcycles and dirt bikes; and facility upgrades and services like sewer system upgrades.
Within a state of exception, such practices are normalized since they often support, or at least maintain fealty to, the sovereign entity. Conceptually, their actions are consistent with Schmitt's (2006) understanding of sovereign authority as well as Agamben's (2005) understanding and critique of it. In practice, we find that as COVID-19 continues to spread relatively unchecked in the United States, asylum seekers, migrants, and their children have suffered from CBP malfeasance, not obtaining food and other services necessary for their survival while they are detained. Briefly, the case study presented here illustrates the direct impact that sovereignty, states of exception, and narratives have on migration policy.

It becomes clear why one might argue how the lenses of Agamben's (2005) state of exception and the commodification of fear (Seaton, 2001; Sementelli, 2020) more generally can provide essential insights into the hegemonic decisions that are made in regard to border issues in general and asylum seekers in particular. Policies about asylum seekers and migrants neatly fit into descriptions of states of exception. In this case, understanding Agamben allows us to distill the imagery, concepts, and theory, while understanding the commodification of fear. It contextualizes the practices—the narratives themselves by framing the possibilities for the emergence of sovereign authority. Understanding why and how this is happening remains rather simple if we continue to use the work of Agamben and Schmitt as guides. The commodification of fear, in this case, serves both political and economic masters, making it extremely valuable, while enabling hegemony to flourish under the guise of protection and other narratives.

**ZERO TOLERANCE REDUX AND TRUMP'S TITLE 42**

“The consequences have been horrific,” historian Monica Muñoz Martinez said of not challenging the humanity or morality of the administration's policy. (Gamboa, 2020)

[Deputy Attorney General] Rosenstein's complicity in this machine was ugly, but it was by no means unique. Top officials at the Departments of Justice, Homeland Security, and Health and Human Services all played a role. They were all sowing chaos, inflicting cruelty and causing unfathomable trauma at the behest of a small, vicious cadre up top. (Senior, 2020)

[Anti-Immigrant Extremist] Stephen Miller is credited with shaping the racist and draconian immigration policies of President Trump, which include the zero-tolerance policy, also known as family separation, the Muslim ban and ending the Deferred Action for Childhood Arrivals (DACA) program. (Southern Poverty Law Center, 2020)

COVID-19 CAPIO continued until the end of Trump's term as well as the ZTP. ZTP provided a natural segue to the COVID-19 CAPIO by normalizing behavior—separating infants from their parents and this would effectively continue as Title 42 into the Biden administration, which is discussed shortly. Critics including former Department of Health and Human Services (HHS) Secretary, Julian Castro, called the ZTP “a damning display of white supremacy in action… [and] that's what happens when you put white supremacists like Stephen Miller in charge of policy and give them free rein to change important policy when it comes to immigrants” (Gamboa, 2020, emphasis added). Despite such critics, the administration continued to foster a homogeneous medium to further develop sovereignty (Schmitt, 2006), by leveraging approval (Hirschfield Davis & Shear, 2019) while developing strategies for conformity.

The development of these narratives as a medium allows the symbols to supersede logic. Rather than abandoning ZTP, they decided to work on spin and public relations while allowing
the program to continue (Rucker & Leonnig, 2020, p. 269). Furthermore, Soboroff (2020, pp. x–xi) notes that by December 2018, HHS had 2737 separated children in Immigrations and Customs Enforcement custody in December 2018 and 1556 additional separated children by October 2019. Much of ZTP can be attributed to Stephen Miller, Trump's Senior Policy Advisor. Despite the attempts at spin, Jean Guerrero (2020) chronicles Miller's influence with Trump, using white nationalist narratives to garner public support to win elections and move public policy. Below is a sample of Miller's position.

> The demonization of migrants is to Miller what the border wall is to Trump: a tool with which to mobilize the base. With it, he sold cruelty and castigation toward brown youths; separating migrant children from parents; revoking protections for people brought to the US as children; incarcerating teenagers with tenuous ties to MS-13 and more. Trump said “alien minors” were a great cost to life. (Guerrero, 2020, p. 5)

Due to the development of the “homogeneous substrate” even further, we find that human rights abuses actually become more noticeable, and less hidden. Investigative reports from The Guardian and The New York Times revealed direct involvement of the U.S. Department of Justice (DOJ) and the Attorney General's office, particularly the former Attorney General, Jeff Sessions, and the Deputy Attorney General, Rob Rosenstein—who played a substantive and direct role—as eventually revealed in a DOJ Inspector General's Report (Kirchgaessner, 2020; Shear et al., 2020). More explicitly, as the executive branch continued to consolidate its power base, we find less and less reliance on the rule of law and a greater emphasis on the development of sovereign authority. The implementation of immigration policy becomes yet one more tool wielded to consolidate power under the executive branch while culminating in near-complete closure of the southern border.

**TITLE 42 AND COVID-19: IMPLICATIONS FOR CONTINUED SEPARATION OF REFUGEE CHILDREN FROM THEIR PARENTS**

In the first 100 days of his administration, President Joe Biden had to deal with national security crises in the form of the COVID-19 global pandemic and the problem of an increased number of refugees and asylum seekers mostly from the northern triangle countries and southern Mexico (Garrett, 2020a). The border security apparatus appears to be in peril with a developing narrative that the United States is about to be overrun and that Biden's policies are to be blamed. However, the state of exception and the previous provisions of President Donald Trump's Title 42 policy remain in effect, despite President Biden temporarily ended Trump's MPP and ZTP, but effectively kept in place ACA with El Salvador, Honduras, and Guatemala—as well as associated programs for policy implementation such as COVID-19 CAPIO. Again, there is a public narrative of change laid over unchanged practices, arguably for some political or economic end.

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42 U.S. Code § 265—Suspension of entries and imports from designated places to prevent spread of communicable diseases. Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with the regulations approved by the president, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose (July 1, 1944, ch. 373, title III, § 362, 58 Stat. 704.) Source: Cornell Law School, Legal Information Institute. Available at: https://www.law.cornell.edu/uscode/text/42/265.
Title 42 gave the Trump administration an excuse to completely halt migration under the declaration of a state of emergency caused by the coronavirus pandemic. However, the ZTP continued covertly during the final years of the Trump administration until the Biden administration took office on January 20, 2021, ending ZTP by executive order on January 27, 2021 (Narea, 2021), and halting the construction of the border wall with funds taken from the Department of Defense and other agencies. MPP and ACA were subsequently suspended by Biden as well, although ACA was reestablished as political pressure came in the form of increased numbers of unaccompanied children (UAC) in the first 7 months of the new administration. Additionally, the Supreme Court of the United States as of August 24, 2021, upheld a Texas federal judge’s decision stripping Biden’s DHS from halting his predecessor's MPP or “Remain in Mexico” policy upending years of judicial branch deference to the executive branch in the conduct of U.S. foreign policy (Milhiser, 2021). These actions resulted in a continuance of ACA, and until the U.S. Supreme Court finally rules on appellate court actions regarding MPP, that resulted in human rights violations on the same order as the previous presidential administration (Human Rights Watch, 2021).

In late 2020 and the first few months of 2021, there was an uptick in the number of border crossers making their way primarily from El Salvador, Honduras, and Guatemala (the northern triangle countries) and southern Mexico. However, political scientists from the University of California at San Diego who track border crossers on the Mexico–U.S. border have made the case that there are two major reasons for the increase: (1) pent-up demand driven by Title 42 restrictions (because of COVID-19), MPP, ZTP, etc., as holdover restrictive and expulsion policies from Biden's predecessor; and (2) the consequences of global climate change as two hurricanes hit Central America, Eta and Iota, in 2 weeks during November 2020 creating a humanitarian and public health crisis with 7 million people in need of assistance (Beaubien, 2020) causing political and economic upheaval—creating refugees. The Washington Post reports:

in fiscal year 2021, it appears that migrants are continuing to enter the United States in the same numbers as in fiscal year 2019—plus the pent-up demand from people who would have come in fiscal year 2020, but for the pandemic. That's shown in the first figure, earlier, in which the blue trend line for the five months of data available for fiscal year 2021 (October, November, December, January and February) neatly reflects the trend line for fiscal year 2019—plus the difference between fiscal year 2020 and fiscal year 2019... This suggests that Title 42 expulsions delayed prospective migrants rather than deterred them—and they're arriving now. (Wong et al., 2021)

These factors are contributing to the increase of both refugees and asylum seekers—not because Biden is president and more “permissive” as these problems were already causing an influx of border crossers on their way to the Mexico–U.S. border. The other aspect of the alleged “surge crisis” is that human traffickers are using social media, mostly Facebook and WhatsApp, to recruit border crossers with the allegation that Biden will essentially welcome them (Ainsley & Martinez, 2021). President Biden, despite the cancellation of MPP, ZTP, a brief suspension of ACA, and subsequent re-implementation of the agreements along with the re-emergent federal court-imposed MPP, continues to maintain the implementation of Title 42 provisions as of the end of August 2021. The CBP data collection of border crossers shows increases as of August 23, 2021, with over 1.3 million encounters to date (U.S. CBP, n.d.). However, Gramlich (2021) indicates that “encounters” has been used to replace “apprehensions” as the metric used during the implementation of the Title 42 policy. Gramlich (2021) notes that “Expulsions have become less common—and apprehensions more common—in the first months of President Joe Biden's administration. In July, 47%
of migrant encounters resulted in expulsion, down from 83% in January, when Biden took office [compared to more than 80% under the duration of the Trump administration].” The justification for a state of exception (Agamben, 2005) under provisions of a state of siege continues.

**DISCUSSION AND CONCLUSION**

The creation of states of exception has specific consequences for American government as well as for public administration and policy. As one of those new-ish modern liberal constitutions, the United States remains subject to constitutional law. Ironically enough is the political realm that has actively created opportunities for the abuse of administrative discretion by public professionals, paraprofessionals, and political actors. Even Schmitt (2006) understood that democracy and legitimacy are inextricably linked. Reconciling the two phenomena within a state of exception is difficult if not impossible. Nor would it be desirable to hegemonic actors. Consequently, the emergence of states of exception to no one's surprise often leads to tyranny. But what does that state of tyranny lead to in practice?

In the case of the southern border, the combination of emergent white nationalist narratives (Boje, 1995, 2001, 2008) and COVID-19 monetize governmental services, while undermining the humane and ethical treatment of people, democracy, and the rule of law. MPP, ZTP, COVID-19 CAPIO, ACA, and Title 42 employed during the emergence of a contemporary state of exception were used to violate the rights of asylum seekers, refugees, migrants, and their children from primarily El Salvador, Guatemala, Honduras, and southern Mexico. Although multiple examples are available, the policies examined indicate how the commodification of fear, enhanced by white nationalist narratives, can be used to develop and maintain a homogeneous substrate, a state of exception, and a set of practices that run against the rule of law. Title 42 is still in effect during the Biden administration, although the application of the law to the COVID-19 pandemic remains questionable.

The context of the COVID-19 pandemic provides an ideal environment for the development and generation of fear providing cover, or a shield, for violations of U.S. national and international human rights laws for asylum seekers and refugees. It also forces scholars and practitioners of public administration and policy to reconsider the relative impact of sovereignty on the executive branch, the importance of legitimacy in a time of narrative fluidity, and the role of constitutionalism where there is flexible interpretation. In this specific case of the southern border, the paradoxical (Stone, 2012) nature of migration policy emerges as a focusing lens to understand broader issues of human rights and contemporary hegemony more generally.

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