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## **An analysis of U.S. Custom and Border Protection's tripartite Mexico border security policy**

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### **Abstract**

The Custom and Border Protection (CBP) border security policy was explicitly presented by former Acting Commissioner of CBP, David Aguilar, in testimony before the United States Senate Homeland Security and Governmental Affairs Committee (HSGAC) on April 4, 2017 in testimony on the subject of “Fencing Along the Southwest Border.” Important for discussion here are the key components of the DHS/CBP/Border Patrol’s strategy, or sets of policies, laying forth elements of the border walls (including barriers, fences), personnel, and technology in order to hinder, or intercept, undocumented migrants (*homo sacer*) from entering the United States illegally—all socially constructed. Aguilar notes in his opening remarks “Maintaining a safe and secure environment along the U.S.—Mexico border is critical. A safe and orderly border that is predicated on the strong rule of law deprives criminal organizations, drug cartels, and criminal individuals the opportunity to thrive.” In Aguilar’s testimony, when pressed by Ranking Member Senator Claire McCaskill, he set forth the current needs for CBP/Border Patrol priority of the three elements in the following order: (1) Technology (border surveillance), (2) Personnel (numbers of agents along the border), and, (3) The Border Wall (physical infrastructure: fences, walls, and vehicle barriers). The security apparatus affects dwellers along the Rio Grande and undocumented border crossers, demonstrated here with an analysis of the application of President Trump’s Zero Tolerance policy (April 6–June 20, 2018). The security framework applied in this paper will consist of theoretical approaches assessing border surveillance as a panopticon, the use of Border Patrol agents for apprehending, detaining and removing *homo sacer*, and the symbolism of the border wall as a spectacle and *simulacrum*—all understood in the pursuit of USA border security policy.

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**Keywords:** security apparatus, migration, zero tolerance policy, panopticon, homo sacer, USA-Mexico border

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## 1. Introduction and background

This paper analyzes three key elements of the Custom and Border Protection's (CBP) tripartite strategy for the border security apparatus—*surveillance infrastructure* (e.g. the panopticon array of observation equipment), *personnel* (e.g. boots on the ground), and *border infrastructure* (e.g. fences, walls, and barriers)—used to restrict access into the USA from its southwest border with Mexico. Additionally, President Trump's "zero tolerance" of migrants crossing into the USA from the border with Mexico will be examined in the context of analyzing the CBP's and Border Patrol's (BP) implementation of the policy. Former Acting CBP Commissioner Aguilar's testimony (HSGAC, April 4, 2017) provides the framework that may be used for a critical policy analysis in which the three elements of border security policy may be assessed. Executives and managers of agencies such as CBP tell stories, including through testimony, which yield valuable insights into agency conduct that is as valid as any scientific inquiry (Boje, 1991, 1995; Hummel, 1991). This paper will be examining each of the three elements, investigating the effectiveness of the CBP/BP's border security policy implementation. For the technology aspect of the policy, the paper employs the *panopticon* concept based primarily on Jeremy Bentham (1787/1995) and Michel Foucault's (1977) theoretical insights on surveillance (cf. also Sementelli, 2012). For a critical examination of the effectiveness of CBP and BP along the border, this work analyzes the ability, legitimacy and the justification of the agents to keep out the "Others," (e.g. undocumented border crossers, drug and human traffickers, and terrorists) using Giorgio Agamben's (1995, 2005) concepts of *homo sacer* and the *state of exception*. For the third aspect—the border wall—the paper utilizes a semiotic concept based on Jean Baudrillard's (1981/2006) *simulacrum* insofar as ascertaining what the wall means, or represents symbolically, to users and those "Others" affected by its presence as a security, or insecurity, apparatus. Additionally, Guy Debord's (1967/1995) concept of the *society of the spectacle* combined with Douglas Kellner's (2016) interpretation with regard to President Donald Trump will be employed to assess the border wall and resultant security apparatus especially along the Texas-Mexico border, which is primarily the Rio Grande. Border dwellers and undocumented crossers are also affected. In sum, the objective of the paper will be to develop a critical policy analysis of the effects of the current border security policy implemented by CBP and BP through and up to the Trump administration.

Border security in the USA has been around since the beginning of the republic but has relatively recently gained more attention especially since the al Qaeda terrorist attacks of September 11, 2001 (hereafter 9-11). Major fencing projects began during the Clinton administration under Operation Gate Keeper in 1994 where the first major stretch of border fence was built on the California—Mexico border (Emmott, October 2, 2009) primarily to curb immigration and stop illegal drugs from entering the USA, also adversely affecting human rights (Dunn, 2001). The terrorist attack of 9-11 brought about an extension of the border fence (or wall) through Bush administration initiatives—the Secure Fence Act of 2006 and the REAL ID Act of 2005—to about 670 miles (1078 kilometers) across the entire length of the 1,954 mile (3,145 kilometers) Mexico-USA border (Garrett & Storbeck, 2011). These projects provide the support for increased technological surveillance, border walls and apparatuses, as well as more boots on the ground—CBP and other Department of Homeland Security (DHS) personnel.

The latest border security policy initiative known as “Zero Tolerance” was announced officially by President Trump in April 2018. From April 19 to May 31, 2018 DHS separated 1,940 children from migrants crossing into the USA (Davis, June 15, 2018). The new policy is ostensibly designed to detour migrants attempting to cross the Mexico-USA border as a warning using all aspects of the CBP’s Tripartite border security policy. The Zero Tolerance policy for migrants will be assessed as it pertains to Border Patrol and border security apparatus.

## 2. The border security spectacle: Trump’s wall and DHS

The building of President Trump’s “big, beautiful wall” (Soboroff & Edelman, October 23, 2017) would be a monumental task simply due to the logistics. *USA Today* in September 2017 conducted an extensive analysis concerning the implications for the border wall project to the USA public as to the consequences that would likely occur if constructed. A portion of the news article is presented here as it pertains to the Mexico-USA border...

In Texas, any new wall would have to be built some distance from the border, because the line itself runs down the middle of the Rio Grande. To gauge the possible impact, the USA TODAY NETWORK used the state’s open-records law to obtain digital property maps from all 13 Texas counties with border frontage. (A 14<sup>th</sup> county touches the border only at one point, accounting for a single parcel.) All told, a network analysis shows, about 4,900 parcels of property sit within 500 feet of the border in Texas [...]. Most Texas land is privately owned, a fact that could complicate and delay efforts to build a wall in a state that reveres private property rights [...]. There is no public map of exactly where, or for how far, a future border wall would run. Some of the wall would surely be on land already owned by the federal government, such as levees. But the 4,900-parcel swath gives a *sense* of the *massive land seizure* and cost that the federal government could face. (Ryman et al., September 2017, para. 1–4; emphasis added; capitalizations by the authors)

The proposed border wall public works project is a massive undertaking and will have mostly adverse effects on people dwelling along the Mexico-USA border. The political, legal, economic, social, and environmental consequences that will occur if the project is passed into law will have changed the landscape architecture and most likely will restrict the rights of USA citizens living in the area as well as any border crossers.

The wall along US border with Mexico is a combination of paramilitary governmental authorities (e.g. CBP, BP, Immigration and Customs Enforcement [ICE], other DHS agencies) electronic surveillance and 18-foot high fence built beyond what was built before in previous administrations (e.g. Bill Clinton and George W. Bush) with the ultimate goal near absolute security—and was a campaign promise by presidential candidate Donald J. Trump. Trump, since his election in 2016 prefers to bypass most conventional media, using mostly social media such as twitter to achieve the ideal of complete control of communication between himself and his constituents without conventional media intervention...

I use Social Media not because I like to, but because it is the only way to fight a VERY dishonest and unfair “press,” now often referred to as Fake News Media. Phony and non-existent “sources” are being used more often than ever. Many stories & reports a pure fiction! (2:36 PM, 30 Dec 2017)

Twitter is one of Trump’s primary means to send his messages on border security and the wall, circumventing media and governmental institutions, including his White House office, to generate support for policies and programs from his followers. The media spectacle (Kellner, 2003, 2016) Trump creates pushes his political agenda to build his wall and increase the number of additional border patrol agents by up to 5,000, even though the USA Government’s DHS has to spend \$297 million to help CBP get them as “Congress requires a force of 21,370 agents, but a report recently said that as of May there were only 19,500 agents. Compounding the problem is retention: between 2013 and 2016 an average of 523 agents were hired, while 904 left” (Moran, December 12, 2017, para. 14).

Border wall security coverage creates zones—or lands divided by the structure that separates homeowners, universities, farmers, businesses and ranchers from their property. Heterotopias created by the power (Foucault, 1980) of the state are ostensibly designed to separate territories through land barriers on the border. In the instance of the Mexico-USA border in Texas, the Rio Grande is a natural barrier that is supplemented by emplacements (fences, walls, surveillance apparatuses) at times and places up to two miles or more inland. Most border structure follows levees designed to prevent flooding. As the river naturally curves and bends, the building of a wall directly on the banks is impractical. Foucault (1970) analyzes heterotopias as places that exist outside of the sacred and profane. Heterotopias are other places, such as prisons, amusement parks, museums, and walls, among other phenomena.

There is a strong fear, or a perception of fear (Correa-Cabrera & Garrett, 2014) socially constructed of another 9-11-style terrorist attack with terrorists coming through the border with Mexico used to justify building an extensive security apparatus for “illegal immigration”—although the 9-11 terrorists never came through the Mexico-USA border. Similarly, failure to produce or extend the wall would result in a loss of contracts for wall building by corporations (Garrett, 2013). Politicians raise the fear of levee failure *à la* New Orleans along the Rio Grande as the levees were built under similar engineering designs (Garrett & Storbeck, 2011), and a fear of separation of culture and society by the authoritarian State. There would be a corresponding loss of commercial and social transactions with neighbors and customers from Mexico leading to economic calamity. Additionally, the border wall increases the potential for criminal activity by transnational criminal organizations (TCOs) along the border, especially on the Mexican side (Correa-Cabrera & Garrett, 2014; Dunn, 2001).

Berger and Luckmann (1980) and Schutz (1967) note that reality is socially constructed and not separate and outside of what people experience. Questions arise as to whether experiences from people dwelling outside of the Mexico-USA border region have any bearing of empathy or appreciation towards people living in the area. Social constructions and their variation matter.

The ability to have any capacity for fellow citizens or neighbors in other states (within the USA) and countries starts with basic perceptions. Merleau-Ponty (1948/2008, 1962/2009, 1964) submits that perception precedes all application of “science” or other rational behaviors in terms of knowledge accumulation and how people come to experience, application of science and practice. What one knows through first-hand experience living on the border is different from others living farther inland, for example, and how they perceive the border wall or border security.

Further philosophical inquiry into the social construction of lived experiences—or what amounts to potential lived experiences—is in order. At this point, we have examined the social construction of images used to forward political agendas ostensibly designed to prevent another 9-11 or mitigate natural disaster. Foucault (1970) offers the following analysis of perceived ideals of reality that is relevant to the assessment of the border “wall”:

*Utopias* afford consolation: although they have no real locality there is nevertheless a fantastic, untroubled region in which they are able to unfold; they open up cities with vast avenues, superbly planted gardens, countries where life is easy, even though the road to them is chimerical. *Heterotopias* are disturbing, probably because they secretly undermine language, because they make it impossible to name this *and* that, because they shatter or tangle common names, because they destroy “syntax” in advance, and not only the syntax which causes words and things (next to and also opposite one another) to “hold together.” This is why utopias permit fables and discourse: they run with the very grain of language and are part of the fundamental dimension of the *fabula*; heterotopias [...]

desiccate speech, stop words in their tracks, contest the very possibility of grammar at its source; they dissolve our myths and sterilize the lyricism of our sentences (p. *xviii*, italics in original).

As such, DHS—through President Trump—proposes the wall ...

[...] as a means to bring about an end to fears of potential terrorism—at least through the border with Mexico—and an end to illegal immigration. These proposed policies constitute a utopian ideal, primarily from senior executive government officials who do not dwell along the US-Mexican border and therefore lack any experience with the local reality. American citizens living in the Rio Grande Valley are affected by the border “wall” and see the possibility of a hideous structure ruining the aesthetical value of the area, destroying long-cherished personal and friendly relations with their neighbors in Mexico, and the potential destruction of the ecological system important for quality of life and eco-tourism. What was first described as the neighborly “fence” in 2007–2009 is now to be foisted upon the residents of the Rio Grande Valley having become the “wall; designed to cut off families, culture, and history of good will between friends on both sides of the river.” [The border “wall” becomes “the other place” —the *heterotopia* for them.] There is no hope of a reprieve [given prior experience with the wall building of 2007–2009 and the current] political climate” [...] [of now Trump’s wall.]<sup>1</sup> (Garrett, 2010, p. 311)

Garrett (2010) wrote: “Since the border ‘wall’ is now seemingly a *fait accompli*, people and their local government representatives have sought to make the most out of an untenable situation. The question remains as to whether those dwelling in the heterotopia will be living in a dystopia—if the violence and chaos ensues from the construction of the border wall” (pp. 311–312). What was true in the previous decade is once again true in 2018. The hardship of the wall remains for the people of the lower Rio Grande Valley. So, while the border wall is central to CBP’s tripartite border security policy, the wall imposes hardships on the people. The border wall is a *simulacrum* (Baudrillard, 1981/2006; Garrett & Storbeck, 2011). It is intended as a symbol for security but in reality for the border dwellers represents insecurity and exploitation.

### 3. Trump’s border surge: More CBP, calling in the national guard and creating an impetus for more wall

Candidate Donald J. Trump was supported by the National Border Patrol Council (NBPC) representing over 16,000 workers and the first federal employee union to endorse him (Katz, March 30, 2016). The NBPC national president, Brandon Judd, testified to the need for 5,000 more Border Patrol agents (Judd, March 22,

<sup>1</sup> This section was written in 2010 and is updated to include material from 2018. Not much has changed with regard to the wall in nearly a decade, except the current executive leadership.

2017) and this was the number promoted by President Trump. Trump did not get 5,000 new CBP approved, but “in total, the bill allocates \$13.8 billion to customs and border protection. That includes the \$1.6 billion for the wall, \$100 million to hire 500 more Border Patrol agents, \$131 million for new border technology, \$106 million for aircraft and sensors and \$109 million for ‘non-intrusive inspection equipment’” (Ellis, July 11, 2017, para. 9). Congress scaled back the president’s request for more border personnel in 2018.

President Trump lamented that he lost his campaign issue to keep undocumented border crossers out of the USA to “seal” the border due to the passage of the Fiscal Year 2018 budget negotiations with Congress and not getting his full wall funded, thereby calling for a National Guard troop surge to protect the border with Mexico (Watson, April 7, 2018). Trump had vowed as a presidential candidate to keep illegal migrants out of the USA and to get Mexico to pay for the border but failed in this quest during the fiscal year 2018 budget negotiation with Congress, getting “\$1.6 billion to pay for six months of work on his wall. He had asked for \$25 billion for it” and “‘We’re looking for 2,000 to 4,000 [National Guard troops] and probably keep them, or [...] a large portion of them, until such time as we get the wall.’” (Mason, April 5, 2018, para. 5, 7). The border surge of National Guard troops on the USA-Mexico border is underway. Part of the explanation of the border construction and troop surge is political theater for the maintenance of political power.

#### 4. CBP’s Panopticon

CBP has numerous tools available to it to control populations attempting to cross the Mexico-USA border—whether legally or illegally. Technological devices such as tethered aerostat radar systems (TARS) (CBP, February 17, 2017) unmanned predator B aerial (drone) aircraft systems (CBP, October 14, 2015), surveillance towers (mobile and fixed assets) and tactical communications (DHS, n.d.), motion sensors, and other apparatuses are employed for controlling who enters the USA from its southwestern border. The result of these surveillance tools gives CBP the ability to monitor migrants and other border crossers into the USA from Mexico. This overall capability results in a panopticon—the concept of surveillance for control of a given population. Jeremy Bentham’s (1787/1995) rationale for the panopticon begins as ....

No matter how different, or even opposite the purpose: whether it be that of punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing in any branch of industry, or training the rising race in the path of education: in a word, whether it be applied to the purposes of perpetual prisons in the room of death, or prisons of confinement before trial, or houses of correction, or work-houses, or manufactories, or mad-houses, or hospitals, or schools. [...] It is obvious that, in all these instances, the more constantly the persons to

be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. (1995, p. 34, italics in the original)

The object of CBP's panopticon reflects the effects Bentham's conceptual framework. Other theoretical explanations since Bentham are categorized and employed for further analysis of the panopticon (Galic et al., 2017). A few of those theories will be utilized in understanding and explaining CBP's panopticon.

In his discussion of Bentham, Foucault (1977) further elaborated about the question of observation, or surveillance, by noting that "[...] the Panopticon [...] could be used as a machine to carry out experiments, alter behavior, to train or correct individuals [...] [and is] a privileged place for experiments on men [...] [functioning] as a kind of laboratory of power" (pp. 203–204). In the context of today's CBP, the panopticon is an instrument of power wielded on migrants, drug and human traffickers, attempting to come into the USA. The panopticon—combining Bentham's prison design and developed further by Foucault for power and social control—acts as an apparatus for "an agent in power [who] has the ability to watch others without their knowledge and can do so without the risk that the others will watch back, creating docile bodies" (Newell et al., 2017, p. 24).

The panopticon employed by the CBP is a key component to the ongoing "low intensity conflict" that relies on surveillance technology in Central America and Mexico (Nevins & Dunn, 2008, p. 23). Arteaga (2009) notes that the Merida Initiative, a new border security configuration agreement between the USA, Mexico and Central America, endorsing "technologies to improved and secure communications systems to support collecting information as well as ensuring that vital information is accessible for criminal law enforcement" with "helicopters and surveillance aircraft to support interdiction activities" (p. 107). The initiative places Latin American countries under systematic surveillance by intelligence agencies of the USA. In addition to CBP and military personnel (e.g. National Guard troops), "vigilant citizens" may also get involved in a "virtual border watch program" to aid those authorities in intercepting border crossers (Koskela, 2010). Bigo (2006, 2011) contends that the panopticon employed by the USA along the southwestern border is more appropriately described as a *ban-opticon* designed to use surveillance in order to profile and keep out migrants and others deemed undesirable...

The notion of "ban" originates from international relations (IR) and critical security studies and is on a parallel track with surveillance studies. The ban-opticon deconstructs some of the post-September 11 analysis as a "permanent state of emergency" or as a "generalized state of exception," which reinstates the question of who decides about the exception in the heart of the IR debate: who is sovereign, and who can legitimately name the public enemy. The ban-opticon dispositif is established in relation to a state of unease created by the United States and its allies. The United States has propagated the idea that there is a global "in-security", which is attributed to the development of threats of mass destruction, thought to be derived from terrorist and other criminal organizations

and governments that support them. This has led the US to assert the need for a globalized security that would render national borders obsolete and pressure other international actors to collaborate. (Bigo, 2011, p. 47)

Migrants especially, when approaching the Mexico-USA border, confront the ban-opticon and “stand at the threshold between two worlds” experiencing and “living one of the most intense, fragile and vulnerable moments” in their lives (Newell et al., 2017). As Boyce (2016) comments quoting a Border Patrol Chief that the US Border Patrol 90% surveillance effectiveness rate is “achievable as a strategic objective [through] [...] more and more of the technology” (p. 258). Boyce further notes, “as a matter of policy, the United States maintains the ambition to detect, monitor, and control virtually all activity proximate to its land borders” that results in a continuous growth and expansion cycle for the panopticon (p. 258).

## 5. The Border Patrol’s wall

The border wall as part and parcel to the overall Mexico-USA tripartite security policy has problems in terms of providing adequate data by the U.S. Governmental Accountability Office (GAO). Between 2007–2015 CBP spent approximately \$2.3 billion to build the wall along the Southwest border (February 16, 2017, p. 41). According to the GAO, “Border Patrol headquarters and sector officials told GAO that Border Patrol lacks adequate guidance for identifying, funding, and deploying TI (tactical infrastructure) needs” as part of the Requirements Management Process (p. 2). The GAO Report found that ...

[...] CBP has not developed metrics that systematically use these, among other data it collects, to assess the contributions of border fencing to its mission. For example, CBP could potentially use these data to determine the extent to which border fencing diverts illegal entrants into more rural and remote environments, and border fencing’s impact, if any, on apprehension rates over time. Developing metrics to assess the contributions of fencing to border security operations could better position CBP to make resource allocation decisions with the best information available to inform competing mission priorities and investment. (p. 1)

Despite the report which put the CBP to the task of trying to define the role of border infrastructure played in the overall security policy, the agency has yet to establish its measurable effectiveness, whether the fence (or wall) was effective in terms of resource allocation was not determined by February 2017. Replying to Ranking Member, Senator Claire McCaskill, on April 4, 2017 before the U.S. Senate Homeland Security and Governmental Affairs Committee (HSGAC), former Acting Commissioner of CBP, David Aguilar, testified that the priority in 2017 was (1) technology; (2) more CBP personnel; and, (3) border wall and other

infrastructure. The Senator asked Mr. Aguilar why he changed his testimony from previous visits to the HSGAC while he was Acting Commissioner from (1) border wall and other infrastructure; (2) more CBP personnel; and, (3) technology. Mr. Aguilar replied that priorities have changed as have the times and circumstances. However, Mr. Aguilar at the time of his testimony was working as a principal for Global Security and Innovative Strategies (GSIS) and “currently serves on the Board of Directors for CZ-USA and Drone Aviation as well as the Advisory Boards of AT&T First Net and the Border Security Expo” (GSIS, n.d., para. 3). Hence, after having spent 35 years as a federal law enforcement officer, Mr. Aguilar is now representing a security-related consulting and business advisory firm that provides technology to the CBP.

The push for more border wall infrastructure is not exclusively limited to upper management and executives in CBP. As mentioned previously, one of the first public employee unions to go on the record for and support then-candidate Trump was the National Border Patrol Council (NBPC), the union for CBP agents. Since the election of President Trump, who was supported by NBPC due in large part to his commitment of obtaining 5,000 more Border Patrol agents, the USA has included 500 more in the FY 2018 budget (Garrett, 2018) with a pledge for more to come in the future. In return for Trump’s support, the NBPC website clearly demonstrates its support of the president. The NBPC leader, Brandon Judd, has indicated his support for President Trump’s wall and Trump has in turn tweeted his acknowledgement of Judd’s support (Chaitlin, January 27, 2018). As of May 2018, Mr. Judd declared that the National Guard deployment brought about by President Trump to help with the surge of migrants was a “colossal waste of resources” (Hennessy-Fisk, May 24, 2018). Politically, however, NBPC remains a strong supporter of President Trump’s border policies, including the border wall.

Criticism of the border wall by CBP and Border Patrol agents is rare as most public statements, especially recently, show that DHS and its agencies want more of it (e.g. Nixon, March 22, 2018). Occasionally, leaders and line agents will speak up. Former CBP Commissioner, Mr. Ralph Basham, wrote (October 25, 2011) “Building a physical fence along the entire border with Mexico was one of the dumbest ideas I heard when I was commissioner of U.S. Customs and Border Protection. It is critical to recognize that fencing (even with barbed wire, electrification, and possibly a moat filled with alligators) is not a solution, it is only a tool” (para. 1). Border Patrol agents do not put the border wall high on their list of preferences for border security. Nixon (March 22, 2018) reports that DHS documents state “the Border Patrol identified what it called 902 “capability gaps,” or vulnerabilities, on the Southwest border [...] [mentioning] a “fence” or “fencing” as a possible solution 34 times—less than 4 percent of the 902 vulnerabilities identified” (para. 6–7). On rare occasions, the overall effectiveness of the border wall is called into question by members of the Border Patrol in a public manner. Mr. Chris Cabrera, Vice President of the Rio Grande Valley Sector Border Patrol, noted that “We came with this 18-foot wall, and the very next day they had 19-foot ladders [...] [and] it got to the point where we had so many ladders at the station that they told us to stop bringing the ladders in. It was just insane the num-

ber of ladders we had. Hundreds upon hundreds” (Hamilton, November 3, 2016, para. 2). Mr. Cabrera also stated “They get up over that wall in a hurry” (para. 22). The question of whether the border wall works as originally conceived and again proposed is open to debate.

## **6. CBP, the *Homo Sacer* and the consequences of Zero Tolerance policy implementation: The role of Border Patrol in the security apparatus**

The central focus of CBP and BP may be captured and summed by examining their mission statements. CBP’s (n.d.) mission statement is “to safeguard America’s borders thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel” (para. 4). The U.S. Border Patrol’s mission states “The priority mission of the Border Patrol is preventing terrorists and terrorists weapons, including weapons of mass destruction, from entering the United States” (para. 1). These statements are prominent on their respective websites and are listed first.

Miguel Padilla, Border Patrol Chief for the Rio Grande Valley Sector, is promoting the new Zero Tolerance policy and said that “his agents had separated 568 parents from children as young as 5 since the Zero Tolerance policy was announced on April 6” (Miller, June 16, 2018, para. 2). Additionally...

In March 2017, Padilla’s agents apprehended only 646 parents and minor children crossing the border. But the number began to creep back up. And by April of this year, when the Trump administration announced zero tolerance, the tally was over 6,000.

Padilla said the new policy reinvigorated the 3,000 agents under his command, who he said were “very motivated to be able to do their jobs again.”

He shrugged off criticism, including comparisons of Border Patrol facilities to concentration camps.

“Really, our mission is border security,” said Padilla, whose unit is hiring more officers. “And I think now we have a policy that supports securing our borders”. (Miller, June 16, 2018, para. 20–23)

There is little doubt concerning Chief Padilla’s commitment to and enthusiasm for the new Zero Tolerance border security policy. The new policy regarded as “the nuclear option in the effort to discourage immigrants from unlawfully entering the United States” (Davis & Shear, June 16, 2018, para. 1) has brought about international attention with migrant children being separated from their parents to bring about more border wall and more border security.

The United Nations condemned the USA government's Zero Tolerance policy as "The Trump administration's practice of separating children from migrant families entering the United States violates their rights and international law" and the "practice 'amounts to arbitrary and unlawful interference in family life, and is a serious violation of the rights of the child,' Ravina Shamdasani, a spokeswoman for the Office of the United Nations High Commissioner for Human Rights, based in Geneva" (Cumming-Bruce, June 5, 2018, para. 1, 4). Migrants coming into the USA have lost most of their human rights which have previously been granted.

Agamben (2005) made the case for the state of siege—or state of emergency—as a legal and policy means by which the George W. Bush administration had used the terrorist attacks to protect the USA from terrorists after the September 11, 2001 attacks, invoking draconian surveillance measures and the border wall. The resulting changes began the erosion of civil rights and liberties for citizens. This was also expanded to include undocumented border crossers, the others—or *homo sacer* (Agamben, 1995), along with potential terrorists and the need for more border security, particularly along the Mexico-USA border (Garrett, 2018; Garrett & Storbeck, 2011; Pope & Garrett, 2012). The other target of the border wall are the USA citizens who live within 100 miles of the border (Garrett, 2012; Garrett & Storbeck, 2011). The *homo sacer* concept, while applied previously to all undocumented border crossers, has taken on additional meaning with the Zero Tolerance policy of 2018. Families fleeing from Central American countries due to violence and other calamities who seek asylum under USA and international law are being systematically denied their human rights. The CBP, BP, Department of Justice (DOJ) and other law enforcement agencies working with the Trump administration have designed a scheme to prevent these asylum seekers and other migrants from legally entering the USA at the international checkpoints systematically violating USA and international law (Nathan, June 16, 2018), forcing these people who have lost their rights and status, *homo sacer*, to attempt dangerous crossings of the Rio Grande only to be captured and arrested by BP (cf. Figure 1 below and Appendix 1). The state of siege scenario manufactured by CBP and Border Patrol—integral components of the border security apparatus—is on full display with the implementation by the border bureaucrats of the Zero Tolerance policy. The political spectacle of the policy is exhibited.

In addition to the legal dimensions and human rights violations, the media spectacle (Garrett, 2018; Kellner, 2003, 2016) promoted by social media, *Twitter* especially, enables President Trump to circumvent traditional media and attempt to speak directly to the citizens of the USA. There is a horrific spectacle of children being separated at the border by Border Patrol and other DHS agencies. All media in 2018 are attuned to this ongoing policy disaster.

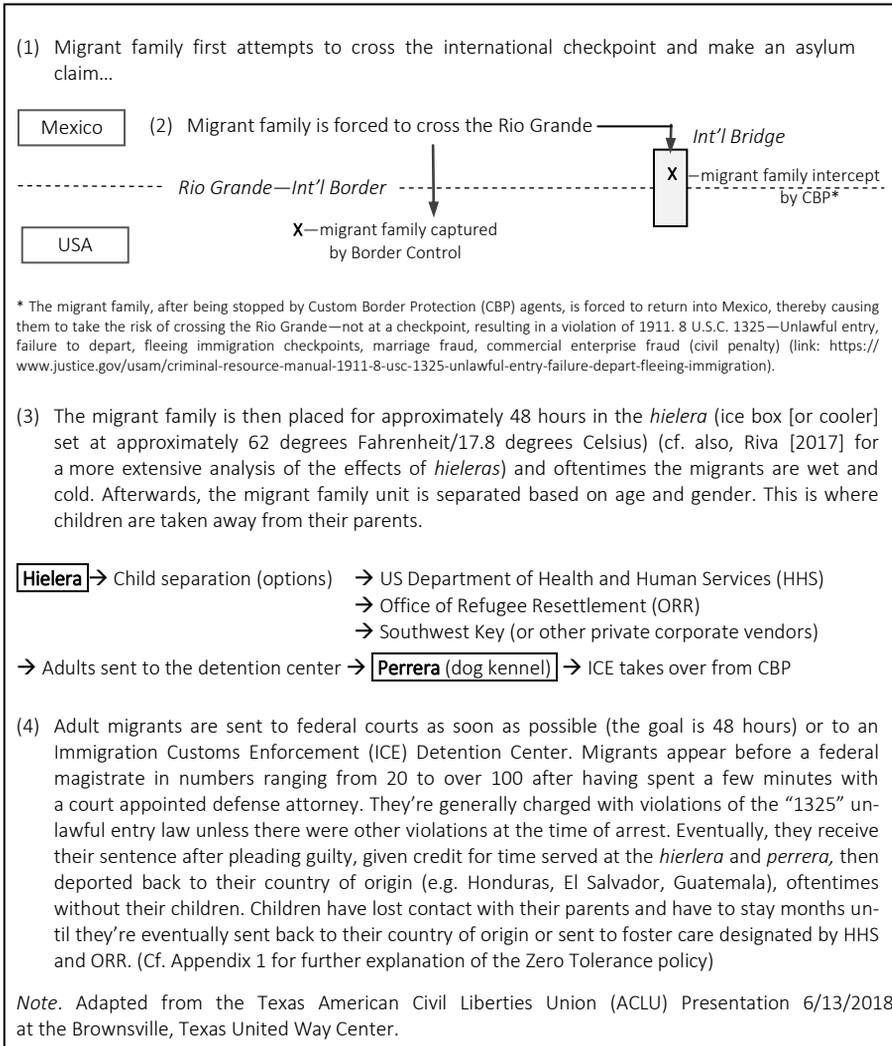


Figure 1. Zero Tolerance Policy Implemented by the Department of Justice and DHS, April 6, 2018: What It Means at the Southwest Border in Texas

The tripartite border security policy as articulated on April 4, 2017 by former CBP Commissioner, Mr. David Aguilar, is fully exhibited by the Zero Tolerance policy that may have effectively “officially” ended June 20, 2018 by President Trump’s executive order titled “Affording Congress an Opportunity to Address Family Separation” due to political pressure by national and international groups and some of the media, although there is confusion as to whether it is in force ...

Though the Trump administration outwardly is maintaining that it is continuing its “zero-tolerance” border policy, email traffic obtained by CNN shows that the policy has effectively been curtailed for now—the latest sign of confusion and disarray over how to implement an executive order designed to halt family separations at the border.

The decision by Customs and Border Protection to put a hold on referring adults caught crossing the border illegally if they arrive with their children comes after President Donald Trump signed an executive order asking his agencies to keep families together at the border—though it did not order a halt to prosecutions. (Kopan, June 21, 2018)

While the Zero Tolerance was in place, the tripartite security apparatus was in full view. CBP blocked the international bridges and Border Patrol (boots on the ground) used the wall (*simulacrum*) and surveillance (the *panopticon*) to channel undocumented migrants (*homo sacer*) to areas across the Rio Grande to be arrested, convicted, and housed in for-profit and government prisons. All of this was done, captured by the media, and may be explained by the overall milieu that is central to the *society of the spectacle* (Debord, 1967, 1995).

## **7. Summary and post case study analysis: Implications of Custom and Border Protection’s Tripartite Border Security Policy for the Mexico–USA Border**

This paper began with an examination of the social construction of reality as to whether the effects of President Trump’s implied policy positions impacted the perception of people dwelling along the Mexico-USA border in a utopian or heterotopian manner. In the areas of the environment and ecotourism, property rights and eminent domain, most are coping with the perceived attacks and crises emanating from the White House. People who care about their homes are fearful that they will be destroyed by the border wall. Border dwellers are facing a crisis based on the state of exception (Agamben, 2005)—the USA is under a state of siege—which is used as a justification and that appears to them to be completely unnecessary for security. Landowners are fearful of more border walls being constructed and not receiving just compensation—not only in terms of remuneration, but loss of properties that have been in some families for generations.

Far from being utopias, the towns and cities along the Mexico-USA border provide a sense of community that the people dwelling in the region have enjoyed for many years. The border wall strips people of their livelihoods and dignity and represents an affront to them as USA citizens. Corporations eager to build President Trump’s wall do not care about the borderlands other than whatever profits they may obtain. Walls create heterotopias—no man’s land between the where the walls are built and the actual border—the Rio Grande in Texas (Garrett, 2012; Garrett & Storbeck, 2011). Previously what occurred in the construction of the

border wall is that profits are made without regard for the people. Security is not the issue as most analysts conclude that the wall is unnecessary and other means—such as technology and more personnel—are far more beneficial. As the former governor of Arizona and former DHS Secretary, Janet Napolitano stated in 2005 about border walls “You show me a 50-foot wall and I’ll show you a 51-foot ladder at the border [...] That’s the way the border works” (Garrett, 2018; Lacy, July 19, 2011, para. 5). Communities along the Mexico-USA border will have the additional experience of extra border wall—with all the security-apparatus *accoutrement* included: invasive surveillance technology and a larger BP presence.

DHS, its constituent agencies—CBP and Border Patrol—as well as President Trump will continue to press their bureaucratically and politically-induced claims for the necessity of the border wall—thoughtlessly over the objections of the people who have much to lose, in an economically disadvantaged region of the United States. Trump blames Democrats for the Zero Tolerance policy devised by the DOJ and the DHS and implemented during his administration, despite the fact that it is occurring on his presidential watch (Davis, June 16, 2018) as he tweeted...

The Democrats are forcing the breakup of families at the Border with their horrible and cruel legislative agenda. Any Immigration Bill MUST HAVE full funding for the Wall, end Catch & Release, Visa Lottery and Chain, and go to Merit Based Immigration. Go for it! WIN! (10:08 AM, 15 Jun 2018)

The mis-perception of border violence (Correa-Cabrera & Garrett, 2014) will have its “state of exception” (Agamben, 2005; Garrett & Storbeck, 2011) narrative heard through the media by the federal government and from President Trump, for public consumption. DHS and CBP will be supported in their promotion of the border wall, increased growth of surveillance technology, and more CBP and Border Patrol personnel by the iron triangle of members of respective legislative committees and corporate interests—as well as President Trump. Building the big, beautiful border wall, more boots on the ground, and more being spent on the DHS panopticon, are all manufactured under the guise of border security, although building the border security apparatus will have continued deleterious policy consequences for *homo sacer*—dwellers living in the borderlands and migrants seeking asylum from Central America. Thousands of children remain separated from their parents—and are unaccounted for by the security apparatus—due to Trump’s Zero Tolerance policy (Shear et al., June 20, 2018).

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## Appendix 1.

### The effects of the USA DHS/CBP Border Security Apparatus for the Zero Tolerance policy: Photo examples and court hearing assessment (by the author)



Picture 1. Step 1: CBP officers turning back Guatemalan migrants seeking asylum at the Paso del Norte Bridge in El Paso, Texas before crossing into USA territory (middle of the Rio Grande) – June 2, 2018

*Note.* Adapted from “Border agents are using a new weapon against asylum seekers: Federal law allows immigrants to step into United States and claim asylum; agents are physically preventing them from doing so,” by R. Moore, 2018, June 2, *Texas Tribune*.



Picture 2. Step 2: Migrants unable to cross the bridge to seek asylum, move off the bridge into other areas along the Rio Grande and are apprehended by Border Patrol agents using surveillance technology.

*Note.* Adapted from “Immigrants who illegally crossed the Mexico-U.S. border are apprehended by the U.S. border patrol in the Rio Grande Valley sector, near McAllen, Texas,” by L. Elliott, 2018, April 5, *Reuters*.

Step 3: After apprehension and being placed in *hieleras* and *perreras*. Adults and children (if accompanying with parents) are separated, with the adults sent to a judicial hearing by the U.S. Border Patrol in Federal District courts along the border and are charged and admit to guilt for the misdemeanor charge of illegally entering the USA. Below is one example: a copy of an assessment of the court proceedings of 48 migrant defendants by the author as reported to the American Civil Liberties Union of Texas.

### **US District Court Southern District of Texas, Judge Ignacio Torteya III, Hearing of 6/18/2018, Brownsville, Texas**

#### My observations

This was my first time to observe the immigration hearing proceedings. Judge Torteya (a judicial magistrate) appeared to me to have divided the hearing in two—one for the 15 people involved in felony proceedings—including re-entry violations, migrant stash houses (human trafficking), etc., with two shackled material witnesses ostensibly involved in the case against two of the defendants, Mr. Dominguez-Roblero and Mr. Cantellano, allegedly the proprietors of the migrant stash house. I’ll call this “group 1.” The second “hearing” or stage of the proceedings involved the 48 migrants, apparently mostly from El Salvador, Guatemala, and Honduras who were alleged “1325” misdemeanor violators. I’ll refer to them as “group 2.”

I believe that the two “hearings” were put together on purpose and may be part of a pattern to use what happens to “group 1” as an intimidation tactic to influence and to cow “group 2.” The grouping of the two sets of defendants together seems highly irregular—if only because group 1 involved felony charges and group 2 involved misdemeanor charges. Group 2 was represented by Mr. Hector Garza who apparently had little time to consult with his “clients” as they all were allegedly intercepted crossing the Rio Grande from June 14–16, 2018 in Hidalgo, Cameron, and (one from) Starr counties in Texas. Group 2 all held in the affirmative to every question posed by Judge Torteya and there was little dissent in the process other than what I observed. First, one of the 48 defendants, a woman, was taken from the Hearing and it was unclear to me what the circumstances were for her removal. Second, defendant #1820—Mr. Francisco Sanchez-Lopez indicated that he had mental health problems that required medication and he had not used it in 5 years. Mr. Sanchez-Lopez was visibly having difficulty, yet, Judge Torteya proceeded onward with Mr. Sanchez-Lopez’s eventual guilty plea. Third, I sat directly behind defendant #1829—Ms. Trinidad Oliva, who was clutching a copy of the “Next Steps for Families” paper apparently given to her by someone in the Department of Homeland Security. Ms. Oliva was in tears when Judge Torteya asked her whether she received such information from Border Patrol. Ms. Oliva indicated to the judge she wanted her daughter back (Ms. Oliva was one of 12 of the 48 defendants present at the Hearing who had her child-in this case, her daughter-taken away by Border Patrol). And finally, defendant #1804—Mr. Omar Jose Ruiz-Fuentes after everyone affirmed they were guilty of the “1325” misdemeanor charge said that he was seeking asylum because going back to El Salvador “meant death” for him.

All of the defendants pled guilty and all were sentenced to a small fine and were given credit for time served in detention. All defendants were to be deported as soon as possible back to their country of origin.

After the hearing adjourned, I was left wondering why these Group 2 defendants had such lousy and superficial legal defense. It appeared that Mr. Garza was part and parcel to a system of “false” justice whereby the entire system was rigged against these migrant-defendants in order to facilitate their exit from the USA. If there were an adequate defense for any and/or all of them, why weren’t they be advised to say “not guilty” based on circumstances? Were some of them turned back by Customs and Border Protection from crossing the bridges in Reynosa/Hidalgo and/or Brownsville/Matamoros, thus causing them not to abide by the provisions of the US Code Title 8 “1325” law? This seems like a logical or reasonable defense given what some of these people have gone through to get to the USA-Mexico border. Aren’t there other circumstances that if brought before a trial jury would have been useful in their defense? I think the entire system is a sham and a disgrace to civil rights and liberties the USA is supposed to be founded upon.