A Memorandum on Border Control Policies

Officially beginning in 1994 during the Clinton administration, the United States has employed a rigorous border control policy known as "Prevention through Deterrence" to "protect" the U.S.-Mexico border from migrants trying to enter the country without legal documentation. Importantly, the policy was implemented as a substitute strategy to preceding border control policies which focused on apprehending unauthorized migrants post-arrival into the United States. Recognizing the former policy's inefficiencies, "Prevention through Deterrence" sought to take proactive action by halting unauthorized border crossings *before* migrants reach U.S. soil in hopes to deter migrants from desiring entrance at all (Ewing, pg. 198, 2014). The strategy relied on militarizing urban entry ports in California, Texas, and Arizona, including the 100-mile land radius from the US-Mexico border, specifically through implementation of border control agents, under the direction of the U.S. Customs and Board Patrol agency (CBP) and the Department of Homeland Security (DHS), as well as fencing and security technologies, for example gamma rays and cameras. The presence of border control officers, advanced technology, and fencing served a dual purpose: if the visible enforcement was not intimidating enough in its own merit, it would also serve as a barricade, forcing migrants to venture through outlawed areas, for example, Arizona's Sonoran Desert, to enter the United States (Ewing, pg. 200, 2014).

Operation Blockade in 1993 and Operation Gatekeeper in 1994—El Paso, Texas and San Diego, California, respectively—laid the foundations for the emulation and adoption of "Prevention through Deterrence" as a border control strategy (Ewing, pg. 200, 2014). While the purpose consistently aimed at averting unauthorized immigration, the policy saw significant modifications—namely, increased enforcement and stricter procedures—with each successive administration. Clinton's *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996 kickstarted expedited removal procedures (Smith, pg. 2 2019). The Bush administration framed "Prevention through Deterrence" policy as preemptive measures against terrorism in its 2004 National Border Patrol Strategy, leading to the relatively unquestioned "need" for the amplification of personnel and resources (Ewing, pg. 203, 2014). The Obama administration launched the Secure Communities program in 2008, using fingerprint databases to deport unauthorized immigrants, and the Trump administration has so far begun construction on its highly publicized border wall (ACLU, 2020; Lahkani, 2020).

Perhaps one of the most noteworthy operations during this time came during the Bush administration. Operation Streamline of 2005 oversaw the prosecution and en masse removal of unauthorized migrants with minimal criminal backgrounds, if any at all. This was thought to be the first "Zero-Tolerance" policy and the leading inspiration behind the Trump administration's current policy (Ewing, pg. 205, 2014; Chishti and Bolter, 2018). The Trump administration's "Zero-Tolerance" policy was set into motion on May 7th, 2018 by the U.S. Department of Justice (DOJ), an expansion to former-U.S. Attorney General Jeff Session's memorandum which came a month prior (Sessions, 2018a; Sessions, 2018b). An important distinction between Operation Streamline and the 2018 "Zero-Tolerance" policy is the 2018 policy not only exacerbated enforcement measures and erased exceptions and leeway, but also specifically targeted those who previously would not have been criminally prosecuted—asylum seekers and families with minors (Human Rights Watch, 2018). To summarize the current "Zero-Tolerance" policy in the

words of former-Attorney General Sessions himself, "If you cross this border unlawfully, then we will prosecute you" (Sessions, 2018b).

Both "Prevention through Deterrence" and "Zero-Tolerance" policies illustrate what Gries refers to as the "Massachusetts idea" of U.S. immigration policy—strict strategies designed to limit U.S. immigration to those who fit compatibly with "White Anglo-Saxon Protestant" (WASP) culture. High social dominance orientations and cultural traditionalist beliefs mediated by the desire for authority and maintaining social order contribute to the Massachusetts idea (Gries, pg. 140, 2014). Bush's Operation Streamline and Trump's "Zero-Tolerance" policy illustrate Gries' findings in that both set greater restrictions on who is allowed entry into the U.S., perpetuating cultural traditionalist beliefs—the presence of outsiders will disrupt WASP culture within and must be prevented (Gries, pg. 60, 143, 147, 2014). Likewise, Trump's border wall—and the physical barricades involved in "Prevention through Deterrence" strategy in general—offer a literal illustration of social order, color-consciousness, and opposition to "racial mixing" (Gries, 63, 64, 140, 2014). Bush's and Trump's administrational actions affirm Gries' assumption that, "stark ideological differences extend beyond broad feelings of warmth," and do explain the "coolness" that both administrations felt towards Mexico (Gries, pg. 137, 2014).

Despite the continuity of these policies throughout administrational changes, both "Prevention through Deterrence" and "Zero-Tolerance" face many problems that repeatedly question their legitimacy and ethics. First, the policies, in tandem, are the direct cause of stark human rights abuses, including, but not limited to, abuse, family separation, and death. For example, under the Trump administration's "Zero-Tolerance" policy, "more than 3,000 children *may have* been separated from their parents," before Trump's executive action to end family separations, according to a report by the Congressional Research Service (emphasis added) (Kandel, pg. 2, 2019). This report does not include the lasting trauma that family members will experience, even in the event of reunification (Lee, pg. 2367, 2019). Even now that families remain together, detention center conditions are still deplorable. According to a 2019 report by the Office of Inspector General (OIG), roughly one-third of the detained minors were held at least three days past their legal limits, a violation of the *Flores Settlement Agreement,* and the report cites overcrowding and the use of plastic bags as a replacement of beds (OIG, pg. 2, 5, 9, 2019). These issues are not exclusive to the Trump administration, however. From 2015, beginning under the Obama administration's "Zero-Tolerance" policy to 2018, under the Trump administration, there were over 4,500 reported cases of sexual harassment and abuse with 1,300 cases under FBI investigation and potentially more cases that were never reported (Gonzales, 2019).

The migrant death tolls as a direct result of both "Prevention through Deterrence" and "Zero-Tolerance" policy remain high. As Jason De León describes in his book *The Land of Open Graves*, "My argument is quite simple. The terrible things that this mass of migrating people experience en route are neither random nor senseless, but rather part of a strategic federal plan that has rarely been publicly illuminated and exposed for what it is: a killing machine that simultaneously uses and hides behind the viciousness of the Sonoran Desert" (De León, pg. 4, 2015). His description describes the inhumane conditions migrants face when crossing through dangerous desert landscapes to enter the United States, and his words are illuminated by a 2019 statistic that since the 1994 implementation of "Prevention through Deterrence," more than 9,000

migrants have died trying to cross the desert, though numbers are undoubtedly higher based on other challenges that plague the policy including the lack of oversight and high impunity for Border Patrol agents and the CBP (Motlagh, 2019). Recently, the House Committee on Oversight and Reform wrote a memorandum, citing the CBP's noncompliance in an investigation regarding the mistreatment of migrants in detention centers, though action has actually been taken (Committee, 2020).

Lastly, it should also be noted that while spending and enforcement for both border control policies have increased, the policies have not actually effectively solved the purported problem. The American Immigration Council notes that Border Patrol spending was at $400 million during FY 1994 when the "Prevention through Deterrence" policy was officially implemented. As of FY 2019, the Border Patrol spending was as high as $4.7 billion (American, pg. 2, 2019). This significant increasing in funding can be partially explained by the U.S. counterterrorist missions, merging parts of spending allocated for border control with other DHS missions (Crawford, pg. 13, 2019). Human Rights Watch reports, however, that the idea of increasing enforcements as a way to deter unauthorized migration is misguided; a migrant's reason for arrival is usually based on the presence of danger in their home country or their family ties in the United States, and these conditions exist outside of the militarization of a border (Human Rights Watch, 2018).

The problematic conditions under the Clinton and Obama administrations—notably, Obama's "Zero-Tolerance" policy and both administrations' responsibilities in the lives lost in the deserts—would suggest a limit to Gries' earlier findings that ideological differences between liberals and conservatives produce policy differences—at least in the context of border enforcement policies. Perhaps, the discrepancy between Clinton's and Obama's liberal ideology—assuming friendly border relations, compassion for the suffering of others, a greater warmth towards Mexico, and an inclination towards diplomacy rather than the use of military force— and their actions—mirroring that of their conservative counterparts—can be ascribed to their characteristic of being humanitarian hawks, inclining them to use military force to "secure" the U.S.-Mexico border and embrace nationalistic beliefs, for example, (Gries, pg. 126-128, 137-138, 146, 2014).

While ideology reflects little difference on the actions of the presidents in their border control strategies, the rhetoric of the leaders suggests divides do exist, positing that Gries' findings are correct insofar that only border control and migration *rhetoric* is the comparison. Comparing the discourse of Trump and Obama, this is clear. On November 20th, 2014, former-President Obama gave his Address of the Nation on Immigration. In his speech, he asserted that, "undocumented immigrants who desperately want to embrace those responsibilities see little option but to remain in the shadows, or risk their families being torn apart," and, "we're going to keep focusing enforcement resources on actual threats to our security. Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids" (Obama, 2014). His speeches reflect his liberal ideology by emphasizing his value in compassion and fairness: he empathizes with the suffering of undocumented immigrants and channels the undocumented immigrant's vulnerability in his speeches, speaking to the unjust system that criminalizes them (Gries, pg. 84, 146-147, 2014). In contrast, when reflecting on the U.S.-Mexico border and asylum-seekers, Trump tweeted, "Many Gang Members and some very bad

people are mixed into the Caravan heading to our Southern Border. Please go back, you will not be admitted into the United States unless you go through the legal process. This is an invasion of our Country and our Military is waiting for you" (Trump, 2018). Unlike Obama, Trump views noncitizens as a threat, highlighting his conservative needs for increasing in-group solidarity and security (Gries, pg. 37, 2014). Likewise, his emphasis on "legal," suggesting that actions would be otherwise, highlights the conservative value of authority, and the description of "gang members" and "very bad people," allude to his favor for social order as well as his desire to maintain "WASP purity" (Gries, pg. 62-63, 78, 153, 2014).

Based on the problems "Prevention through Deterrence" and "Zero-Tolerance" policies face and the stated statistical evidence of these issues, two recommendations are offered to improve border control strategies while improving human rights conditions for migrants. First, further oversight, transparency and accountability are needed within CBP and Border Patrol. As noted, several migrants have been mistreated, abused, and killed based on both agents' direct actions and their inaction. In *The Geography of Border Militarization: Violence, Death, and Health in Mexico and the United States*, researches report that as the "largest police force in the U.S.," Border Patrol lacks the systems in place for the proper training and oversight of its agents (Slack et al., pg. 19, 2016). The report cites several abuse scandals and notes that "97 percent of all complaints against CBP agents result in no action," (Slack et al., pg. 21, 2016). To solve these issues, it is first necessary to improve CBP's Use of Force handbook. Last updated in 2014, the handbook does not provide legal guidelines or policies explaining the purpose for the use of such force (Slack et al., pg. 21, 2016; CBP, 2014). The handbook also fails to recognize the consequences of misconduct, aside from ambiguously stating that certain actions "may result in a disciplinary action" (CBP, pg. 19, 2014). It is recommended that the handbook is written to include detailed procedures that are taken when an agent is found to have committed misconduct. The DHS, the parent agency of CBP, should also follow the eight recommendations laid out by the Office of Inspector General (OIG) to ensure greater oversight and accountability is met with CBP and Border Patrol (OIG, pg. 13-14, 20, 2019).

A weakness of this recommendation is it assumes designated oversight groups would actively pressure CBP and Border Patrol to comply. Because the DHS has, by and large, ignored recommendations thus far, it is difficult to gauge how much would really change with the addition of an extra committee group, especially one that is not a third-party mediator. A strength, however, is that the additions to the handbook would exert pressure on individuals within CBP and Border Patrol to comply. When CBP and Border Patrol commit violations, enforcement would be more realistic with actual rules to enforce in place. Additionally, this would provide the public with greater transparency.

Creating more legal pathways for immigrants to receive citizenship, granting protective status to those fleeing dangerous situations, and expediting legal procedures to process these requests all form a second recommendation worth considering. Recalling the statement by Human Rights Watch that many who try to cross the U.S.-Mexico border without documentation are either refugees or transnational families who seek to live with their loved ones, the expansion of legal opportunities is crucial if the U.S. government has any intention to end unauthorized migration (Human Rights Watch, 2018). Medrano recognizes similar trends, stating that there has been an influx of refugee, de facto refugees, and asylum seekers to the United States from

the Northern Triangle (Medrano, pg. 129, 2017). She later addresses the decreased protections offered to these groups since the beginning of the Trump administration (Medrano, pg. 133, 2017). Not only has the Trump administration dismantled protections in place for those fleeing danger, but also its "Zero-Tolerance" policy calls for prosecutions to include those claiming asylum and those with children—the groups that, as Human Rights Watch reports, are representing the largest groups of those attempting to cross the border without documentation (Kandel, pg. 2019; Human Rights Watch, 2018). In order to protect these vulnerable groups, lower the number of unauthorized entries into the U.S., and combat other enforcement obstacles, for example, overcrowded detention centers, it is recommended that family visas and green card, asylum, and like-status quotas increase and the wait time for processing immigration and related documents is reduced by at least half (OIG, pg. 5, 2019).

A strength of this policy recommendation is that it would directly impact vulnerable groups, preventing them from suffering inhumane alternatives, for example crossing Arizona's deserts or being detained, abused, or mistreated. Additionally, creating more pathways for legal entry and protection would deduce those who are forced to opt to unauthorized methods, working in line with the goal "Prevention through Deterrence" and "Zero-Tolerance" policy sought to do in the first place. A weakness is that while following this recommendation would reduce overcrowding in detention centers, it might overwhelm court systems and immigration legal offices. Likewise, even with increases in citizenship, asylum, and related quotas, there would still be vulnerable people denied of these services. Lastly, it's highly unlikely that unauthorized migration will ever stop entirely, though that doesn't mean progress cannot be made.

Border control strategy lacks scrutiny by design, and as a result, several variables remain unknown. One "unknowable" is the total collateral damage accompanying "Prevention through Deterrence" strategy and "Zero-Tolerance" policy. As stated, thousands die crossing Arizona's deserts every year, in part, based on naturally dangerous conditions, for example, the extreme temperatures in tandem with the absence of water. Border Patrol agents exacerbate these already deadly conditions by emptying water tanks that aid groups leave for migrants, fueling migrant death (Carroll, 2018). Because the desert is so expansive, it's impossible to account for all the deaths, especially as corpses decompose overtime, meaning that true statistics regarding how lethal "Prevention through Deterrence" policy is unknown (Bichell, 2017). Likewise, while there are statistics as to how many migrants have been abused by Border Patrol, CBP, and U.S. Immigrations and Customs Enforcement (ICE), the numbers are not an accurate reflection of the true scale of the crime, based on both the nature of abuse. Lastly, trauma is not quantifiable; a statistic may tell report many noncitizens have been placed in detention centers, but numbers will never accurately reflect the lasting impact of being detained, especially as a minor.

These "unknowable" statistics make it rather difficult to fully interpret both how dehumanizing the United States' current border control policies are as well as how constitutional these practices are, but to be clear, the ambiguities of U.S. border control strategy are—and have always been—deliberate. As long as these "unknowables" remain unknown—and they will—the government can continue to enforce tough border control policies without responsibility for the lives their policies claim, further erasing or subjugating non-WASP communities. These ambiguities align both with Mayerfeld's U.S. self-exemption policy and Gries' border control

findings relating to conservative ideology. First, Mayerfeld explains U.S. self-exemption policy as the United States' refusal to recognize and honor human rights, or inspired treaties and legislations, while expecting other countries to follow such international treaties and standards—a double standard (Mayerfeld, pg. 117, 2016). Gries' findings relate to the U.S.' intentional ambiguities in that the border control policies that have been set in place since 1994 have been conservative in nature, recalling the limitation of the liberal-conservative divide *in practice*. These tough policies suggest downright frigid temperatures towards Mexico and the Northern Triangle, they emphasize a lack of sympathy, they show a perversion to exert authority—and in the harshest ways possible—and they emphasize the conservative's need for racial separation, even to the extents of detention and death to achieve such separation (Gries, pg. 137, 140, 149, 2014).

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