

Necro-Rhetorical Constructions of the Migrant: An Image of Death on the Border

by

Natalie Baumann

A Thesis Presented in Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts

Approved April 2020 by the  
Graduate Supervisory Committee:

Maureen Goggin, Chair  
Keith Miller  
Elenore Long

ARIZONA STATE UNIVERSITY

May 2020

## ABSTRACT

This thesis examines the rhetorical relationship between migrant death and American culture, with an emphasis on how postmortem treatment of the deceased gives shape to anti-migrant attitudes. By isolating one instance of death on the border and considering the discourse that ensued in the following two months, this research assesses mechanisms of a rhetoric of death (necrorhetoric) as they relate to sociopolitical constructions of the migrant. The political apparatus of the State as a natural extension of biopower confers upon it the authority to produce sacred life or bare life (*homo sacer*). This process of production creates conditions of being which precede the potential to kill without allegation of murder, constructs the content of sovereign power, and results in a social sense-making, or public doxa, that informs cultural values and justifies collective attitudes. As the process is perfected, meticulous and calculated demonstrations of force become a crucial exercise of sovereignty. Efforts to enforce and maintain control of the border develop into increasingly streamlined methods, placing the state on an incremental trajectory of power that inaugurates ritualized and state sanctioned violence. The aggrieved take on a sociopolitical role that renders their lives less than fully human, allowing further alienation and segregation to occur. The desire to maintain sovereign power is the typifying force around which United States history has been shaped, and this desire continues to inform contemporary American policy. Analysis of legal, presidential, and news documents pertaining to the deaths of Oscar Martinez Ramirez and his twenty-three-month-old daughter, Valeria, reveals a network of rhetorical maneuvering that gives evidence of a necropolitical environment defined by its intentional and obscure brutality.

## TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
The Border.....	1
Necropolitics and <i>Homo Sacer</i> .....	7
Population Management.....	10
Citizenship.....	13
OSCAR AND VALERIA MARTINEZ.....	15
METHODS.....	18
PRESIDENTIAL RESPONSE.....	20
MEDIA RESPONSE.....	29
LEGAL RESPONSE.....	35
CONCLUSION.....	41
REFERENCES.....	44

## **Introduction**

### *The Border*

On June 8, 1854, the pen stroke of an American businessman plunged nearly 300,000 Mexican nationals, residing in what is now southern Arizona and New Mexico, into a precarious state of existence as the line between the United States and Mexico now declared them to be foreigners in their own home. The deal between James Gadsen and then president of Mexico, Antonio López de Santa Ana, was one of the last major territorial acquisitions by the United States. Though it occurred nearly two centuries ago, this land sale has continued to be a thorn in the side of the Mexican-American relationship, as the imperialist spirit of superiority and authority that motivated the purchase continues to reinforce inequality between the two countries. The forces of coercion and manipulation that took advantage of a then-unstable Mexico for the purpose of acquiring its land have remained in place to this day, as contemporary forms of control and regulation are thrust upon those who, having been ancestrally displaced from their homeland, now wish to return for the benefits of its prosperity and safety.

The United States lauds itself as a land of liberty and freedom, though entry into the state is profoundly regulated. While it is a simple task to fixate on current heads of state when considering present border conditions, the policy-centric border security that we are familiar with today has its roots in the Reagan administration. The 1994 Immigration and Naturalization Services program implemented a “Southwest Border

Strategy” initiative in four phases with a plan to militarize the border for the purpose of intimidating outsiders and discouraging illegal border crossings. “Operation Gatekeeper,” passed by Bill Clinton in 1994, built a ten-foot wall that extended fourteen miles on the border between California and Mexico. After the 9/11 attacks in 2001, militarized border protection was escalated and new measures such as moving border crossings to increasingly hostile landscapes were applied. With these new measures, came a documented increase in people detained at the border and bodies recovered in the desert. In 2002, the Immigration and Naturalization Services became part of the Department of Homeland Security. The DHS engaged in several recategorization efforts, one of which placed Border Patrol under the newly formed administration of Customs and Border Patrol. With more resources and manpower than ever before, the DHS and CBP moved to pass an act that would extend the fourteen-mile fence hundreds of miles further. The Mexican-American border had begun its transition into a *deathscape*.

Leshem, arguing that these *deathscapes* or *death spaces* “function as a spatio-cultural component of a border ‘enclave geopolitics’ that typifies the struggle over territory [in Jerusalem],” occasionally interchanges those terms with the concept of *necrogeography*. Centering cemeteries within a political struggle largely predicated on geographical tension invokes Mbembe’s theories of necropolitics and challenges the heavy conceptuality that is characteristic of the framework often used when considering the function of biopower. Using the context of the cemetery, geographies that exist for the purpose of accommodating death become an emblematic indication of the power that

the sovereign holds over not just life, but the geographies these lives inhabit. Leshem suggests that this function of authority makes these spaces into “powerful geopolitical instruments,” yet he draws parameters around his conceptualization of *necrogeography* as merely a place where the dead reside after dying. It is in these location where death actually occurs that I believe this term could be applied. Though necropolitics focuses mostly on the relationship between the state and the bodies over which it wields sovereign power, the geography within the jurisdiction of the sovereign cannot be ignored when considering the ways in which power operates. In expanding the uses of the term necrogeography, I would like to propose that the spatio-cultural component of border tension not only uses certain geographies to its advantage, but actively weaponizes these spaces against bodies it does not approve of. In broadening the use of the concept in this way, it is my hope that the function of geography as a moral alibi to the state will become clear.

Mark Salter argues that “routine performance of the border on both citizens and foreigners creates the subject and the sovereign through the submission of the traveler and the recognition of the sovereign,” a point which aptly recognizes the continuous generative power possessed by the border in reinstating its own authority and the authority of the state (366). The border plays a totalizing role in constituting “the population through the decision to admit or exclude and in terms of measuring and manipulating the quantities and qualities of the population through citizenship, immigration, and refugee adjudication” (Salter, 366). Following Butler’s theories of

performative identity, borders can be understood as performative entities and, as the border is performed upon each passing citizen, it is replicated and reinforced. Close proximity to border spaces alter the rules of propriety regarding human interaction, as the options available for movement through space become narrower until it is regulated so thoroughly that it might well be scripted. Bodies are coordinated and mundane human actions—hugging loved ones, using the restroom, taking measures to keep warm—are disallowed. As their ability to act is further stripped from them, migrants become mechanisms of state interest, their actions and inactions dictated by and belonging to those in power on the border. Along these lines, Nancy Wonders has defined border performativity, arguing that it “takes as its theoretical starting point the idea that borders are not only geographically constituted, but are socially constructed via the performance of various state actors in an elaborate dance with ordinary people who seek freedom of movement and identification” (64). The events that take place on the border are reflections of a larger ethos of the state, in this case, an ethos of what Isin refers to as the anxious, neurotic citizen who will accept all measures of dehumanization of the ‘other’ in order to feel secure. These privatizations profoundly affect understandings of human movement, an act around which one’s ability to care for and defend themselves and others revolves. The United States-Mexico border privatizes human movement through the seemingly innocuous performance of its identity on the body. This *border performo-privatization* draws again from Judith Butler’s theory of performativity and Mark Salter’s theorization of specifically border related performativity, positing that the border’s

identity is constituted through routine stylized acts, all of which are contingent on the proximity of bodies.

Additionally, the mundanity of movement is challenged by the ways in which people are able to move across the border, as their bodies and voices are restricted by the state implemented processes and procedures, i.e., linewatch and signcutting (watching and tracking the evidence or signs left behind by travelers through a terrain, e.g. footprints, disturbances to plants, human waste); traffic checkpoints on roads that lead away from the border; luggage inspection; documentation inquiry and authentication; the inspection of interior-bound conveyances; unspecified biometric measures; the allowance of crossings only at certain manned geographical locations; questioning of intent and motives for entering the country. These measures assume a hostile, potentially dangerous individual and prematurely appraise their value. They are exhaustive and seek to investigate until all avenues have been queried and presumed to be unthreatening. Until the person has been labelled admissible, the processes and procedures which they must endure know no difference between the dangerous body and their own; all are subject to the border's interrogation and the border is indeed eager to interrogate, as its existence relies on the presence of objects upon which to perform its restrictions and limitations.

This eagerness is evident in the harsh and brutal processes migrants undergo as they attempt to cross. The state as sovereign has the ability to justify the “extraordinary measures [used] to maintain control and exclude ‘uncivilized’ non-US citizens” (De León



et al., 452). While it is less likely that a Customs and Border Patrol officer will encounter a hostile subject or experience a hostile interaction, they are far more likely than other enforcement officers of the state to use extreme force as a response (Marquez 2012). Under the guise of “border protection” (Chávez, 2012), violent acts are legitimized and even celebrated as heroic. Customs and Border Patrol frequently release propaganda citing the bravery of their agents and take measures to honor their actions through award such as “Officer of the Year,” given by the International Association of Chiefs of Police. Awards such as these receive more publicity than the hostile actions of border patrol agents like Matthew Bowen who was sentenced to just three years of probation for hitting a Guatemalan man with his truck two times before taking to social media and referring to migrants as “disgusting subhuman shit unworthy of being kindling in a fire.” Before this episode that ended his career, Bowen had previously been investigated for use of excessive force; his file lists several incidents of violence, including an accusation of giving an already apprehended and handcuffed suspect what agents refer to as a “rough ride,” slamming on the gas and then suddenly hitting the breaks causing the suspect to be flung against the floor of the vehicle. While Bowen’s actions were not celebrated outright by CBP, the moderate punishment and continuation of the narrative of heroism pushed by the organization communicates a general attitude of indifference towards the wellbeing of migrants that is, as proven by the violence of CBP agents, understood to as an endorsement of their behavior. The motivation to brutality is enhanced by widespread fear tactics and the public praise that follows a thwarted crossing attempt. Border

protection ignores the constant violence enacted on the migrant people and fortifies the border as a “particular space, [where] sovereign power produces migrants as excluded subjects to be dealt with violently while simultaneously neutralizing their right to resist” (De León et al., 452). Policy, deliberated upon in the offices of our nation’s capital, is the authority under which these selective necropolitical practices are sanctioned. The presence of regulatable bodies upon which to enact its restrictions and limitations imbues a border with not only its identity but its purpose; without the bodies of migrants, the border is unable to perform itself and ceases to maintain its identity.

### *Necropolitics and Homo Sacer*

Foucault’s concept of biopower, Agamben’s figure of *homo sacer*, Mbembe’s sociopolitical construct of necropolitics, and Cacho’s discussions of social death both directly and indirectly build upon one another to create a thorough understanding of the State as a natural extension of biopower. The political apparatus of the State as biopolitical sovereign makes it such that delineations of “who must live and who must die” (Mbembe, 2003) are well within its abilities. Agamben’s theories of *homo sacer* are helpful in understanding the conditions of being which precede the ability to die at the hand of another without the accusation of murder. He directs us to Pompeius Festus’ treatise *On the Significance of Words*, in which Festus explains,

The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not

be condemned for homicide; in the first tribunitian law, in fact, it is noted that ‘if someone kills the one who is sacred according to plebiscite, it will not be considered homicide.’ This is why it is customary for a bad or impure man to be called sacred.

The figure antedates the separation of religious and secular law, though does not align itself with either. Drawing a direct parallel between the treatment of the law in a state of exception and the treatment of the body when considered *homo sacer*, Agamben argues that the violence to which the *homo sacer* is subject cannot be classified as sacrifice or homicide, as they are a figure fully removed from both human and divine law. When removed from the sanctioned forms of both human law and divine law, another “sphere of human action” is made available. The contemporary manifestation of this “other sphere” is that of sovereign decision—that is, decision made by a human authority which considers itself to be divine. The structures of the sovereign and the sacred are then connected, as the sovereign, now standing in for the divine, is anointed with the power to implement distinctions of sacred and profane. Agamben explains that this sovereign sphere “is the sphere within which it is permitted without committing homicide and without celebrating a sacrifice, and sacred life—that is life which may be killed but not sacrificed—is the life that has been captured in this sphere” (*Homo Sacer*, 83). Sovereign power is defined by this ability to kill without consequence, and the production of sacred life or bare life constructs the content of sovereign power. The primary activity of sovereignty is to produce life over which it is able to wield absolute control—bare life—

and it does so by assuming the place of the divine. Meticulous and calculated forms of violence become a crucial exercise of sovereignty, as efforts to enforce and maintain control of the borders that define a sovereign territory develop into increasingly streamlined methods.

Achille Mbembe identifies occupation as the primary mode of control. The conflict over not only border regions but those who challenge mechanisms of its control demands sovereign occupation, “and occupation means relegating the colonized into a third zone between subject hood and objecthood” (Necropolitics, 26). Sovereign enterprise is marked by its presence in these transitional zones between territories under differing authority. Mbembe identifies these ambiguous zones as “frontiers. They are inhabited by ‘savages.’” He continues, “as such, the colonies are the location par excellence where the controls and guarantees of judicial order can be suspended--the zone where the violence of the state of exception is deemed to operate in the service of ‘civilization’” (Necropolitics, 24). Civilization acts in service to the sovereign and reinforces its authority through a system of recurrent performances: the sovereign protects the civilization it has chosen to be worthy of its protection; civilization provides the sovereign with a subject over which it is able to exercise its power. Subsumed into the sovereign as a part of its whole, civilization and the violence enacted on its behalf can then be understood here to stand solely in service of maintaining sovereign power. This control, which is given a moral alibi under the guise of protection, creates what has been described by the ACLU as “constitution-free zones” that restructure the sociopolitical

framework of ethics within the territory. Cacho expounds on this concept, explaining that for those who do not fall under the favor of the authoritative body, “the law punishes but does not protect, disciplines but does not defend” (8). Further, she argues, “as criminal by being, unlawful presence and illegal status, they do not have the option to be law abiding, which is always the prerequisite for political rights, legal recognition, and resource redistribution in the United States” (Social Death, 8). In these spaces of exception, the right to have rights is stripped from distinctly coded individuals and their status as “criminal by being” justifies their ineligibility for personhood.

“Territorialization” is the process that Mbembe defines as the production of extensive cultural imaginaries. Building upon Schmittian understandings of territory as “the political status of an organized people in an enclosed territorial unit,” Mbembe offers new ways of understanding political status as defined by relationship with territory (The Concept of the Political 19). He asserts that these cultural imaginaries create a discursive framework that allocate rights unevenly to different “categories of people for different purposes within the same space” (Necropolitics 26). Sovereignty in this sense creates a caesura between groups of people as it delineates the criteria required for interacting appropriately with each. The distinction between dispensable and indispensable carries legal and moral implications, and the denial of wrongdoing that is allowed on the part of the sovereign—here, the State—creates a framework within which people’s lives are discursively and physically stripped of dignity and meaning. The ritualized violence that certain people undergo at the command of the State permits both citizens and officials to

overlook traumatic behaviors that cost lives and usher in new, more violent ways of interacting with similarly coded bodies. Sovereign authority responds to new modes of threat in a mechanical fashion, adapting quickly to perceived modes of threat. They develop forms of violence that are at once more efficacious and more subtle, and the necropolitical landscape further evolves into an environment defined by its obscure brutality.

### *Population Management*

Charlotte Epstein presents the orientation of the modern state as evolved from what Foucault referred to as *governmentality*, a process in which governments become managerial and adopt “an overall tendency toward increasingly efficient forms of population management” (151). Epstein’s term for this evolution is *governmentalization*, which she claims places the state on “an incremental trajectory of power” (152). Policy changes, shifts in public attitude, and tightening regulatory measures are all processes through which this population management is achieved. In a space as highly regulated as the border, governmentalization has been naturalized through continued exposure to the Schmittian language of “internal/external” which necessitates a physical line across which bodies must pass to achieve “internal” status. This governmentality is the subject of little to no resistance, as the immediate check of its power is the government it protects.

Enhanced border control measures streamline population management, both standardizing its practices and reinforcing its necessity. These strict regulations privatize access to the United States, rendering it accessible only to its preexisting occupants and those who have the means to comply with the processes and procedures of its crossing points. Due to innumerable regulations which are reinforced and enhanced through various physical and psychological measures taken by those in power, the United States is most directly available to a network of naturalized and legally approved citizens. As the boundaries of the American national network have become increasingly rigid over the previous three decades and the number of potential candidates for legal entry grows, the state has adopted aggressive prevention policies that exploit American fear and foster the belief that personhood is synonymous with legal status. The most notable of these policies is metering. Driving many desperate individuals and families to cross the border at dangerous geographical points, metering has been the fundamental cause of countless deaths. The discursive construction of migrant life is perhaps at its most bleak when faced with the statements of those who discuss metering and its life-threatening effects.

Former Immigration and Naturalization Service (INS) Commissioner, Doris Messner explains that if the major border gateways can be controlled and migrants can be directed to cross at areas of the border that do not place them on a direct trajectory to populated areas the geography will cause the death of the migrants. These geographies, these “vast and varied migrant crossing areas, not limited to any specific demarcated or confined space though ‘grounded’ so to speak in specific geographic terrains,” referred to

as ‘killing fields’ and ‘the corridor of death’ by the US Customs and Border Patrol, become, in a sense, Agamben’s death camp (Doty 608). The spaces reflect with an alarming degree of accuracy Mbembe’s description of *death-worlds*, or “new and unique forms of social existence in which vast populations are subjected to conditions of life conferring them to the status of the living dead” (Necropolitics, 40). Crossing the desert, migrants face extreme dehydration and heat-related illnesses. Corpses are found with their skin stretched thin over their faces, sunburnt and peeling. The bones found by volunteers who search for the remains so they might be returned to loved ones are often bleached white by the sun, brittle and cracking from prolonged exposure to high temperatures. Those who survive long enough into their desert crossing are frequently subjected to profound and disturbing human rights violations: women who make the journey describe the environmental hardships as well as the direct danger they are in from cartel members who patrol the border waiting for weak victims to kidnap and extort.

Women and children who cross the desert illegally face rape at the hands of the cartel or smugglers; women and children who cross at designated border crossings face rape at the hands of INS or border control agents. In an interview with the National Public Radio, police Lt. Michael Ford reports that women who cross the desert “may carry [contraceptives] just because there's an expectation that there may be an assault somewhere along the way...they already are kind of prepared that...they're completely at the will of the people...the coyotes who are transporting them.” Women’s bodies are exploited as payment in the middle of the desert, facing abandonment if they do not meet



their smugglers demands. In the same interview, independent journalist, Jude Joffe-Block, tells of a mother and her daughter who were forced by their smuggler to take birth control “Because the coyotes know what they're going to do in the middle of the desert. Once [they] started walking with the group, she couldn't keep up. One of the coyotes said he'd wait for her, but only if he could have sex with her daughter. They refused, and he abandoned them.” The choices women face often reflect this same narrative: if they want their bodies to survive, they must endure merciless and enthusiastic violation.

### *Citizenship*

The contemporary understanding of citizenship as the position or status of being a legally recognized subject is a narrower one than in centuries past when citizenship was contingent on participatory practices and engagement rather than documentation and legal status. Karma R. Chávez considers the evolution of the term, asserting that “we cannot deny that [documentation and legal status] is the predominant understanding of citizenship, and we further cannot deny that this kind of citizenship is a product of modern state development and also of the colonial creation of national borders” (165). The internal/external narrative of disunion offered to Americans by their understanding of the United States as a protected space grants them the ability to quickly and efficiently adopt an attitude that understands outsiders as the ‘them’ against which their home must be defended. Irrespective of their motivations for wishing to enter, the severe rhetorical weight of state immigration policies and procedures falls disproportionately onto the

shoulders of migrants, who face inordinate exclusionary and defensive measures merely because they are without American origin.

“Alien” is the name given to any man or woman not a citizen or national of the United States. This word is used extensively in discussing the legal rights of migrants who make their way to the United States seeking a safer life for themselves and their families. The classification of “alien” is an institutional measure implemented by the United States for the purpose of reinforcing an “other” who is external and apart from legal American citizens. “Power,” Achille Mbembe notes, “continuously refers and appeals to exception, emergency, and a fictionalized notion of the enemy” (Necropolitics, 16). The implications of this classification and the caesura it enforces are political, social, and legal, as the presence and magnitude of State sympathies are largely determined by an individual’s status as citizen. Because of their classification, the people described by the State as “aliens” benefit from fewer constitutional protections. The term, which calls attention to their alterity, is distinctly pejorative and associates these individuals with nonhuman invaders. It has also become the nucleus around which most of United States immigration law and discourse orbits. American media and journalism largely ensure that these “aliens” are faceless. They come from countries that most Americans have never visited and they speak languages unknown to the vast majority of United States residents. It is easy to distance oneself from something both nameless and faceless, and those who wish to keep asylum seekers in exile know and use this to their advantage.

## Óscar and Valeria Martínez Ramírez



“I did not want them to go,” Ms. Ramírez said to New York Times journalists. In the quiet of her home, surrounded by artifacts of her late granddaughter’s presence, she continued to explain that violence, extortion, and drug-dealing were the motivations for her son taking his wife and daughter north from El Salvador to the United States. Though the family could not claim to be directly imperiled by the gangs in their city, their opportunities for work were heavily restricted due to the cycle of poverty perpetuated by their proximity to gang violence and the presence of drug use in the area. Víctor Manuel Rivera, the mayor of San Martín, describes what the locals have characterized as “la

situación”—the situation—claiming, “there isn’t opportunity, there’s no work.” The economic struggle faced by a vast majority of the city’s inhabitants places their current conditions in stark contrast with what the mayor says they all have hope for: “the American Dream.” For those who make the northbound trek, this dream embodies their wish for stability and safety from various forms of economic, social, political, and criminal injustices.

In spite of the odds that were stacked against them, both Mr. Martínez and his wife held jobs at local fast food restaurants. Even with their combined salaries, though, they were still living on the edge of poverty, unable to make ends meet for their small family of three. The meager \$300 a month that they earned working multiple jobs each was not enough and, after months of deliberation, Mr. Martínez decided to ignore the wishes of his mother to follow the example of many other Salvadorians who had attempted entry into the United States under an asylum plea. Mr. Martínez did not make clear his strategy for advocating his family’s right to asylum, though recent measures had been taken under the current administration to impose restrictions on what Trump describes as “asylum fraud.” These charges of fraud implicate any person who makes a claim to asylum when their lives are not in immediate danger. Under these guidelines, Mr. Martínez’s plea—taking place after travelling hundreds of miles, eating far less than what an adult body requires, and without access to a lawyer—was sure to not only be denied, but labelled as an abuse of the system as well. According to relatives in the city of Matamoros, just south of the border, they made it to the border bridge and were turned away due to lack of credibility, likely due to the family’s inability to prove that they were

fleeing immediate and direct violence. It was then that they decided to ford the Rio Grande. They made their way north to the river, and Mr. Martínez took his 23-month old daughter under his arm, tucking her into the front of his shirt. He then entered the water. According to Mrs. Martínez, the crossing grew much harder as they drew closer to the opposite side of the riverbank. The rapids quickened and she began to fear for her life. Making the executive decision to turn back, she glanced toward the American side of the river hoping to catch a glimpse of her husband and daughter. As she scanned the distant bank of the river, she saw them disappear under the water. Their dead bodies were recovered shortly after, with Valeria Martínez still tucked securely inside of her father's shirt.

The events that followed their deaths plunged the two victims and their families into a network of systematic re-traumatization as photographs of their bodies were circulated throughout American national news. Sources ranging from CBS to Fox News posted stories accompanied with photographs of the two drowned migrants face down on the bank of the river, clothes soaked and muddied, their faces buried in six inches of watery silt. Oscar and Valeria's family did not get a chance to see the photograph before its publication and have since described the grief they felt over the deaths as magnified due to the insensitivity of journalists and border officials when dealing with the aftermath of the deaths. Many allies and advocates shared the photograph as a call to action and another example of the indirect violence endured by those who interact with the southern border without realizing the harm and indignity such actions inflict upon the people who are hurt most by the policies they are working to resist. Unfortunately, this insensitivity

was only the beginning, and the dissemination of the photographs proved part of a larger necropolitical structure designed to generate death as proof of its authority. I posit that the events which followed Oscar and Valeria's death fit into and reinforce a necropolitical system that delegitimizes the dignity of migrant life such that it is possible to kill a migrant without substantive accusation of murder. That is, migrant lives can be taken with little to no formal or procedural repercussions, diminishing their life to little more than that of an animal. In the analysis that follows, I will use the presidential, media, and legal responses to this event as illustration of this sociopolitical phenomenon, and bring to the forefront one example of the material consequences of necropolitical action.

## **Methods**

For the purpose of achieving a focused yet thorough analysis of the American necropolitical landscape as it relates to the photograph of Oscar and Valeria, the approach I have taken in this project is three-pronged. The methods I elected to use will focus specifically on the presidential, news media, and legal responses to the incident immediately following the photograph's release. To stay within a reasonable scope for this project, I have chosen to isolate the texts I am using in kind and date. The presidential responses I incorporate into my analysis have been selected from a variety of press releases, media interviews, and social media posts from Twitter. In order to ensure relevance and prove connection to Oscar and Valeria's deaths, these texts all include direct references to the deaths and/or United States immigration policy. Additionally,

each statement analyzed occurred within two months of their deaths and can therefore be qualified as speech events occurring in the immediate aftermath of the tragedy. A more in-depth cross-section of media responses might include a social media angle, incorporating analyses of more ephemeral media options, i.e., posts from Instagram, Facebook, and personal blogs. For the purpose of this analysis, though, I have elected to use print journalism as representative of authoritative media. I feel that such a selection is adequate due to print journalism's influential reputation, and its general accessibility among wide audiences. The articles I analyze have been selected from a diverse pool of news outlets, including Vox, CBS, Fox News, NPR, Independent, and The New York Times. I chose these outlets due to their unique reporting strategies and, for some such as Fox News, clearly identifiable rhetorical strategies. It is my hope that the variety of political leanings represented in my analysis will offer a thorough representation of the rhetorical responses to this event and trending attitudes towards migrants reinforced by print journalism. To analyze the legal proceedings following the events, I will need to be a bit broader in regards to source material. I have chosen to look at a timeline of border policies and procedures from the time of the deaths onward in order to gauge the way in which they have changed. It is my intent to draw a conclusion concerning overarching legal attitudes toward the unorganized and often illegal metering policies that strand migrants at the border with little to no humanitarian aid and force them to take measures similar to the Martinez family.

I use an emergent coding scheme to categorize the information I find into a coherent framework that assists me in the process of drawing parallels and developing

thematic ideas. Employing a necro-rhetorical lens, I choose to focus on language that I believe to be relevant to the production of bare life. Because of my own political and personal beliefs, there is significant chance of bias present in my analysis. Due to this, I approach the data without any preconceived notions of what I will find and allow the texts to speak for themselves. This methodology protects against a large amount of pre-existing biases about the individuals or institutions presented and encourages my analysis to emerge from the texts rather than from my own preceding opinions. The emergent coding process for this analysis includes the identification of raw data, development of descriptive preliminary codes, and subsequent reification of these preliminary codes into more concise labels, or final codes. Because there are consistent themes that appear throughout the texts, I allow these final codes to span across all three categories of text that I am using, though not all will apply to more than one. The following analysis serves as an explanation of the network and ideas that emerged from the codes that I identified.

### **Presidential Response**

“The asylum policy of the Democrats is responsible.” The words rung out clear and unwavering the morning of June 27<sup>th</sup> 2019. President Trump’s remarks before boarding Marine One had addressed a wide range of affairs before one reporter’s question cut through air: “Mr. President,” the reporter had asked, “how do you feel about the picture of the father and daughter dead?...What did you feel when you saw it?” The reply that came was quick and self-assured. “I hate it,” Trump answered confidently, descending into the familiar refrain of walls and open borders. When pressed further



about the policy that pushed Salvadorian migrant Óscar Alberto Martínez Ramírez and his young daughter Valeria to swim the Rio Grande the previous morning, though, his words began to suggest that his hatred was only minimally concerned with the loss of their lives. His display of grief, steeped in indignation toward the Democratic party and measured innuendos invoking the objectionability of migrants, seemed to point toward a more pressing concern underpinning his words: the President of the United States did not hate the deaths, he hated that he was being asked to answer for them.

The remarks made by President Trump before his Marine One departure tacitly reveal the enmity with which migrants are perceived by some in contemporary American culture. His statements that morning, followed by the numerous messages posted to Twitter in the following three days, and interviews done before his departure to Osaka on June 29<sup>th</sup> affirm that in a system that purposefully antagonizes the most weak and traumatized populations, the natural state of a migrant is understood to be confrontational, exploitative, and dangerous. Furthermore, the value of migrating lives decreases as their proximity to the United States increases. The manifold patterns present in the President's manner of discussing border events and policies not only corroborate but reinforce that the sheer biological fact of migrant lives is given priority over the quality—the possibilities and potentialities—afforded to them. The rhetoric employed by Trump when asked about the photo of Óscar and Valeria face down in the water on the shores of the Rio Grande reduces not only those two lives but all lives associated with border crossings to bare life, in which they have been stripped of their personhood. In the coming weeks as the photograph was circulated, Trump used measured strategies to talk

about or around the crisis on the border. His remarks followed five major trends: conflation of migrant lives with crime, the illegality of migrants in the United States, evasion of responsibility through the use of moral alibis, classification of migrants as opportunists, and minimizing his acknowledgement of migrant life only to include contexts that appeal to administration goals.

### *Conflation of migrant and criminal*

Drawing on the format of cause and effect, President Trump was thorough in his attempt to equalize the life of a migrant and the life of a criminal. Warning his 65.7 million Twitter followers of the Democratic party's intentions to ease border crossing restrictions, he took to the microblogging platform the day after the photograph was released, cautioning "They want Open Borders, which means crime". The following day while answering questions from reporters prior to his Marine One flight, he reiterated, "They want to have open borders, and open borders mean crime," only this time in direct response to an inquiry about Óscar and Valeria's deaths. The grammatical operation of cause and effect creates a relationship between two things and is one of the most basic formats through which consequence, which lies at the foundation of all action, is understood. Furthermore, the arrangement, which often relies on a priori assumptions about a given cause instead of explicit proof, lends itself to extrapolation. This tendency is heightened when the effect suggested is done so by someone in authority.

But Trump's equations do not stop with a vague outline of crime. He conjures a blueprint of the crimes that American citizens can come to expect, repeatedly mentioning the trafficking of women and children, the sale of drugs, and violent crime. In doing so, he is able to establish an enemy who threatens citizens' safety and against whom Americans feel they must resist. This notion of the enemy and the continuous institution of a caesura is the foundation upon which Trump's border politics functions. Making the discursive leap from migrant to criminal, he authorizes a conclusive value judgement and lays the groundwork for American citizens to fear and avoid those seeking asylum. In a framework that gives the American public two options—exclude migrants or suffer the consequences—the backlash against those seeking asylum is not coincidental, it is instrumental.

#### *Use of legal and illegal personhood*

The personhood of the migrant is bracketed by their legal status: Trump conflates personhood and citizenship, further dehumanizing the migrant who has not yet found their way through the intricate rituals of citizenship required by the State. Because United States land is popularly conceived of as private, it can be 'invaded' by those who allegedly wish to unsettle the perceived security of the American way of life: the internal/external narrative of disunion offered to Americans by the President renders an understanding of the United States as a protected space and grants them the ability to quickly and efficiently adopt an attitude that understands outsiders as the 'them' against which their home must be defended. Irrespective of their motivations for wishing to

enter, the material repercussions of the rhetorical work done demonizing and alienating migrants are severe exclusionary and defensive measures.

When questioned further about Óscar and Valeria's deaths, he uses their passing as an opportunity to expound on the hazards of illegal persons and encourage the exclusive presence of legal bodies in the United States. He explains, "Now, what they're doing is they come in illegally," immediately stripping them of their authority or power to exist as they currently are. In this framework, the illegal person is no longer a person, but a misplaced body: something to be removed and returned to its rightful habitat elsewhere. Furthermore, he classifies the removal of people deemed illegal by the State as itself a legal practice, creating a positive feedback loop wherein migrant illegality is replicated and emphasized by these classifications and the subsequent legal removal of all persons not given lawful permission to exist within the boundaries of the United States. "We are bringing them out legally," he points out just two days after Óscar and Valeria's deaths, then emphasizes again, "legally removing." But those who are marginalized by the President Trump's comments are not suffering because they are not participating correctly in the legal landscape; rather, as the goals of the current administration stand, this landscape creates and thrives on their marginalization.

The careful division of legal and illegal people can thus be understood as the political reproduction and exploitation of legal personhood for the purpose of reducing personal value of migrants in order to reinforce their physical separation. The careful positioning of persons classified as legal opposite those who are classified as illegal can

again be seen in the June 27<sup>th</sup> comment made by President Trump wherein, following discussion of a bill that would grant health services to undocumented migrants, he explicitly encouraged American citizens to “take care of American citizens first.” By placing the health of American citizens in a position of primacy over migrants, Trump institutes a hierarchy wherein the life of the migrant is not only worth less than, but is a danger to the health of a lawful citizen. The law, then, anoints people with the right to live.

### *Shifting of blame*

The creation of a moral alibi has been monumental in the success of diverting responsibility for the deaths of thousands of migrants away from the Trump administration. Using the alibis he creates, Trump is able to continue placing the accountability for the deaths occurring on others as his administration continues to pass increasingly more restrictive laws. Often relying on the Democratic party, a key component of the President’s strategy in discussing the deaths of migrants has been to simply place blame on those who oppose him. There is little subtlety in his delivery, as seen in his response to a line of questioning concerning the loss of Óscar and Valeria the day after they drowned. “The asylum policy of the Democrats is responsible,” Trump had replied when asked why he thought the two had drowned. When pushed further about the fact that the father and daughter had previously been denied asylum under his own administration’s metering asylum laws, he quickly moved on.

Following the deaths of Óscar and Valeria, he co-opted a strategy that had previously only been used in lawmaking: the creation of a geographical alibi. When pressed about their deaths, he was quick to mention the danger posed by the Rio Grande: “Because that journey across the river—that journey. That’s a very dangerous journey”. In his decision to acknowledge only the topographical hazards of the journey instead of administrative measures that forced these migrants to attempt crossing, he redirected the ethical question of responsibility not only onto the river, but onto the migrants who made the decision to cross it.

*Goal-oriented acknowledgement of migrant life*

A subtle bifurcation of migrant life and the well-being of the migrant begins to take place in the language that President Trump uses to describe immigration policy and deaths on the border. The use of words such as “life” or “lives” is employed almost exclusively in conjunction with administrative goals, stripping “life” of any substantive connection to the experience of inhabiting an immigrant body. In the days following Óscar and Valeria’s deaths, President Trump made four such conditional statements, each of which established the life of the migrant as dependent on the fulfillment of his conditions. Trump’s use of the rhetorical conditional does not serve to emphasize the lives being lost, rather it only enhances the conditional preposition: the policy change that his administration supports.

Taking to Twitter the morning following their deaths, the President challenged Democrats to save lives by changing the loopholes and asylum laws at the Southern

border. Two posts, separated by less than three hours, had the same message: the fate of migrants is out of presidential hands. They read: “the Democrats should change the Loopholes and Asylum Laws so lives will be saved at our Southern Border,” and “The Democrats would save so many lives if they would change out broken and very DANGEROUS [sic] Immigration Laws.” In these tweets, Trump not only defers responsibility, he blames his own policies that encouraged the Martinez family to cross the Rio Grande on the Democrats. When questioned further about the photograph, the President again blames the Democratic Party, stating “If they fixed the laws, you wouldn’t have that...if they thought it was hard to get in, they wouldn’t be coming up. They wouldn’t be coming up. And so many lives would be saved.” This statement both misrepresents the urgency with which migrants are fleeing their home countries for the United States and again uses the lives of migrants as a political pawn to achieve administrative goals. It is untrue that fixing the asylum laws would dissuade people from attempting entry and the thousands of deaths that have occurred on the border are proof of that. The President’s use of life as motivation for change has nothing to do with the life itself, and has everything to do with the advancement of administrative authority and goals. Each time Donald Trump appealed to the collective lives of migrants when asked about the photograph, he contributed to the process of detaching individual lives from the brutality each endures. This detachment ensures that the victims of biopolitical violence will continue to be faceless and that their suffering will always be abstract.

### *Opportunism*

Just one month later on June 24<sup>th</sup>, the United States Press Secretary released a statement citing “opportunistic asylum claims” as the reason for the recent increase in mass migration, referring to such claims as meritless and positioning them at odds with other “genuine” asylum seekers. The State’s decision to sort migrants into incisive and oppositional categories accomplished two goals. First, it established that demonstrable merit alone is sufficient for entry, barring the impoverished, uneducated, and inexperienced from hopes of asylum. Second, it fabricated a calibrated vocabulary to be used by the government in order to place asylum claims on a spectrum of merited to meritless. On June 29<sup>th</sup> 2019, just days after Oscar and Valeria’s deaths, Donald Trump stood before an audience and described in detail the ways in which migrants frequently take advantage of the asylum process. “They have to come in through a process,” he begun, explaining that “They take tests. They study. They know a lot about our country. They read...People have worked hard. They’ve been in line for seven, eight, nine years.” A cursory glance at the language he is using would suggest that the President is merely defining the terms of asylum for the logistical purpose of identifying who America understands as “the refugee.” This impression begins to break down, though, when considering his response through a necropolitical lens: by way of categorization and exclusion, he demarcates the potentialities that he believes are sufficient for certain lives.

The asylum claims that Trump designates as “unfair” and “opportunistic” often include those of people who, like Oscar and Valeria, are seeking economic stabilization for either themselves or their families who they plan to remotely support by sending money. Arriving to the United Sates from countries where extreme poverty has made it



difficult or nearly impossible to live, these individuals hope to escape insufficient and often dangerous living conditions that threaten or even eliminate their access to food, sanitation facilities, safe drinking water, health, and education. By excluding the uneducated and impoverished of a country from seeking asylum in the United States, the President establishes the conditions of poverty, i.e., severe deprivation of human needs, as adequate conditions for entire populations of people. The merit-based asylum system implemented by Trump's immigration policy effectively ignores the external socioeconomic factors involved in developing personal merit and disregards those people who cannot perform desirability in the eyes of the State but still provide ample compelling evidence that they too deserve United States aid. In a merit-based system, no one has an intrinsic right to security and prosperity; they must prove to a group of government officials that they have earned permission to operate above their previous status and pursue goals allowed only to those who can demonstrate quantifiable value.

Unable to prove that they were fleeing direct violence or that they possessed cultural or economic capital, the Martinez family was turned away. When border patrol rejected their asylum plea, they not only reinforced the Martinez family's status as deserving of their poverty and its hardships, they also implicated them as entitled for wishing to rise above it in the first place. President Donald Trump's statements after Oscar and Valeria's deaths only confirm this, as he places them in direct opposition to people who are able—often by virtue of their wealth, geographic location, or class status—to immigrate by following a process which requires them to study, take tests, and read, claiming that “tens of thousands of migrants making opportunistic asylum

claims have not only exacerbated the crisis at our southern border but also have harmed genuine asylum seekers, who are forced to wait years for relief because our system is clogged with meritless claims.” Introducing the language of merit begs the question of what kind of lives certain people have the right to live, and who has the power to withhold the conditions of those lives. Trump marks those with wealth and class status as worthy of safety and prosperity, and brands those who come from less fortunate backgrounds as deserving of their misfortune. In public response to a line of questioning regarding his thoughts about the deaths, Trump declares that the people who the United States allows to enter “have worked hard. They’ve been in line for seven, eight, nine years, and then somebody walks in and they’re you know, ‘Welcome to the United States.’ It’s really – honestly, it’s very unfair.”. Trump implies that if only these people worked harder and did more for themselves, they too could join the others in America; but, because they will not—he regards this as a matter of fully informed and consenting choice—they are not to be treated with the same level of dignity. Economic depravity is thus equated with moral depravity, and the cycle of dehumanization continues as certain people are condemned to a life that bestows upon them only the air in their lungs.

### **Media Response**

The image of Valeria and her father face down on the banks of the Rio Grande is appalling in ways impossible to overstate. In it, viewers are confronted with the efforts a protective father made in vain to keep his daughter safely tucked close to his body as he attempted the journey to safety. Oscar knew the currents were strong that day,

and he had taken measures to ensure his daughter's safety. He thought that they were going to survive the crossing. Nauseated by what I was seeing, I pored over the details of each article, trying to identify the patterns of speech or strategies of moral displacement that were leaving this pit in my stomach, but despite the hours I spent, nothing cohesive was coming together; each article, regardless of political origin, responded to the photograph with the utmost disgust. The reason for my residual discomfort was unclear to me: the articles were treating the deaths with appropriate outrage. None of them seemed to fall short in their efforts to eulogize the two, but each story left me more dismayed than the last. Finally, I was able to recognize that the tension I felt in consuming these stories was actually present in their exposition of the event. The words of reverence and sorrow that I was reading did not align with the indignity of the photograph that overshadowed every story. This dissonance between word and image was nearly impossible for me to identify, but as I considered it further, I realized that the internal conflict between word and image was powerfully rhetorical in its incongruity.

The sickening photograph, seen by millions of people not hours after it was taken, feels at once like an intrusion of privacy and an impersonal, voyeuristic exhibition of suffering. Scholars of media and journalism, as well as the general public, hold conflicting opinions regarding the ethics of photojournalism and the implications of publishing certain controversial images. Some believe that we have a moral obligation to be faced with the embodied consequences of our actions, no matter how gruesome, while others believe that it is always wrong to use photography as a means of exposing the savage reality of violence; but, while both camps propose compelling arguments either

for or against publishing photographs of the dead, the vocabulary of “right or wrong” cannot capture the scope of what is being communicated in the distribution of Oscar and Valeria’s death. In order to reach a salient conclusion, it seems as though an inquiry surrounding the media’s response to this event should focus less on whether it is correct to publish dead bodies and more on what the absence of other types of bodies means to the discursive network of death surrounding migrant life. Do people need to see an image of the body in order to care that someone has died? From the smiling faces of soldiers, to the children who have been killed in school shootings, it seems that the answer is no. What, then, does the photograph of Oscar and Valeria mean about how we regard their lives and the lives of people who resemble them? There is a rhetorical relationship between the censored dead bodies of our own country and the broadcasted dead bodies from others. In other words, the absence of some dead bodies in media affects the way we are able to critically consume the presence of others.

Nearly two decades ago, Susan Sontag noted that “the more remote or exotic the place, the more likely we are to have full frontal views of the dead and the dying,” though now it seems as though the beginning clause of her statement could be revised to read “the more remote or exotic the skin.” The editorial value of publishing the photograph is undeniable: the combination of shock value and topicality struck the perfect note between spectacle and news, and the American people devoured the image. The opening lines of alt-right and progressive news sources alike described the image as “harrowing,” “searing,” and “haunting,” before warning readers that the content they were about to witness was gruesome. A basic description of the cause of death should have come next,

but in every instance, readers were confronted with the lifeless bodies of two brown migrants. Where words might have sufficed for a white family, a photograph—a permanent visual record of an instance in time—was used to not only memorialize but fortify the inhumanity sustained by the Martinez family. It is important to note, though, that each media source used in this analysis portrayed the incident as tragic. When published in conjunction with sympathetic language, the discursive leap required in understanding this image as a call to action rather than a voyeuristic exhibition of human suffering is quite minimal.

Susan Sontag argues that “showing only photographs of violence that happens abroad generates separation between subjects and viewers. These images imply that tragedy is inevitable and unavoidable — and therefore more acceptable — when it is experienced by faraway people; they create the sense that violence is something that happens elsewhere and to others” (Regarding the Pain of Others). If we are never allowed to see the bodies of our own dead in the media, what does it mean that we are able to click on a link to this news story from any major news source in the country and view the dead bodies of two brown migrants? Meaning is often made in the silences, and the visual silences that surround white and American deaths intend to communicate homage. It is easy to take for granted the well-composed portrait in a school shooting victim’s newspaper column until one is faced with the image of an even younger child whose death was not afforded the same standard of treatment. In a necropolitical system wherein we have already conferred upon migrants the status of the living dead, choosing to interact in this way with their bodies only strengthens the notion that the only thing they

had left to lose in this world was their life. If the prohibition of publishing dead American bodies invokes respect in its reasoning, likewise the urgent willingness of American media to publish dead Salvadorian bodies can be seen as a display of irreverence and disrespect.

Our culture is saturated with images, and often the way that an image circulates communicates the value of its subject. Sarah Sentilles notes that “images — both those we see and those blocked from our view — send messages about whose lives count, about whose lives should be mourned, about who belongs to us and who doesn’t.” She continues on to explain that the concealment of some dead bodies that are seen in life as possessing a certain magnitude of social status, such as cops, soldiers, or wealthy individuals, suggests that there is something shameful and humiliating about dying. In the same way that being seen in a photograph can signify rank, honor, or value, so too can an image signify objectification, victimization, and loss of dignity. The hypervisibility of brown bodies on the border presents a paradox that at once renders them conspicuous and invisible, as each body blends into the image of the last. Stephanie Walsh Matthews—the Ryerson Program Director for the Department of Languages, Literatures and Cultures—argues that when one contrasts the abandon with which American media portrays non-western disasters with the censorship exercised around tragedy in the western world, it becomes clear that the result is a distorted sense of reality. “There’s a barrier between the West and the Third World,” says Matthews. “When we display so many horrors in the Third World and not at home, it creates a stereotype that these places are falling apart, leaving us as role models. There’s a de-familiarization going on.” This defamiliarization

that Matthews describes is yet another step in the rhetorical process of dehumanization—one that wreaks havoc on the dead and contributes to the status of indignity that encourages similar bodies to be mistreated in life.

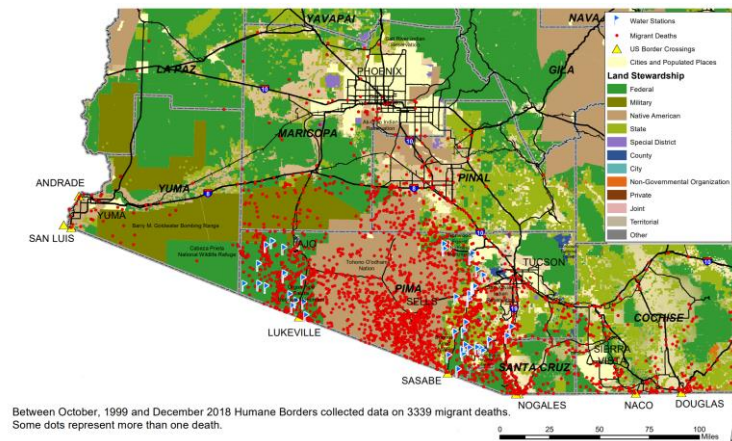
As this dehumanization process advances, the identity of migrant undergoes a broad flattening effect that levels the topography of suffering such that each individual experience no longer belongs to the individual, but to the group as a whole. Agamben discusses the results of such a shift in representation, explaining that,

What is essential is that each and every time refugees no longer represent individual cases but rather a mass phenomenon (as was the case between the two world wars and is now once again), [refugee aid organizations] as well as the single states – all the solemn evocations of the inalienable rights of human beings notwithstanding – have proved to be absolutely incapable not only of solving the problem but also of facing it in an adequate manner.

This process operates synecdochally. As bureaucratic apparatuses of the state, media corporations facilitate the compression of individual migrant cases into the mass phenomenon that Agamben describes by way of creating spectacle and using the shock induced by that spectacle to generate comprehensive attitudes. Human cognitive capacities make it difficult to perceive scales larger than those that we experience on a daily basis. After the count of around one hundred, people encounter enormous challenge envisioning larger quantities in more than just the abstract. Because of this, it is not uncommon for people to ascribe fictitious values to numbers that they are unable to

imagine, thus allowing a situation involving those statistics to lose dimension altogether. Applied to the photograph of Oscar and Valeria, this adimensionality only further serves to alienate them from their audience.

## Legal Response



Citizenship is a status conferred upon each child born in the United States regardless of ancestral origin or ethnicity. From the moment a child breathes American air, their identity is shaped and informed by their status as a citizen of the United States. This condition of allegiance to their country—for allegiance is the condition of American citizenship—endows them with certain privileges. U.S. Citizenship and Immigration Services refers to these privileges as rights and freedoms, and identifies them as: Freedom to express yourself; freedom to worship as you wish; right to a prompt, fair trial



by jury; right to vote in elections for public officials; right to apply for federal employment requiring U.S. citizenship; right to run for elected office; freedom to pursue “life, liberty, and the pursuit of happiness. Access to these privileges, though, is firmly predicated on the status of citizen—though even within that classification there are still discrepancies based, for example, on racial appearance—and the legal framework of rights and privileges shifts drastically when this status is removed from consideration.

The migrant does not have a home in any sphere of the current neoliberal political order; that is, the state requires a citizen. The state’s primary goal regarding the migrant is naturalization or repatriation. Therefore, when a migrant inhabits the space between their native country and the country within which they hope to find asylum, they exist in a space that constitutes a permanent state of exception. In this abstract state, the migrant is beholden to all laws, though none are beholden to them; they may be treated with as little mercy deemed necessary by the sovereign in pursuit of reinforcing their power. Though the Bill of Rights cites “persons” rather than “citizens,” thus suggesting that its contents apply to every individual on United States soil, and the 14<sup>th</sup> Amendment to the Constitution promises equal protection to the law, these commitments to every person regardless of legal status do not apply to those who are at the border or who have been taken into custody at the border. As a result, the United States has full legal rights to deny entry and access to these rights. Though the parameters for denying entry should not contravene the constitution, there is no standardized procedure for ensuring this does not happen. Non-citizens are protected from “unreasonable searches” once they have entered the United States, but while they are at the border, this protection is lifted and they can be

subjected to confiscations and searches at the discretion of individual border patrol members. Additionally, though due process is guaranteed under the Bill of Rights, this guarantee is not always so secure for migrants. Passed in 1996 under the Clinton administration, the Illegal Immigration Reform and Responsibility Act created an “expedited removal” process under which immigrants illegally staying in the country for less than two years could be deported immediately without a proper hearing if they were apprehended within 100 miles of the border. Nearly one full year before the deaths of Oscar and Valeria, President Donald Trump publicly expressed his opinion that “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came. Our system is a mockery to good immigration policy and Law and Order.” Though his sentiment struck a chord with humanitarian activists and adherents to progressive politics, it is important to note that this statement only amplified the attitudes towards migrants already present in the American legal framework.

The longstanding resistance that migrants have faced when confronted with the American legal system only amplifies the need for a complete reworking of its structures and priorities. A response to the deaths of migrants at the border that does not immediately shift the legal framework to recognize the inherent rights of the refugee is an insufficient response. As Agamben further explains,

It is even possible that, if we want to be equal to the absolutely new tasks ahead, we will have to abandon decidedly, without reservation, the

fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and its rights, but also the sovereign people, the worker, and so forth) and build our political philosophy anew starting from the one and only figure of the refugee.

What a just political philosophy of the refugee calls for is an unexamined acceptance of those individuals who find themselves displaced for any reason from their country of origin. It demands an acknowledgement of the dignity of the human in itself that resists subjection to the sovereign and orders law around providing asylum.

Justice does not exist on a spectrum: there is justice or injustice. Though injustices can be ranked in accordance to their severity, even the most incrementally unjust circumstance still indeed falls short of justice. The space between justice and injustice is home to a great degree of rhetorical maneuvering that attempts to make the unjust appear to be just, or at least warranted. In the wake of a tragic event that is relevant to a larger ongoing conversation, such as an instance of gun violence amidst the national debate over gun control, these maneuvers to justice are sometimes made quite clear. This was simply not the case regarding the legal discussion of immigration reform after the deaths of Oscar and Valeria. As a nation of individuals poured out support all over social media platforms, the United States government only emphasized their anti-immigration stance. The legal response in the two months following this excruciating display of negligence was silence and then renewed hostility.

In the months following their deaths, the Trump administration not only ignored the factors that created the scenario that motivated the Martinez family to attempt their river crossing, they made the process of seeking asylum even harder. The expansion of a pilot program suggested by Stephen Miller shifted responsibility from Asylum Officers to only moderately trained Border Patrol Agents in the process of interviewing those attempting to gain asylum. In an attempt to unilaterally reverse the country's commitment to helping migrants, this program employed fear tactics and required asylum seekers, recently arriving at the border, exhausted, and without time to recover from the trauma of their journey, to rearticulate their fear of returning to their country of origin. Falling on untrained ears, these pleas often resulted in forcible return to harm and instability. Additionally, the asylum ban pushed by the administration gained traction. Partially in effect, this ban prohibited all people, including children, who had travelled through another country to reach the United States from applying for asylum. A judge in California appealed to the U.S. Circuit Court of Appeals for the Ninth Circuit, which repealed the ban from all locations except California and Arizona and allowed for the ban to stay in place along the rest of the southern border. In July 2019 less than one month after Oscar and Valeria died, the Federal government announced that it was following through with its decision to cancel the Temporary Protective Status which applied to immigrants who had fled to the United States in the wake of national emergencies occurring in their countries of origin. This decision removed protective status from 45,000 to 59,000 Haitians, nearly 200,000 Salvadorians, and 2,500 Nicaraguans. In the same month, Trump's administration deployed 2,100 troops to the border in one of the

largest militarization efforts recorded on the southern border. These troops were to be members of the Texas National Guard, as well as active duty members of the armed forces. Assisting with operational, logistical, and administrative support at what the Pentagon referred to as “temporary adult migrant holding facilities,” these military personnel were largely assigned to positions directly supervising migrants. Echoing the 1994 Immigration and Naturalization Services program that implemented the “Southwest Border Strategy” initiative, this plan to militarize the border for the purpose of intimidating outsiders and discouraging illegal border crossings was a mere continuation of decades of nearly identical immigration policy.

In August 2019, two months after the deaths, the administration announced the end of the Flores Agreement, a settlement that set a 20-day limit on the detainment of minors and required immigration officials to offer children who were detained a certain quality of life, including food, drinking water, toilets, sinks, medical assistance, temperature control, and supervision. Additionally, this settlement protected minors from abuse by unrelated adults by enforcing restrictive access to minor holding areas. The end of this agreement meant that adults with children could be separated from those children indefinitely with no assurance of standardized safety measures or precautions. By September, fewer than ten thousand migrants in the Migrant Protection Protocol program had their cases reviewed and the admission rate had dropped to less than 0.1%. Of those, 11 had been granted asylum, 5,085 were denied, and 4,471 cases were dismissed before even being evaluated. Later in the month, the reason for these low numbers became clear

as the Trump administration announced that it had plans to admit only 18,000 refugees to the United States in the year 2020. In the three years that President Trump held office, these numbers had dropped nearly 30,000 from 45,000 in 2018.

In the two months following the tragic deaths of Oscar and Valeria, which the Trump administration claimed to abhor, they rolled out programs that threatened to separate families, limit credibility of asylum claims, turn away claims due to procedural issues, rescind current protected statuses, and further militarize the border. Though their deaths did not by any means cause these changes to be made, the changes nevertheless communicate a certain pointed ambivalence to the lives that were lost. These programs, among many that were implemented in the months before and the months since, do little to dissuade migrants from taking risks similar to the one taken by the Martinez family when they elected to cross the Rio Grande. The law invokes consent when it attempts to dodge responsibility, often claiming that migrants choose to endure harsh conditions when subjecting themselves to geography of questionable safety, but the unnavigable legal terrain before them is designed to be far less porous than the physical border. Reflecting again on the statement made by former Immigration and Naturalization Service (INS) Commissioner, Doris Messner, in which she explains that major border gateways can be controlled and migrants can be directed to cross at areas of the border that do not place them on a direct trajectory to populated areas, her casual remark that “geography will do the rest” incriminates the legal system that encourages these crossings. The legal measures taken in the months following their deaths confirm that the

fate of Oscar and his nearly two-year-old daughter fulfilled administrative goals, and that those who died before them did as well.

## **Conclusion**

The complicated network of socio-political factors that allows the lives that exist on the border to be stripped of their dignity is Gordian. It is the result of biological impulses that drive us to protect that which is important to us coupled with the myth of the enemy and a needless and inaccurate fictionalization of the lives south of the border. The management of borders takes place alongside volatile political, social, and colonial historical backgrounds. Many of the people crossing the borders have been valued for their labor but not as human beings, which, among other things, makes them particularly good candidates for being reduced to bare life. Migrants fleeing their home countries are often escaping conditions of extreme inhumanity. Central American and Mexican families are seeking a safer life away from the dangerous living conditions of their hometowns, which often suffer at the hand of the cartel or face extreme poverty and lack of work opportunities. They travel long distances and endure severe difficulties reaching the United States, only to find themselves face to face with a different kind of threat: American sovereignty. The human in itself has no place in the sphere of American political action and, as a result, the lives that belong to no nation can be reduced to the inhuman. In a nation such as the United States that wields sovereign power, a person must either serve the purpose of the state, or stand against it. The Federal government approaches migrants with an explicit goal of repatriation. The border separates those who

have accomplished this goal and those who have not. Thus, a border is placed in order to solve a “problem of excess of presence.” In other words, the border wall is put in place for the purpose of dividing those who belong and those who do not. Achille Mbembe discusses this divide, asserting that the border wall itself expresses a desire for separation. The sovereign nation, dependent on its continued ability to define itself by those it rejects, accepts by way of division that there is nothing in common between the citizen and the noncitizen and uses this division and enclaving as a method of categorizing the noncitizen as excess. As Achille Mbembe aptly notes, then, “to regain the feeling of existing henceforth depends on breaking with that excess presence, whose absence (or indeed disappearance pure and simple) will no longer be felt as a loss...The anxiety of annihilation thus goes to the core of contemporary projects of separation” (Necropolitics, 43). This annihilation is procedural, meticulous, and brutal, but as a self-affirming process, its brutality becomes less apparent as its processes become increasingly socially acceptable. Oscar and Valeria Martinez were victims when they were turned away at the border bridge, and they were victims again when their lungs finally filled with water. Their victimhood did not stop at death though. It is impossible to determine how many times we subjected the circumstance of their deaths to undignified and ruthless appropriation in the service of creating headlines or intimidating the American people into supporting inhumane border policies. What is possible to affirm, though, is that each migrant death thereafter proves the willful and methodological American indifference to life.



## REFERENCES

- Agamben, Giorgio. *Homo Sacer*. Stanford University Press, 1995.
- BUTLER, JUDITH. *PRECARIOUS LIFE: the Powers of Mourning and Violence*. VERSO, 2020.
- Cacho, Lisa Marie. *Social Death: Radicalized Rightlessness and the Criminalization of the Unprotected*. New York University Press, 2012.
- Chávez, Karma R. “Beyond Inclusion: Rethinking Rhetoric’s Historical Narrative.” *Quarterly Journal of Speech*, vol. 101, no. 1, 2015, pp. 162–172.
- Doty, Roxanne Lynn. “Bare Life: Border-Crossing Deaths and Spaces of Moral Alibi.” *Environment and Planning D: Society and Space*, vol. 29, no. 4, 2011, pp. 599–612.
- Epstein, Charlotte. “Guilty Bodies, Productive Bodies, Destructive Bodies: Crossing the Biometric Borders.” *International Political Sociology*, vol. 1, no. 2, 2007, pp. 149–164.
- Foucault, Michel, and Ewald François. *Society Must Be Defended: Lectures at the Collège De France, 1975-76*. Penguin, 2008.
- Foucault, Michel. *The Birth of Biopolitics Lectures at the College De France, 1978-1979*. Palgrave Macmillan, 2011.
- Isin, Engin F. *Being Political: Genealogies of Citizenship*. University of Minnesota Press, 2002.
- Isin, Engin F. “The Neurotic Citizen.” *Citizenship Studies*, vol. 8, no. 3, 2004, pp. 217–235., doi:10.1080/1362102042000256970.
- León, Jason De, et al. “‘By the Time I Get to Arizona’: Citizenship, Materiality, and Contested Identities Along the US–Mexico Border.” *Anthropological Quarterly*, vol. 88, no. 2, 2015, pp. 445–479., doi:10.1353/anq.2015.0022.
- Leshem, Noam. “‘Over Our Dead Bodies’: Placing Necropolitical Activism.” *Political Geography*, vol. 45, 2015, pp. 34–44., doi:10.1016/j.polgeo.2014.09.003.
- Márquez, John D. “Latinos as the ‘Living Dead’: Raciality, Expendability, and Border Militarization.” *Latino Studies*, vol. 10, no. 4, 2012, pp. 473–498., doi:10.1057/lst.2012.39.
- Mbembe, Achille, and Steve Corcoran. *Necropolitics*. Wits University Press, 2019.

- Mbembé, J.-A., and Libby. Meintjes. "Necropolitics." *Public Culture*, vol. 15, no. 1, 2003, pp. 11–40.
- Salter, Mark B. "When the Exception Becomes the Rule: Borders, Sovereignty, and Citizenship." *Citizenship Studies*, vol. 12, no. 4, 2008, pp. 365–380.
- Schmitt, Carl. *The Concept of the Political*. Univ. of Chicago Press, 2008.
- Semple, Kirk. "I Didn't Want Them to Go': Salvadoran Family Grieves for Father and Daughter Who Drowned." *The New York Times*, The New York Times, 28 June 2019, [www.nytimes.com/2019/06/28/world/americas/rio-grande-drowning-father-daughter.html](http://www.nytimes.com/2019/06/28/world/americas/rio-grande-drowning-father-daughter.html).
- Sentilles, Sarah. "When We See Photographs of Some Dead Bodies and Not Others." *The New York Times*, The New York Times, 14 Aug. 2018, [www.nytimes.com/2018/08/14/magazine/media-bodies-censorship.html?auth=login-email&login=email](http://www.nytimes.com/2018/08/14/magazine/media-bodies-censorship.html?auth=login-email&login=email).
- Sontag, Susan. *Regarding the Pain of Others*. Penguin Books, 2019.
- Wonders, Nancy A., and Lynn C. Jones. "Doing and Undoing Borders: The Multiplication of Citizenship, Citizenship Performances, and Migration as Social Movement." *Theoretical Criminology*, vol. 23, no. 2, May 2019, pp. 136–155, doi:10.1177/1362480618802297.