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## State of Emergency for Immigration Containment

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### ABSTRACT

This article addresses restrictions on human mobility and migrations decreed as a result of the expansion of the COVID-19 pandemic. It analyzes these restrictions' exclusionary approaches aimed mainly at the impoverished migrant population and synthesizes different facts that, over time and by means of state provisions, which are conceptualized as one of the emergency, are limiting rights. For example, the right to migrate; to receive asylum requests or non-refoulement; to live without stigmatization, racism and violence. These are all justified as a matter of national security – a concept that originates and spreads as a policy of the receiving state with a high impact on the emigrants of the expelling states. Guatemala's case is shown to be one that exemplifies how migration in transit is managed and its relationship with the establishment of a state of prevention, which corresponds to a state of emergency conceptually exposed.

### KEYWORDS

Migrations; security; state of emergency

### Construction of the state of emergency

The year 2020 has undoubtedly been a *sui generis* year in terms of the suspension of human mobility forced by the expansion of COVID-19. With this pandemic, the state of emergency was put in its maximum expression – as conceptualized by researcher Giorgio Agamben – by suspending, in nearly the entire world, the right to internal mobility. In other words, the right to leave and enter even your own state, in full circulation of goods and human beings in an economic and recreational sense, as is meant by tourism, which in this century was in expansion, and, therefore, human mobility was taking place at a planetary level. In addition, it is known that international migrations forced by wars and unfavorable conditions for socioeconomic and political survival have been generating the mobility of large conglomerates, although with the characteristic that it is limited to certain people. In this sense, philosopher Cortina, A. (2017) states that there is a clear differentiation with mobility for those who are poor, and, therefore, in their entry to countries other than their own; the prohibition is aimed at impoverished, exiled, dispossessed people – it is not a rejection of the foreign but of the poor, an action she calls aporophobia.

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In this context, the historically constructed concept of the state of emergency is analyzed and contextualized in contemporary times and its relationship with international migrations in emergency situations. Agamben (2007, p. 5) explains that such a provision “is that moment of law in which the law is suspended precisely to guarantee its continuity and even its existence.” According to his thesis, the moment of the state of emergency, which is supposed to be temporary, is when the legal order is suspended; however, during the twentieth century, it has become a permanent and paradigmatic form of government. An idea the author reassumes from Walter Benjamin is the following: “the tradition of the oppressed teaches us that the state of emergency in which we live is the rule. We must adhere to a concept of history that corresponds to this fact” (Agamben, p. 3). This author also bases his argumentation on the concept of the state of emergency created in 1922 by Carl Schmitt, who defined it as a condition neither of anarchy nor of chaos, but of order. Schmitt therefore establishes a relationship between the state of emergency and the legal order, although paradoxically because this law that is established in the state of law is outside the law itself.

This article presents different facts that have occurred through decrees and regulations, even if they have gone against the pre-established law itself. For example, the right to migrate, while the sovereign right that states assert over who enters or does not enter their territories prevails. With regard to asylum seekers, although their rights are recognized through adherence to the international statute on refugees established since 1951, their compliance has been misconfigured from the practices of expulsions without due process. A form that exposes in its maximum expression that as Agamben points out about the state of emergency, there is opposition between norm and action, between the rights recognized in international conventions and national legislation and the anti-immigration policies in states of emergency.

Paolo Cossarini mentions that it is the writer Hannah Arendt, who analyzes the problem of immigrants, especially of stateless refugees, as initiator of the totalitarian state. He also contextualizes that in times of global capitalism when the right to free movement has been promoted, at least when societies under the socialist regime were questioned because that is where it has been most limited, since “the immigration policies of liberal states have been characterized by a restrictive tendency, dominated by the cutting of rights and freedoms of immigrants, especially illegal ones, and by a strengthening of border controls and surveillance” (Cossarini, 2010, p. 9). This same author argues that a typical contemporary political resource for border and internal control and surveillance occurs in times of emergencies, when panic spreads in the face of a phenomenon presented as dangerous, justifying restrictive measures.

In this way, a series of facts is included that not only reinforce this approach but also demonstrate how this state of emergency for migrations has been built over time, as well as various discourses that are shaping an imaginary about

the suspension of rights in states that claim to be democratic, but in order to continue in this system, they take the emergency of limiting them to ensure their continuity.

### **Facts that build the states of emergency**

Prior to the COVID-19 pandemic, there were some facts in the last two decades that have been relevant to mark a before and after for the state of emergency in the migratory reality, specifically the migration of the Mesoamerican corridor to the United States, with special mention of Guatemala.

#### **Fact 1: undoubtedly, September 2001**

This moment marked the beginning of the state of emergency that spread around the world. The terrorist attack against the very symbols of power of the world's most powerful country, the United States, was the sign that the world was entering an extreme scenario of global safety against those considered suspects of attacking the great nation.

Since George W. Bush issued a “military order” on November 13, 2001, authorizing the “indefinite detention” of non-U.S. citizens suspected of terrorist activities, it was no longer a question of prisoners or the accused, but of subjects of indefinite detention—both in time and in the modality of detention—who must be prosecuted by military commissions other than the courts of war (Cossarini, 2010, pg. 7).

For the migrations to that country, this fact marked a regrettable amalgam between aliens and those suspected of threatening the national safety of the United States. Thus, begins the establishment of different policies for greater border control, taking advantage of another device of this era: digital controls. In 2006, the construction of the wall, the detention centers, and the cameras and biometric devices to detect mobility within means of land transportation and during any time (day-night, heat-cold) were part of the control of these inhospitable border places. Detentions in this decade increased from 209,000 in 2001 to 378,582 in 2008 (CIDH, 2010, Chap.IV, para.101).

This report shows that immigration detention in the United States was applied as a rule rather than an emergency, and that detainees had very little chance of being released. It also points to a series of practices such as raids on workplaces and homes where the so-called Fugitive Operations Teams (FOTs), composed of seven members tasked with identifying, locating, apprehending, prosecuting, and deporting alien fugitives from the United States, who “constitute a threat to the security of the nation and the community, including cases of transnational gang members, persons who have committed sex crimes against children, and aliens previously convicted of violent crimes”

(CIDH, 2010, Chap.IV, para. 157). It also indicates other practices, such as monthly detention quotas for Immigration and Customs Enforcement (ICE) agents that deserve recognition.

Investment in security was already part of the big business of corporations, which, at the time of the elections, approached the United States Congress to make the immigration issue of political importance. In 2017, during the Donald Trump administration, it was mentioned that some make juicy profits from immigration detention: “the award to GEO’s U.S. Corrections and Detention of a \$110 million contract for the construction of a detention center in the city of Conroe, Texas.” This company, the world’s largest in the prison industry, estimated that the new facility will provide it with an annual profit of 44 million USD. “The facility in Conroe was granted a 10-year renewable term” (Rocha, 2018, p. 3).

In this order of ideas, Agamben mentions that the emergency is in fact the original structure that founds – gives origin and foundation to – modern biopolitics; that is, to the politics that includes natural life. In other words, the “zoe” (the biology of life) in Michel Foucault’s terminology, speaking of the state of emergency with this notion of biopolitics, within the calculations of state power because undocumented migration is undoubtedly opposed to any risk behind: “Nude life through exclusion . . . to be a citizen he puts his naked life at the disposal of political power. Politics becomes biopolitics” (Agamben, 2007, p. 7). Foucault notes (Foucault, 2007, p. 359):

The way in which, since the eighteenth century, efforts have been made to rationalize the problems posed to governmental practice by the phenomena inherent to a group of living beings constructed as a population: health, hygiene, birth rate, longevity, races . . . The growing importance of these problems since the nineteenth century is well known, as are the political and economic stakes they have represented up to the present day.

The author explains this concept extensively within the framework of what he calls the general regime of governmental reason, situated as the economic truth within governmental reason, in the context of the development of the regime of liberalism opposed to the reason of the state or that, at least, modifies it substantially, especially in this era called neoliberalism. Author Iban Trápaga (2019) refers to the interpretations of [Thomas] Lemke, who establishes the elements of synthesis between the concepts of biopower and biopolitics developed by Foucault:

First, biopolitics represents a historical caesura in political action and thought that is highlighted by a relativization and reformulation of sovereign power. Second, Foucault gives the biopolitical mechanism a central role in the development of modern racism; in a third meaning, the concept points to a particular art of the government that only emerges with bilateral management techniques (Lemke, 2017, p. 49 as cited in Trápaga, 2019). The author mentions that it is necessary to complement this notion with the security device in correlation with the disciplinary device. Both, he says, are technologies

of power that characterize the new sovereignty, which Foucault summarizes in the adage: let die let live and that from the “sovereign power” of the state would be to make die and let live (Trápaga, 2019).

## Fact 2: coolers as detention centers

Diverse images and testimonies from immigrants were unveiled starting from what was known as the major migratory crisis, the arriving of unaccompanied migrant children to the southern border – more than 56,000 Central American children. The serious thing was not only how difficult it was for this conglomerate to have access to due process but more dramatic was the place where they were overcrowded, in detention centers with freezing temperatures, sleeping on the floor with platinum-colored blankets; they were not supposed to stay for more than 72 hours, which was not always complied with by the immigration authorities (Silva, H., July 21, 2014). This situation was denounced by various human rights organizations.

New images and speeches were shown to the world about the “Zero Tolerance” policy, which meant the separation of families at the border (around 2,000 children separated from their parents) imposed by Trump in 2018. In the same way, the relocation of doing something illegal, the practice of the state of emergency (since irregular migration does not commit crimes but only administrative infringements) as legal and national security mechanisms, given that is typified as federal crime that would have an effect of criminal and as an act of dissuasion of the irregular migration. The BBC News Mundo reports:

Until two years ago, “Zero Tolerance” was associated with the obscure violent traces and hard police politics. However, since two months ago, the term has acquired a new dimension: it has started to be linked with the migratory topic and with the controversial measure of Donald Trump’s administration of separating minor children from those attempting to enter the United States illegally . . . Since last April, the U.S. Department of Justice has been treating undocumented immigrants who attempt to enter U.S. territory as perpetrators of a crime for which they must be tried, which means they lose custody of their children. (BBC News Mundo, June 21, 2018).

The same media states that the term “Zero Tolerance” came from “iron fist” policies that seek to suppress certain infractions of the law as “exemplary punishments.” Again “the emergency” becomes the rule because although it is justified that these rules apply to those who carry weapons in schools, drive drunk, or consume or sell drugs, a measure that was used in that country to mitigate neighborhood violence since 1973, would now be applied in the Trump era for immigrants.

Here, it is worth mentioning again what Agamben argues about modern totalitarianism, established through the state of emergency: it not only can be interpreted as the legal civil war against the political adversary but with all those categories of citizens who for whatever reason are not integrable into the political system. Hence, president Trump in particular, unchained a series of norms that resulted from a created emerging state, the “migratory crisis at the border due to the arrival of families” in state of emergency within the supposedly democratic system itself.

### **Fact 3: Trump’s executive orders**

These orders were against irregular immigration. They were, as a whole, one of the main samples of the different mechanisms that intertwine those who exercise biopolitics as a means of separating those who are not wanted to be part of a society. In Trump’s case, he intertwined a speech that emphasized racism, fear, and exclusion of the foreigner who was from an undesired origin and represented a danger for the nation. With his speech, he wished to rebuild the supremacy of the white nation.

On January 17<sup>th</sup>, his term began. He honored his electoral promise of combating undocumented immigration as a danger to national security. This first order was “Border Security and Immigration Enforcement Improvements,” with the purpose of guaranteeing the security and territorial integrity of the United States and insuring compliance to its national laws.

The order warns the secretary of the Department of Homeland Security (DHS) to take the following measures to assume full control of the southern border: (a) plan, design and build a wall along the southern border using appropriate materials and the most effective technology; (b) identify and, to the extent permitted by law, place federal funds in the above undertaking; (c) project a budget request to be submitted to Congress for such purpose; and d) produce a comprehensive southern border security study, to be completed no later than 180 days after the issuance of the executive order, which shall include the current status of border security and all geophysical and topographical aspects and the availability of federal and state funds to achieve operational control of the southern border (Rocha, 2018, p. 2).

This same order allocated more budget and border security agents; the construction of more detention centers and increased their capacity; and linked the decisions of local and state agents to the investigation, detention, and confinement of aliens by federal immigration agents, which made detention inside the United States an enforcement action to be followed. In the same manner, this order was accompanied by other memoranda that reviewed the cases and definitions of unaccompanied migrant childhood and asylum seekers, in order to avoid the alleged abuses that were being generated by immigrant families.

Other orders were issued, such as the “Executive Order Protecting the Nation from Foreign Terrorist Entry into The United States” on January 17, 2017 to supposedly protect the nation from the entrance of foreign terrorists, which was contested and replaced on March 6<sup>th</sup> (order 13,780), albeit with the same name, only eliminating Iraq from the list. This provision evoked, once again, the amalgamation between terrorism and fear of foreigners, directed against Iran, Libya, Somalia, Sudan, Syria, and Yemen, and the protection of the nation as an impassable principle of security, which goes beyond the democratic values of nationality that integrates a diversity of citizenships, but rather with a clear intentionality of elevating the power of one kind of nation – the one that excludes according to race and religion (Rodríguez and Deisy, 2017). Another order was dedicated to human trafficking: “Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking” also addressed with a message in its content to gangs (Rocha, 2018).

More orders were issued (RAISE ACT, ACA, TPS, and the suppression of the “Central American Minors Program” that allowed Central American minors to be claimed by their parents already legally established in the United States in 2014) with the finality of deconstructing the possibility of documenting these uncomfortable citizenships such as those of Arab, Mexican, and Central American origin.

#### **Fact 4: another extraordinary time: an emergency due to the pandemic**

On March 11<sup>th</sup>, the World Health Organization (WHO) officially declared a coronavirus pandemic, which on January 30<sup>th</sup> had been declared a COVID-19 epidemic. This meant that it had spread and would continue to spread throughout the world, so it was necessary to take containment measures, without panicking, but with the need to take serious precautions to avoid further spread and more deaths. This meant the closing of borders in almost all the countries of the world, especially those with the greatest air and land traffic, such as the United States and Europe. In the United States, an order was issued that was initially of general application (March 20<sup>th</sup>, extended on April 20<sup>th</sup> and amended on May 19, 2020), which ended up being of particular relevance to irregular migration along the border with Mexico. It was applied to those persons arriving by land from Mexico and Canada: Order of the Department of Health and Human Services due to the existence of a contagious disease in accordance with sections 362 and 365 of the Public Health Order (title 42 USC, 265, 268) and its implementation regulations that authorize directors of control and disease prevention centers to suspend the right of entry to persons when the existence of a contagious disease is determined.

Another device against the foreign population. The virus was carried by foreign nationals, especially those from the countries that cause the most immigration to the United States: Mexicans and other nationalities, including Central Americans. Explicitly, the disposition excludes U.S. citizens, permanent residents, or those who carry a permanent or temporary legal permit to enter the United States. This order was directed to any person coming from these countries even though their nationality was a different one, as long as they are confined in detention places by the border patrol or in the borders, generally people that try to migrate with inadequate documentation.

Nexus Digital Media (Del Monte, J. A., March 3, 2021) comments that with the pretext of the global COVID-19 emergency, the Trump administration has put into operation Title 42 to expeditiously expel unwanted persons in the United States, and that these expulsions have nothing to do with legal immigration provisions, but with public health regulations. It was reported that from March to September of the 2020 fiscal year, 197,043 people were expelled by the Customs and Border Protection Office (CBP), which contrasts with the 185,884 removed by ICE, “the agency traditionally charged with deporting people from the country to the north.” The same source notes that from March 2020 to January 2021, 444,159 people were expelled under the same order from the border with Mexico and 995 from Canada.

The Inter-American Commission on Human Rights (IACHR. [CIDH in Spanish]), in a release dated April 1, 2021, expressed its concern over the increase in mixed migratory movements and the recent tightening of migration policies in the region, which have worsened in the context of the pandemic. It emphasizes that there exist measures tending to: (1) externalize migratory control; (2) deploy armed forces, military police, and other security bodies with military formation profile in the management of border tasks; (3) increase the application of migratory detention and procedures of deportation or expulsion that does not assure the due process guarantees; and (4) limit the access to the territories of the states and to the migratory, asylum, or international protection procedures, especially using the pandemic and the response measures as justification, also affecting the returning migration of nationals (CIDH, 2021).

In the same way, the project (Im)Mobility in the Americas, Covid-19” (<https://www.inmovilidadamericas.org/>) mentions that among several common factors affecting the countries of the region, aggravated in this time of pandemic, are the closing of borders and hyper-surveillance, selective hyper-nationalism, irregularized, and dispossessed of the right, as well as the production of fear. It refers to migrants as “necessary but disposable” because they support a good part of the jobs for production and essential services; and to a certain extent it is normalized that they are deported as a result of the pandemic ((Im)Mobility in the Americas, n.d.).

All these situations affect international mobility, but fundamentally these populations that mobilize in extreme need, escape from socioeconomic conditions that put their survival at risk or from the violence and impact of climate change in the face of the vulnerability that has been built in societies with fragile states and nonfunctional democracies. They also affect the cross-border spaces where traditional exchange movements take place, modified by the border devices that were already severe and that add the device of health as a security issue. Even in a pandemic, health is a matter of global priority, as it carries a care device for those who are part of the nation, for those who are desirable to continue living even if others die, as supported by Foucault's concept of biopolitics. Therefore, the concept of national security is indispensable because of the fear of contagion prevailing over the universal solidarity to achieve new health standards for humanity.

### **Fact 5: states of prevention in Guatemala to stop Migrant Caravans**

Guatemala is a country that has suffered from internal war, as well as an inconclusive peace process, with signed commitments that sought to transform the structural causes that generated the armed confrontation, and a specific one signed in December 1996 to put an end to the conflict of more than 36 years. The nonuse of the armed forces, as well as the democratization through legislative reforms and elections of civilian power at the helm of the state have been one of the constant struggles of civil society. With various practical implications, such as the intention of preventing the armed forces from intervening in public security, and that the power of the Ministry of the Interior, under which the entire policy of control and repression of the citizenry was directed would become part of the civilian powers, as well as its security forces, such as the Civil National Police [Policía Nacional Civil (PNC)]. In addition to the noncompliance with the Peace Accords, a degradation of democracy is being generated, which today has subsumed the three branches of government under economic and political powers linked to corruption, influence peddling, and coalition with drug trafficking and organized crime.

This background is to argue that because of this situation, the use of the armed forces and public security forces have not been left out of the intervention in matters of citizen security. In the social conflict in Guatemala over issues related to land and other natural resources, during the 1985–2021 period, they were used to dissuade and placate social protest; this same intervention has been transferred to the regional threat posed by the United States: the irregular migrant population.

In this way, in northern Central America, immersed in conditions of social conflict and increased violence due to the incursion of drug trafficking and organized crime into its territory, as well as the expansion of gangs, it

established its strategy of a firm hand with the use of public forces within the country to combat crime, while strengthening its border security. Adam Isacson and Sara Kinosian, investigators of the Washington Office for Latinoamerican Affairs (WOLA) explain that the United States increased in that year, more than the budget it had provided in a decade by providing them with training, intelligence equipment, construction at army and police bases, special forces, vetted military units, and other programs focused on detecting and monitoring illicit trafficking. A proportion will go to public security-related units. (Isacson and Kinosian, April 15, 2016).

This same source reports the installation – in the case of Guatemala – of the Interinstitutional Tasks Forces, conformed by members of the army, PNC, and the Public Prosecutor’s Office [Ministerio Público (MP)]. The first one was implemented in 2013, named “Tecun Umán” and was located close to the border between Mexico and Guatemala. In 2016, the “Maya Chortí” was formed between the border of Honduras and Guatemala and the “Xinca” covering the departments along the border between Guatemala and El Salvador to combat this amalgam of transnational phenomena of threats to the national security of the United States: “organized crime, drug trafficking and terrorism.” Also, “Los Halcones” Task Force with aerial interdiction, antinarcotic and antiterrorist of the PNC. It also points out the close relationship with the specialized force Kaibiles in 2013 and in 2015, with the Interdiction and Rescue Group whose mission is to “neutralize, prevent and act against the threats of narcoterrorism in the country.” These devices were placed precisely on the route through which the Central American migrant population transits through Guatemala, so it is unthinkable to rule out that they are another mechanism of deterrence, detection, and actions for the detention and return of the migrant population.

In October 2018, the so-called “migrant caravans” emerged, marking a new peculiarity of expression of Central American migrations, conceptualized by the International Organization for Migration [Organización Internacional para las Migraciones, (OIM)] (OIM, October 13, 2018) as a migration with the following characteristics: (1) they are carried out by land; (2) they are integrated in significantly large groups, mainly made up of adult men and, to a lesser extent, women and children. Furthermore, it adds that the caravans – according to the people who have been part of them – believe that it is a better means of protection as they are less exposed to crimes and abuses encountered on the route; they have greater assistance from governmental and non-governmental entities; lower costs associated with hiring coyotes or traffickers to cross borders.

The IOM performed a similar monitoring. The first caravan left Honduras on October 13, 2018, with 1,500 people who managed to cross the border on the 16<sup>th</sup> of the same month from Mexico on their way to the United States, showing the constant mobility made up of different mixed groups, of migrants

and people requiring international protection. A second caravan took place between October 20<sup>th</sup> and 23<sup>rd</sup>, and according to IOM and the office of the United Nations High Commissioner for Refugees UNHCR reports, 7,000 people managed to reach the Mexican border. A significant number of people were repelled by Mexican security forces on October 28<sup>th</sup> at the international bridge between Guatemala and Mexico, resulting in injuries and one death. Despite this, the caravans continued in smaller numbers. On October 29<sup>th</sup>, another caravan of 300 people was organized, this one from El Salvador, which on November 1<sup>st</sup> reached a total of 1,780 people. Thus, other groups were reported to have managed to enter through Mexico until they reached the United States border, especially at Tijuana (although later caravans reported, their arrival in Texas), and others were taken to improvised temporary shelters for their reception in Mexico, while the so-called voluntary returns were organized. In January 2019, mixed groups of Salvadorans, Hondurans, Nicaraguans, and Guatemalans were again reported, totaling 7,057 people, who on January 26<sup>th</sup> were in the border town of Tecún Umán seeking to cross into Mexico, but were evicted by the same residents and municipality, being pushed to stay at the International Bridge. Subsequently, caravans were reported in February, March, and April; by April 22<sup>nd</sup>, a heavy raid against the caravans had already been carried out in Mexican territory, resulting in the detention of 371 people, in a group of 3,000 people.

In March 2020, the COVID-19 pandemic was declared, and although it meant the closure of borders around the world, some countries – such as Mexico – kept them open for tourism, but not for the Central American migrant population. Despite this provision, Guatemala reported from March to December 2020: 6,521 people deported by air from the United States; 6,433 by land from Mexico; and by air from Mexico 77 people?? (IGM, 2020) [Instituto Guatemalteco de Migración (IGM)]. At the beginning of the pandemic, there were voluntary returns and reports of deported persons infected by the virus on flights from the United States (La Razón, July 21, 2020), which generated the rejection of the inhabitants of the communities of origin in the first months (Madrigal, August 29, 2020).

Months later, other borders were opened by other countries, like Guatemala, that specifically opened its borders on September 18<sup>th</sup>. Consequently, on October 1, 2020, the Guatemalan government decreed a “State of Prevention” (Governmental Decree 18–20) in six departments, through which the Hondurans organizing a new caravan was supposed to transit. This time the argument was the pandemic and the threat that the migrants were carriers of the virus and would put the health of Guatemalans at risk: “We will not allow foreigners who are using illegal means to contaminate and put Guatemalans at risk.”

On January 14, a state of prevention was again decreed for seven departments near the border with Honduras and one on the border with Mexico, Petén. The IOM reports that 3,500 people left Honduras and that between January 15<sup>th</sup> and 16<sup>th</sup>, 7,500 were already in Guatemala. This caravan was dissolved with force by elements of the army and PNC in its passage in Vado Hondo Zacapa, which caused about 5,000 people, on January 17<sup>th</sup>, to remain on the road until they were dissolved into small groups to flee by different routes and about 900 were returned to their country. On March 3<sup>rd</sup> of the same year, another state of prevention was decreed in these same departments.

The orders of these decrees were to forcibly dissolve mobilizations and gatherings of people – the pretext was still the protection of the national population from the virus outbreak. Therefore, the authorities mentioned that these populations could enter with their personal identification documents that allowed them to enter Guatemala, but only as long as they could prove that they did not carry the virus.

## Conclusion

The aforementioned facts, which stem from an anti-immigration policy issued by the receiving country (the United States) and which pressures and impacts the expelling countries and the emigrant population, mainly Central American, demonstrate the actions of a state that pretends to be an emergency (in the face of migratory waves that seem to be emerging due to their irruption in time, number, and profiles) within its own system of law; given that on the irregular migration, refugee, the superior interest of the child, gender rights, and others, a series of International Agreements and local legislations that obligate the states to guarantee the protection of the people in national and worldwide level, especially in high vulnerability contexts, as occurs in Central America, have been generated. However, as the theoretical discussion on the state of emergency is based on, these measures are framed in the historical construction of devices of force, coercion, and persuasion of social phenomena that place people naked to the power of the state with facts, due to their racial, gender, or threat condition (in this case irregular migration and COVID-19) that put into question the nature of the state by opposing its own law. It therefore establishes a state of emergency that becomes the norm in the restriction of the regulated rights, especially because before the migrants broke with the administrative rules of transiting through other states without the necessary documentation, their economic, social, cultural, and political rights had been systematically violated in their own countries, a situation of defenselessness that made them decide to flee their respective countries.

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