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| Title | Gendering Border Studies: Biopolitics in the Elusive U.S. Wars on Drugs and Immigrants |
| Author(s) | Staudt, Kathleen; Coronado, Irasema |
| Citation | Eurasia Border Review, 8(1), 59-72 |
| Issue Date | 2017 |
| DOI | https://doi.org/10.14943/ebr.8.1.59 |
| Doc URL | https://hdl.handle.net/2115/83524 |
| Type | departmental bulletin paper |
| File Information | 8-1_05_Kathleen_Staudt_and_Irasema_Coronado.pdf |

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# Gendering Border Studies: Biopolitics in the Elusive U.S. Wars on Drugs and Immigrants

Kathleen Staudt and Irasema Coronado*

**Abstract**

What difference do borderlands make for people's everyday lives, safety, and freedom? This question is best answered with a gendered approach, that is, one that differentiates the experiences of women and men. In borderlands, people deal with opportunities, burdens, and ambiguities that come from the different policies imposed from capital-city decision-makers in two or more nation-states. This paper will explore gender issues in borderlands, but then move to analyze several legal cases involving internal anal and vaginal body cavity searches by U.S. border police, also known as the Border Patrol (and its sister agency, within the Department of Homeland Security, Customs and Border Protection (CBP)). The paper draws on documentation from legal cases and official complaints—a heretofore underexplored source in border studies—for selective women border crossers who experienced, we argue, an invasion into the privacy of their bodies. In stronger terms, one could argue that the practices became a form of unjustifiable state-instigated sexual assault.

## Introduction

The United States Constitution, in its Fourth Amendment, claims to protect people from unreasonable searches and seizures. In 2009, Yule Kim of the Congressional Research Service analyzed border searches under the Fourth Amendment.[1] Given the 'border exception' rule, a wide range of discretion appears available to agents on reasonable cause and suspicion grounds, based on many past court decisions. The report ends on a slippery slope toward border security and terrorism.

What exactly are the rights of border crossers, who might be U.S. citizens returning home after a day of shopping in Mexico, or visiting friends? Do U.S. citizens have more civil/human rights than nationals from other countries at ports of entry? What human/civil rights do Mexican nationals with legitimate visas to enter the U.S. have as they enter the country? The short answer is that at a port of entry or a functional border equivalent such as an international airport, no one has civil/human rights and U.S. Customs and Immigration officials have

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[1] Yule Kim, "Protecting the U.S. Perimeter: Border Searches Under the Fourth Amendment," Congressional Research Service, 7–5700, www.crs.gov RL31826, June 29, 2009. Accessed January 17, 2018: http://fas.org/sgp/crs/ homesec/RL31826.pdf

**DOI: 10.14943/ebr.8.1.59**

inordinate discretionary power to question, interrogate people, search their belongings, and subject them to body cavity searches as they enter the United States.

Timothy Dunn offers two conceptual frames for understanding rights: the citizenship-nationalist camp that depend on the boundaries and sovereignty of nation-states to be enforced along with international human rights agreements versus the human rights perspectives which view rights as unconditional and state/bureaucratic power in a critical light.[2] At borderlands, we believe that international human rights agreements offer a higher and more ethical standard.

Hector Padilla in 2011 compiled anecdotes of students with legitimate visas who entered the United States on an almost daily basis to study at a university. The anecdotes document the stress, tensions, emotions, fear and uncertainty that students faced when interacting with U.S. border officials.[3] Other scholars have focused on cross-border patterns of women and note that after 9/11, increased scrutiny at border crossings affect women's mobility by adding to the time constraints they already face.[4]

We worry that the words border security and terrorism have been overused to justify near-absolute power for arbitrary actions. In our analysis of lawsuit cases, neither of the two U.S.-citizen women who filed lawsuits carried drugs, explosives, or money inside their body cavities. Had the women not been citizens, perhaps their treatment could have been worse.

The U.S. Constitution would seem to offer protection. However, it co-exists with a long-term War on Drugs that began in 1969 and is coupled with a deadlock in immigration policy reform, fast-growing and militarized policing operations at the border and a federal police force whose institutional incentives operate to expand its workforce and, at least until 2016, collect additional wages until Congress passed a new law to control the abuse of overtime payments.

Our theoretical framework draws on bio-politics in its most startling terms: the invasion of female body cavities in the search for drugs and the use of misogynist verbal abuse, which sexualize health and disease references. The framework is threaded together with institutional incentive theories from public administration and public policy. Like theorists who called for "bringing the state back in" to political studies in the 1980s,[5] we view this work as bringing bodies into border political studies.

**Theoretical Frameworks**

In this article, we weave together concepts and literature from feminist and gender studies, from biopolitics, and from the U.S. Wars on Drugs. The somewhat lethal combination produces

[2] Timothy J. Dunn, *Blockading the Border and Human Rights: The El Paso Operation that Remade Immigration Enforcement* (Austin, TX: University of Texas Press, 2009), 8–9.

[3] Hector Padilla, *En el Puente con la Migra: Anecdotario de la vida fronteriza* (Ciudad Juárez: Universidad Autónoma de Ciudad Juárez, 2011).

[4] Doreen J. Mattingly and Ellen R. Hansen, eds. *Women and Change at the U.S.-Mexico Border: Mobility, Labor, and Activism* (Tucson, AZ: University of Arizona Press, 2008).

[5] Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds. *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985).

insight on the gendered nature of U.S. policing practices of recent decades—practices that invade privacy inside people's bodies.

*Gender/Feminist Studies*

Only since the 1970s have political scientists joined historians, anthropologists, and sociologists in analyzing the social construction of gender, women and men in the political process, their power relationships, and the ways that states regulate sexuality and reproduction.[6] In the U.S., gendered analysis also focuses on the intersection of race/ethnicity, class, language, and age. At borders, nationality and citizenship must be added to intersectional analysis.

Added to this, philosopher Judith Butler has developed concepts associated with gender performance, including the performance of masculinity—often absorbed in public institutions and their organizational culture—and of femininity. In International Relations, a subfield of political science, Anna Agathangelou and L. H. M. Ling have taken masculinism one step further in their analysis of national security after the U.S. tragedy of September 11, 2001 (hereafter called 9/11). They contrast normalized hegemonic masculinity with hyper-masculinity, the latter of which peaked in the twenty-first century securitization era.[7] Comparative politics analyst Karen Beckwith analyzes how "gender functions as a meta-concept:" despite gender's "universal presence, its meanings and content are context-specific."[8] However, most studies in comparative politics are state-centric, thus minimizing the effects of the grounded, context-specific bordered experience.[9]

Most policy analysts conclude that state policies have long shaped populations, their growth and demise, people's health and well-being. For feminist scholars, a re-focus on women's bodies brings renewed attention to sexual assaults and reproductive justice to include access to technology and procedures that permit voluntary motherhood.

*Gender in Border Studies*

The consequences of border politics and policy for gender should be fleshed out: violence, 'citizenship' entitlements via birth and marriage, and masculinist/militarist security agencies among

[6] Joni Lovenduski, "Gendering Research in Political Science," *Annual Review of Political Science* 1 (1998), 333–356.

[7] Anna Agathangelou and L. H. M. Ling, "Power, Borders, Security, Wealth: Lessons of Violence and Desire from September 11," *International Studies Quarterly* 48 (2004): 517–538; see their applications to the border in Kathleen Staudt, "Violence at the Border: Broadening the Discourse to Include Feminism, Human Security, and Deeper Democracy," in *Human Rights along the U.S.-Mexico Border: Gendered Violence and Insecurity* eds. Kathleen Staudt, Tony Payan and Z. Anthony Kruszewski (Tucson: University of Arizona Press 2009), 1–27; Judith Butler, *Undoing Gender* (New York: Routledge, 2004).

[8] Karen Beckwith, "Introduction: Comparative Politics and the Logics of a Comparative Politics of Gender," *Perspectives on Politics* 8:1 (2010): 161.

[9] Kathleen Staudt, *Border Politics in a Global Era: Comparative Perspectives* (Lanham: Rowman & Littlefield, 2017).

other issues. The nation-state has traditionally aimed to control reproduction, marriage, and sexuality, with different impacts on women, men, and transgender people in borderlands spaces. Despite near universal acceptance of, though not necessarily implementation of the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) (U.S. and Somalia are the exceptions), the Institute on Statelessness notes how citizenship rights or lack of rights are tied to gender; over fifty countries have gender discrimination built into nationality laws.[10]

Border studies scholars and their research agendas have rarely focused on women, much less gender as a social construct, with the exception of the work cited above. Border studies, a traditionally male-dominated field drawing heavily on geography and political science, rarely contains more gender-inclusive interdisciplinary research results with theoretical frameworks to match. As such, we need to understand the bordered experiences of all people, whatever their gender. This paper focuses on women, though some unique experiences of men are addressed later in the paper as well. And in particular, the focus is on the state invasion of women's private sphere, namely inside their bodies and verbal abuse about being women.

In border studies, a biopolitical approach permits focus on biometric identification and technologies that associate people's names with their bodies. Governments use various biometrics such as fingerprinting, retinal scans, photographs, and body scanners to inspect people's bodies from the outside, looking at, in or through body tissues. However, a person's encounter with a government agent usually occurs outside the body rather than through invasive practices inside the body.

*Biopolitics and the Politics of Citizenship*

At its base, biopolitics has to do with two key issues relevant in border studies. A first issue would be the biological identifiers that essentialize and verify body part connections to identity, often used in border inspections at international territorial lines and airports, such as fingerprints, iris and facial scans. A second issue would be surveillance of people's bodies—external and internal—and people's thoughts through communication (emails, social media, telephones). The physical examples of such surveillance include quick physical eyeballing by guards to categorize border crossers as possible risks or not; racial profiling by law enforcement personnel who typically view 'persons of color' as risky; and information about crossers from their license plates showing individuals' records, their background, and networks of relatives or friends who may have criminal records. At most major and regional U.S. airports, travelers stand momentarily for their bodies to be scanned. The United Nations-affiliated International Civil Aviation Organization promulgates safety and security standards worldwide. Those scanners, costing up to $200,000 each, emit radiation in imprecise doses, of worry to cancer survivors already radiated in their treatment, but the process is so routinized that few airline travelers even question or challenge the practice if they want to be on their way.

In the dissenting opinion in the Supreme Court Case, United States v. Montoya de Hernández, Justice Brennan noted that "Medical xrays are of course a common diagnostic technique;

[10] Ibid., Chapter 9.

that is exactly why there is such a sharp debate among the medical community concerning the cellular and chromosomal effects of routine reliance on xrays, both from the perspective of individual health (it having been estimated that a routine medical xray takes about six days off a person's life expectancy and from the perspective of successive generations). The cumulative effect of xrays on an individual's biological and genetic well-being has been the subject of particularly disturbing debate .[11]

Inspection and surveillance have become endemic in society. Inspectors also use specially trained dogs ('canines' or so-called K-9) which are trained to smell "illegal" substances or radiation from cancer treatment. An interdisciplinary subfield has emerged with its very own journal: *Surveillance Studies*.

Biopolitics, a term often associated with the late French post-modern philosopher Michel Foucault, has blossomed into one with multiple meanings, ranging from how the state affects populations and people's bodies to a host of assertions and metaphoric meanings. One useful metaphor relates to border control policies and practices which aim to protect the body and population of a state from outside contaminative forces. Yet in the case of body cavity searches, state officials—or their designated medical contractors—contaminate the internal body cavities of their own citizens.

Philosophers offer a way of thinking about biopolitics, citizenship and borders. Kim Rygiel has analyzed three philosophers (Arendt, Foucault, and Agamben) who offer discourses to understand how decision-makers use concepts like citizenship and security to categorize people and justify biopolitical intrusions.[12] However, philosophers offer no empirical evidence for or connection with decision-makers who pass bills into laws or made administrative decisions about enforcement that enter into judicial cases, used to reinforce or challenge laws with implications for Fourth Amendment principles. As non-philosopher empirical researchers, we look to academic studies, legal documents, and media to understand the biopolitics of gendering at the border, with specific cases from the central U.S.-Mexico borderlands.

Although we will not synthesize Giorgio Agamben's philosophical treatment in 1995 of biopolitics and citizenship, it is worth noting how the "state of exception" (from Prussian, then Nazi laws) of protective custody to preempt or prevent crimes resonates with the vigorous enforcement in post 9/11 U.S. practices and can turn into routine norms.[13] At U.S. territorial borders and in airports, we argue that the *border exception* legal principle permits warrantless exceptions that have become intrusive and potential violators of the Fourth Amendment to the U.S. Constitution. The body cavity searches offer horrifying examples of this.

Moreover, it appears that the amount of contraband confiscated is minimal. Justice Brennan's dissenting opinion, in the Supreme Court Case, United States v. Montoya de Hernández, noted that "One physician who at the request of customs officials conducted many "internal searches"—rectal and vaginal examinations and stomach pumping—estimated that he had found

[11] United States v. Montoya de Hernandez, 1985.
[12] Kim Rygiel, *Globalizing Citizenship* (Vancouver: University of British Columbia Press, 2010).
[13] Ibid., 108–109.

contraband in only 15–20 percent of the persons he had examined. It has similarly been estimated that only 16 percent of women subjected to body-cavity searches at the border were in fact found to be carrying contraband.[14]

In pursuing other biopolitical theories, the latest compilations contain philosophical abstractions with limited application to grounded realities.[15] One may need conceptual translations from obscure English to plain-language English just to decipher, use, and apply the analyses.

In this paper, we intend to forge analysis with the real-life interaction of state and citizen—one lacking oversight and therefore allowing discretionary interaction for what Michael Lipsky referred to in his classic study, *Street-Level Bureaucracy*.[16] Here, we alter his conception of the street-level bureaucrat, renamed here the 'border bureaucrat.' These bureaucrats operate in a weak or nonexistent constitutional zone under 'border exception' terms, namely at the territorial border and in airports. Yet procedures are supposed to be in place for oversight and consent, granted by supervisors.

Courts have long approved inspections processes at borders. In one case in 1985, relating to a Colombian woman who had swallowed bags of cocaine at LAX, a majority of the court affirmed that an invasive border inspection process was permissable, with certain standards.[17] However, the invasive procedures were not as degrading, public and thorough as the ones discussed below. For example, she was allowed to defecate in a private room with just one female agent present.

X-ray scanning has become normalized at airports. Most people are familiar with U.S. TSA (Transportation Security Administration) screening at airports, including full body scans which allow agents to look inside bodies, without them or hospital contractors penetrating body cavities with their fingers or other equipment. Curiously, while airport body scanning equipment is routinely available at airports, they are not found at high-traffic land ports of entry like the central U.S.-Mexico borderlands.

Border bureaucrats, joined by dogs trained to sniff drugs, make decisions to pull border crossers to secondary for more questioning, inspection, and perhaps hours of delay associated with invasive body inspections. In an otherwise useless book on border security, the consultant claims that 60% of inspections come from 'canine hits' (K-9).[18] Dogs alert border bureaucrats with a sound or movement. One can only imagine the cost-saving aspects of using animals to inspect the millions of border crossers, travelers, suitcases, and shipping containers. However, when it comes to probes inside a human body, a body scan or ultrasound technology—as invasive as those technologies are—would seem preferable to finger probes in the anus or a speculum inserted into the vagina.

The use of dogs to justify internal body cavity searches seems a curious pre-modern technique for such a sacred privacy consideration as violating potential Fourth Amendment

[14] United States v Montoya de Hernández, 1985.

[15] Timothy Campbell and Adam Sitze, eds. *Biopolitics: A Reader* (Durham, NC: Duke University Press, 2013).

[16] Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation,1980).

[17] United States v. Montoya de Hernández; note the minority report cited above as well.

[18] Kathleen Staudt, Review of book *Border Insecurity: Why Big Money, Fences and Drones Aren't Making us Safer*, *Journal of Borderland Studies,* 31:2 (2016): 269–270.

protections in unreasonable search and seizure. Pre-scientific means are reminiscent of the 2002 preventive, preemptive science fiction crime film, *The Minority Report*. Three prescient humans who are trapped in a pool, only one of them truly skilled in sensory perception, sense crimes about to be committed thereby triggering police action.[19]

*Incentives in Institutions*

Biopolitical themes must be understood in their institutional context. Why might border bureaucrats engage in potentially revolting behavior that they themselves would no doubt resist or find abhorrent? Their jobs involve 'catching' wrong-doers in the relentless and perpetual U.S. wars on drugs, on immigrants, and on terrorists.[20] As professionals, perhaps first-generation aspiring middle-class, agents' salaries are augmented with overtime (until a recent change in law), night duty, and other perks. Border bureaucrats may gain rewards in the form of peer approval and performance evaluation. And lacking penalties for abuse or murder,[21] i.e. impunity and lack of accountability, border agents' abusive behavior may make the work shift pass more quickly or with some excitement in an otherwise boring environment.

Here we draw on various theorists who use incentive theories to explain bureaucratic behavior. Among classics, we cite Anthony Downs, *Inside Bureaucracy* for his attention to motivations in bureaucratic behavior; James Q. Wilson, *Bureaucracy* for his explicit focus on analyzing bureaucratic tasks and incentives to understand institutional behavior; and Deborah Stone for her attention to understanding incentives and penalties in explaining policy performance in U.S. agencies.[22] To this, we might add the insights of feminist IR theories on masculinism, and even the hyper-masculinity of the national security border patrol institutional culture.

**The Two Core Cases at the Central U.S.-Mexico Border**

Crossing the border for many residents of the U.S.-Mexico border is a frequent occurrence; in some cases, people cross daily from Mexico into the United States. People cross to visit family, friends, to shop, to attend institutions of higher learning, for medical reasons, or for entertainment. As highlighted in a National Public Radio report by Melissa Block, Nogales, Arizona is one of the most

[19] Kathleen Staudt, "The Border Performed in Films: Produced in Both Mexico and the U.S. 'To Bring Out the Worst in a Country,'" *Journal of Borderlands Studies,* 14: 4 (2014): 465–479; Kathleen Staudt, *Border Politics in a Global Era: Comparative Perspectives*, Chapter 11 on more and updated film analysis.

[20] Tony Payan, *The Three U.S.-Mexico Border Wars: Drugs, Immigration, and Homeland Security,* 2nd ed. (Westport, CT: Praeger Security International, 2016).

[21] Mark Binelli, "10 Shots Across the Border: The Killing of a Mexican 16-year-old Raises Troubling Questions about the United States Border Patrol," *New York Times Magazine,* March 3, 2016. Accessed January 17, 2018: http://www.nytimes.com/2016/03/06/magazine/10-shots-across-the-border.html?_r=1

[22] Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown, 1964); James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic, 1989); Deborah Stone, *Policy Paradox: The Art of Political Decision-Making,* 3rd ed. (New York: W. W. Norton, 2012).

integrated border cities, with people crossing frequently for short term visits.[23] For some people, crossing the border is similar to visiting another part of town, except that you must cross an official port of entry; and sometimes, reentry into your country of origin, the U.S., can have dire consequences.

Border women filed two lawsuits regarding internal body cavity searches. In one case, the nonprofit American Civil Liberties Union (ACLU) represented an unnamed woman, in her 50's, called "Jane Doe" to protect her privacy. In the other case, a private lawyer represented a teenaged woman. Both women are U.S. citizens. Both women did not carry drugs in their bodies, but the dogs and border bureaucrats seemed to think they did. It should be noted that each day, thousands of pedestrians cross the border legally at each port of entry, as these women aimed to do. Perhaps the percentage of crossers who undergo humiliating procedures is low (though the 2009 Congressional Research Service [CRS] report suggests more than we had imagined in case law over the decades).

It is also important to understand that many people do not report abuse by authorities. Like rape cases, most victim-survivors seek to avoid the lingering experience of re-living and re-telling their horrifying experiences. Prosecutors make few convictions for rape trials. If this border experience is to be likened to sexual assault, one clear difference exists: the district prosecuting attorney does not represent the client as a crime victim. Rather, the client sought her own legal counsel and filed a civil case in hope of two outcomes: potential damages awarded and change in policy and procedure.

"Jane Doe" (named as such to protect her anonymity) sought to cross the Port of Entry from Ciudad Juárez to El Paso in late 2012. The CBP suspected drugs with a 'canine hit,' a reaction from a drug-sniffing dog. She was pulled over for inspection and taken to the University Medical Center Hospital for more thorough inspection. Hospital procedures seemed to be in place for what was perhaps a routine subcontract and revenue generator. Jane Doe underwent a multiple-staged ordeal: searches of the vagina and anus; administration of a fast-moving laxative forcing her to defecate in front of multiple strangers, and twice x-rayed thereby exposed to radiation. No consent was obtained for what is required in intrusive medical procedures. She was told that if she did not sign her consent, she would be billed $5,000. No drugs were found and she was released after the six-hour ordeal. She would not consent, before or after the grueling procedures.

With legal assistance from the American Civil Liberties Union (ACLU) in Las Cruces, New Mexico, a lawsuit was filed and in 2013, she was awarded $1.1 million from the University Medical Center and its Board of Directors (no doubt passed on to El Paso taxpayers since this is a public hospital) along with a change in hospital policy to disallow such procedures. The lawsuit also named the Department of Homeland Security Customs and Border Protection (partial settlement of nearly a half million dollars reached in 2014).[24]

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[23] National Public Radio (NPR) [Radio broadcast]. Accessed January 17, 2018: https://www.npr.org/2017/04/04/520874611/when-the-border-is-just-next-door-crossing-it-is-a-fact-of-daily-life

[24] Information from both paragraphs comes from "Jane Doe v Various Defendants," the American Civil Liberties Union, New Mexico. 2013. Accessed February 1, 2014: http://www.aclu-nm.org/wp-content/uploads/2013/12/Complaint-Jane-Doe-v-Various Defendants-12-18-13.pdf

Turning to another legal case, in 2014, an 18-year old female U.S. citizen went for breakfast from her home in Nogales, Arizona, to Nogales, Sonora. Upon her return, she was interrogated, handcuffed, sniffed at by dogs, stripped, and accused of carrying drugs. She was also sniffed by CBP dogs in violation of agency policy prohibiting the use of drug-sniffing dogs on people, patted down and asked to squat to be visually inspected by a female agent. Without consent or warrant, she was taken to a Catholic hospital and while handcuffed, subjected to rectal and vaginal searches with CBP agents and hospital employees looking on.[25] She had never had gynecological exams before this experience, so this was her first pelvic and rectal exam. No drugs were found. She was released after seven hours and given a bill for hospital services at $575. With assistance from an attorney, she filed a lawsuit against the CBP in 2016. The hospital billed her parents.[26] The suit filed states that the hospital staff members are not trained on conducting law enforcement searches nor on the constraints the Fourth Amendment places on those searches. The victim seeks compensation for physical injury from the invasive search, mental and emotional trauma, which left her "violated, demeaned and powerless."[27]

These two unreasonable searches highlight the arbitrary nature and high level of discretion that U.S. officials can use at the border and the lack of power of victims at the port of entry. If the Fourth amendment to the U.S. Constitution allows almost any search as 'reasonable' because of the 'border exception,' surely higher human rights principles—albeit difficult to enforce—would represent a higher ethical standard, such as those used in crimes against humanity or war crimes.

**ACLU Complaints Filed: Misogynist Verbal Abuse among 13 Cases**

Short of physical abuse and sexual assault, CBP officers in El Paso have engaged in verbal abuse that draws on metaphors of disease and sexuality. Historians and discourse analysts document this sort of language in the othering processes of prejudice and discrimination. For example, the rationale of disease was used to subject working-class Mexicans crossing the border in 1917 to practices ranging from photographing men and women to strip searches and bathing them in kerosene.[28]

In 2016, the ACLU filed a formal complaint from 13 named individuals, (whose names we do not use in this paper), asking the CBP to investigate and address officers' failure to comply with

[25] Kendal Blust, "Woman Sues CBP and Holy Cross Hospital, Alleging Illegal Body Cavity Search," *Nogales International*, June 14, 2016. Accessed November 29, 2017: http://www.nogalesinternational.com/news/woman-sues-cbp-and-holy-cross-hospital-alleging-illegal-body/article_c7692c00-31c0-11e6-962f-c33e5683ba30.html

[26] Howard Fischer, "U.S. Citizen Sues Feds over Border Body Cavity Search," *Arizona Capitol Times*, June 14, 2016. Accessed June 23, 2016: http://azcapitoltimes.com/news/2016/06/14/u-s-citizen-sues-feds-over-border-body-cavity-search/ She is named in the lawsuit, but we chose not to use it.

[27] Kendal Blust, "Woman Sues CBP and Holy Cross Hospital, Alleging Illegal Body Cavity Search."

[28] David Romo, *Ringside Seat to a Revolution: An Underground History of El Paso and Juárez, 1893–1923* (El Paso: Cinco Puntos Press, 2005).

law and policy. Gendered performance was at the heart of several complaints, in the following ways.[29]

**Case #1*: Accusations that this 51-year old grandmother was a "whore," belittling her work in a Mexican NGO focused on women's rights, plus officer assertions that "women have already achieved equality….[pointing to a female officer] she carries a gun just like me and smokes cigarettes just like me. So your work for gender equality is a waste of time." This was followed by body searches and threatened charges of prostitution, only alleviated ten hours later with her signature on an English-language form that she did not understand (admitting to prostitution, determining inadmissibility and ordering removal).

**Case #3*: Questions about why time was spent in the U.S., despite having a valid permit, followed with warnings about lying to a federal officer, and requirement to take off pants for inspection, and when she spread her legs, the officer said "Hopefully you don't have any diseases." After a four-hour delay, the officers required her to sign English-language forms, without returning her permit, and releasing her to Mexico.

**Case #4:* Accuses "Ms Doe" (fiancé to "Mr Doe") of illegally working in the U.S., dumped purse contents, interrogating in English, and after eight hours, strip searched by three female officers without consent, and compelled to sign English-language document that she did not understand refusing her entry to the U.S. for five years.

**Case #5:* Accused of not being the person on her ID card and fingerprints, handcuffed, and denied use of a toilet until after her genitalia were searched with a kick to widen her legs for the search. She was not charged, but eventually released and allowed to enter the U.S..

**Case #8*: Taken to secondary for inspection, without question or charge, and strip searched plus asked if she was diseased. She was menstruating and felt humiliated, but her hair was searched. After several hours, she was allowed to leave.

In four more complaints from women, no sexual inspections or language of disease was used, but delays lasted hours without seeming or probable cause. We want to make sure readers know that both men and women border police are implicated. Female CBP officers do the sexual inspections of women, though in a Montana case (without formal complaint or lawsuit filed), three

[29] Summarized from the lengthy document: American Civil Liberties Union of New Mexico, Regional Center for Border Rights, "Complaint and Request for Investigation of Coercion, Abuse of Power, and Excessive Force by Customs and Border Protection at Ports of Entry along the U.S.-Mexico Border," May 17, 2016.

male officers stripped and searched a Canadian woman crossing into Montana from Canada.[30] In masculinist organizational cultures, the usually small percentage of female officers pick up and absorb the cues, or leave the institution. This paper does not address how some female officers in military and mainstream police forces face sexual harassment as well.

In May of 2017, four CBP officers assigned to work at the Newark Airport alleged that they were physically and sexually abused by fellow officers at their place of work. CBP officer Vito Degironimo claimed he was pinned down by other CBP agents on a so-called "rape table" and sexually abused. Another agent reported being choked after a bag was put over his head and another reported being sexually abused, again by fellow CBP agents. The officers stated that this abuse had been going on for years and that senior CBP officers were aware of it and looked the other way. Senator Claire McCaskill wrote to the head of the CBP asking for him to respond to this and other allegations of abuse within CBP. She wrote that "I am concerned that senior leaders at CBP knowingly maintained an environment that allowed assault and harassment to take place despite complaints."[31]

**The Big Picture in North America**

We have no way of knowing the extent to which abuse and sexual assault is common for women crossers at the border, most likely low-income people of Mexican heritage, yet across all age groups. One million cross daily at multiple points of entry on the U.S.-Mexico border.[32] However, we do know that the CBP accountability and oversight is out of control, "broken" in the words of the CBP oversight committee. [33]

Turning southward, Mexico, a close U.S. ally and trade partner, also exhibits gendering processes in its police behavior toward women in a system with questionable 'rule of law.' In a recently released Amnesty International report of 100 women under arrest by Mexican state police, army, navy, and municipal police, 33 women were raped in custody and 74 experienced verbal abuse, most frequently misogynist in character, "because they were women" as the category in bar graphs.[34] In a five-year period, only four members of the navy were held accountable, but none among state

[30] Llowell Williams, "Innocent U.S. Woman Sues Over Illegal Body Cavity Search at Border," June 20, 2016. Accessed August 1, 2016: http://www.care2.com/causes/innocent-u-s-woman-sues-over-illegal-body-cavity-search-at-border.html

[31] Sarah Wallace, Evan Stulberger and Dave Manney, "Congress Puts Pressure on CBP Comm'r Amid Newark Airport Hazing Probe," July 13, 2017. Accessed November 11, 2017: https://www.nbcnewyork.com/investigations/Newark-Airport-Customs-Border-Patrol-Rape-Table-Hazing-Investigation-434256273.html

[32] Miriam Valverde, "Trump Says 1 Million Legal Crossings along U.S.-Mexico Border," *Politifact*, September 14, 2016. Accessed November 29, 2017: http://www.politifact.com/truth-o-meter/statements/2016/sep/14/donald-trump/trump-says-1-million-legal-crossings-along-us-mexi/

[33] Chris Rickerd, "Border Patrol Union Scorns Award for Agents who Follow Policy to Avoid Deadly Force," June 23, 2016. Accessed June 16, 2016: https://www.aclu.org/blog/washington-markup/border-patrol-union-scorns-ward-agents-who-follow-policy-avoid-deadly-force

**[34] "**Mexico Surviving Death: Police and Military Torture of Women in Mexico," *Amnesty International*, June 28, 2016. Accessed January 18, 2018: https://www.amnesty.org/en/documents/amr41/4237/2016/en/

judicial police—the most common abusers. Amnesty attributes this behavior to Mexico's militarized war on drugs.

We are certainly not suggesting that the U.S. border police have become "Mexicanized," but rather that misogynist and abusive behavior exists in both states with hyper-masculine militarized agencies that lack oversight. We would hope that Amnesty International would conduct studies in and on U.S. border bureaucrats who have what its own agency calls an "excessive use-of-force problem." President Obama appointed Mark Morgan as chief of the Border Patrol in July of 2016; his appointment was met with criticism by the rank and file of the Border Patrol because he did not rise from within the ranks, since he was a former FBI agent. His mandate was clear: to address the excessive use of force, systemic abuse, misconduct and disciplinary issues, ranging from alcohol and drug related arrests to charges of domestic violence, within the Border Patrol.[35] Border bureaucrats and police are not held accountable for their actions. It would appear that citizens and visitors need protection from their so-called security forces.

**The Endless and Futile War on Drugs**

For over forty years, the United States has been fighting a war on drugs, primarily focused on supply-side, that is, an interdiction approach at borders, rather than a demand-side approach which would focus on prevention and treatment of addiction. Many scholars and advocacy organizations have questioned the effectiveness of this costly approach, one that creates havoc and brutality for the high profits earned in shipping countries, puts disproportionate numbers of 'men of color' in costly-to-maintain prisons, and wrecks their lives thereafter. [36]

It has become increasingly clear that the large budgets, staff, and jurisdictions of various agencies with the cabinet-level Department of Homeland Security requires a criminalization and interdiction approach to justify their existence. The enormously wide mission of the department and its agencies spread rather than targets, resources and attention on the truly serious goals of eliminating terrorism and dealing with emergencies.

Approximately half of the fifty states in the United States have passed laws to regulate and tax marijuana for medical and leisurely use among adults. In late 2016, California once again voted in a referendum which will likely legalize marijuana compared with the close vote in the lower-turnout, off-year 2010 election; this time it passed. Will border exceptions exist at state boundaries in the

[35] Andrew Becker, "New Border Patrol Chief Faces Uphill Battle to Reform Agency," *The Texas Tribune*, July 11, 2016. Accessed November 29, 2017: https://www.texastribune.org/2016/07/11/new-border-patrol-chief-faces-uphill-battle-reform/ The selection of Mark Morgan, a career FBI official, to run the 20,000-strong force sends a clear message: the Border Patrol has a culture problem that needs to be fixed.

[36] For example, see Tony Payan, Kathleen Staudt and Z. Anthony Kruszewski, eds. *A War that Can't be Won: U.S. and Mexican Perspectives on the War on Drugs* (Tucson: University of Arizona Press, 2013); see also the first, two-day campus-community Global Public Policy Conference on the War on Drugs, http://warondrugsconference.utep.edu and advocacy organizations like www.drugpolicy.org and www.leap.org—the latter an organization of retired law enforcement and border patrol officers against prohibition.

United States? Many state, county, and city law enforcement agencies justify their size and staff with enforcing the criminalization of low-level offenses, like possession of small amounts of marijuana.

We believe that another casualty of the war on drugs is the incentive to tread fast and loose with Fourth Amendment supposed protections against unreasonable search and seizures. Over the years, internal body cavity searches have become more intrusive and humiliating, and one wonders for what? Is the trade-off between dehumanizing citizens and visitors through horrifying procedures like those we discussed in this paper worth what may be increasingly routine violations of the Fourth Amendment? Can the U.S. hold itself to higher human rights standards? If so, we must conclude that this 'war' results in state-sanctioned sexual assault, indeed rape, for mere 'reasonable cause or suspicion' of possession of a partially legal substance, marijuana, and other substances with less-elastic demand, such as cocaine. We believe that much of the budget for interdiction and enforcement ought to shift to prevention and treatment and to reduce the kinds of conditions that lead people to depend on drugs (including alcohol) in their lives. And the larger obvious question is whether the U.S. ought to hold itself to higher human rights standards such as the crimes against humanity which occur during and after conflicts, to include rape and invasion of internal body cavities.

**Concluding Reflections and Research Needs**

This paper has been framed to thread together perspectives on biopolitics, gendered body politics and border studies. The core sources for the paper come from legal documents—lawsuits and official complaints—that raise questions about U.S. Constitutional Fourth Amendment protections against unreasonable search and seizures given the 'border exception' and its distance from human rights standards. Two lawsuits and multiple complaints, among no doubt many that go unreported, reveal techno-sexual physical assault and toleration of misogyny in verbal abuse.

While this paper has focused on borders and border exceptions, further study could explore other gendered experiences and the intersection of race and class. For example, researchers could also examine U.S. police forces who routinely probe men via anal searches, particularly men of color, invading their anal cavities in the everlasting search for drugs or rationale for harassment, even on streets and in public, as racial profiling and harassment continues unabated in the United States in the increasingly militarized and dangerous police forces. Men have filed two lawsuits in New Mexico for forced colonoscopies in the elusive search for drugs (none were found). As international media like *The Guardian* and the U.S. Department of Justice have finally come to recognize, police execute hundreds of African American men annually. We are not suggesting that U.S. and border police face no risks; one acute fear at the border is of rocks being thrown at them and of bandits. However, police forces operating under constitutional rule of law must adhere to Fourth Amendment and other lawful human rights principles.

Accountability for wrong-doing is at issue here. Some 'security' forces are more frightening than others. Border Patrol agents, says Binelli, "are generally immune from the kind of transparency

required of most state and local law-enforcement."[37] And accountability from police is weak as case after case shows. From 2005–2013, the *Arizona* Report found CBP killed at least 42 people, most in the U.S., and 13 of them citizens.[38] The figures have not been gender disaggregated.

The wider public knows little about the quick recruitment of large numbers of border police forces in response to a U.S. political panic associated with border security. What is the recruitment process? Are there efforts to screen for racism and psychopathology? Are some recruits, perhaps after exiting military service, themselves damaged from Post-Traumatic Stress in Iraq or Afghanistan?

And the larger public cannot continue to be ignorant of or immune to abuse from security forces. To explore imagery related to internal cavity searches, we googled the keyword phrase and located numerous pictures with a mix of messages. While some were serious, others made light of the experience with joking cartoons; still other images emerged as soft pornography, as if women enjoyed anal probes from faceless authorities in uniform. Perhaps invasive body searches have become normalized, explained in part by hyper-masculine organizational cultures like the CBP wherein border bureaucrats are rewarded for humiliating and delaying crossers with reinforcement from peers, relief from boredom, and/or some psychic satisfaction from exerting power and control over vulnerable and relatively powerless people. In so doing, they create collateral damage, a seemingly neutral term commonly used in wars (including the wars on drugs and immigrants), but one with devastating and long-term effects on their victim-survivors.

[37] Mark Binelli, "10 Shots Across the Border."
[38] Ibid.