



# Failing to Protect Bare Life During the COVID-19 Pandemic: Forced Migrants as Carriers of the Virus

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*ABSTRACT This study compares the restriction of mobility of forced migrants during the COVID-19 pandemic between March 2020 and December 2021 in the United States and Ecuador. Based on the critical discourse analysis of anti-migrant rhetoric in press articles, migrant stories in the press, reports, and border control practices, I examine the Ecuadorian government's response to the migration flow of Venezuelans and the United States' enforcement practices against Central American asylum seekers. By exploring Giorgio Agamben's concept of bare life, I argue that this failure to protect forced migrant's rights is due to the United States' and Ecuador's representations of forced migrants as bare life and carriers of the virus, justifying xenophobia and resistance to humanitarian international law. By drawing on a feminist intersectional approach, I add to recent research on the securitization of forced migration and challenge the race/ethnicity, immigration status, class, and nationality-based discrimination of the measures undertaken during the pandemic. I illustrate how the treatment of forced migrants as bare life was aggravated by their intersectional inequalities. I conclude by providing recommendations that could be considered by the U.S. and Ecuadorian governments to protect the right to freedom of mobility.*

**KEYWORDS** bare life; intersectionality; mobility rights; United States; Ecuador; COVID-19

## Introduction

The COVID-19 pandemic encouraged many countries to take strict and unique measures against forced migrants as potential carriers of the virus. In this study, forced migrants are defined as those displaced by persecution, coercion, and structural violence due to state collapse, economic crises, and food insecurity. This includes refugees and asylum seekers (Mandić, 2021), survival migrants fleeing serious human rights deprivations (Betts, 2013), and distress migrants escaping from economic insecurity (Bhabha, 2018). In the name of public

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health, measures during the pandemic included border closures, quarantines, removals, continuous detention, and lockdowns of refugee camps. This study seeks to answer these questions: How does the United States and Ecuador's framing of forced migrants during the pandemic as a "health security threat" and "carriers of the virus" downplay their claims to legal protection and produce them as bare life? To what extent does the intersecting identities of forced migrants based on their race/ethnicity, nationality, immigration status, and class reinforce their treatment as bare life?

Preventing the spread of the virus harshly impacted the mobility and human rights of forced migrants. The *Universal Declaration of Human Rights* asserts, in Articles 13 and 14, the right to freedom of movement and the right to seek and enjoy asylum from persecution in other countries (United Nations, 1948). To accept such a right, nevertheless, would deprive every state of its sovereign power to decide whom to admit to its territory and on what terms (Miller, 2015). Although Article 12(3) of the *International Covenant on Civil and Political Rights* allows restrictions on the right to freedom of movement for reasons of public health and national emergency, these restrictions must be lawful and proportionate (United Nations, 1976). Mike Sullivan (2023) further argues that public health emergency exit controls do not constitute a violation of a traveler's mobility rights if these are temporary, narrowly tailored, and proportionate to the health risk posed by the traveler. However, other experts have noted that countries must respect the liberty of movement of all persons within their territory and that all restrictions on mobility must respect the rights of persons to leave any country or to re-enter their home countries (Columbia University et al., 2020). Moreover, countries must respect the principle of *non-refoulement*, including non-return to a real risk of persecution, arbitrary deprivation of life, or torture. In this vein, countries must refrain from enforcing immigration law that might increase the risk of transmission of COVID-19, such as immigration detention (Columbia University et al., 2020).

This study demonstrates that mobility restrictions were imposed on Venezuelan and Central American forced migrants, and their human rights were forgotten and considered inopportune to the pursuit of controlling the virus during the COVID-19 pandemic. The United States and Ecuador did not respect the right to have access to food, clean water, and health care, as well as protection against *refoulement*,<sup>1</sup> arbitrary detention, deportation, or family separation. Extreme controls were initiated without considering less restrictive alternatives. Although the comparison of these two cases displays differences in the border enforcement strategies used by the security authorities in both countries, I contend that the treatment of forced migrants as bare life in Ecuador and the United States during the COVID-19 pandemic was similar

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<sup>1</sup> The principle of *non-refoulement*, as the cornerstone of asylum and of international refugee law, forbids a country receiving asylum seekers or refugees to remove them from their jurisdiction. Therefore, states are prohibited from returning these individuals to unsafe conditions in which they can suffer persecution, torture, or other serious human rights violations based on their race, religion, nationality, membership of a particular social group or political opinion.

and was aggravated by their intersectional inequalities, disproportionately exposing them to a higher risk of transmission of the virus and death. This study contributes to feminist critiques of mobility control during pandemics by comparing how forced migrants were treated as bare life by the Ecuadorian and the U.S. border security apparatuses due to their intersecting inequalities. An intersectional feminist approach comprehends that the inequalities faced by Venezuelan and Central American forced migrants are rooted in the intersection between their immigration status, nationality, class, and ethnicity, shaping processes of exclusion.

This research shows that the failure to enforce the protection of human rights during the pandemic is due to representations of forced migrants as bare life and carriers of the virus. Enforcement policies have attached meaning to the “other” (the “asylum seeker,” or the “forced migrant”) to exclude people of color and low-income mobilities from the enjoyment of their rights. Through the findings, the bare life and intersectionality theses demonstrate how some must die for others to live. First, I examine the Venezuelan and Central American migratory crises. Second, to illustrate the justification of mobility restrictive practices in the pandemic, I analyze Giorgio Agamben’s concept of bare life in the context of forced migration. Third, I discuss the intersectional inequalities of forced migrants that justified their treatment as bare life. Finally, I suggest initiatives that could be implemented by the U.S. and Ecuadorian governments to protect the mobility and human rights of forced migrants.

## **Methodology**

Critical discourse analysis (CDA) informs the methodology used to understand the empirical section of this study. By investigating social inequality legitimized in language, CDA advocates for groups who suffer from social discrimination (Meyer, 2001; Wodak, 2001). CDA is fundamentally concerned with analyzing structural relationships of power, discrimination, and control as manifested in language (Wodak, 2001). Furthermore, CDA understands that all discourses are historical and can only be understood with reference to their context (Meyer, 2001), emphasizing the contextual meaning of language. Thus, the discussion of the findings examines the socio-political and historical contexts in which the representations of forced migrants as bare life due to their intersectional inequalities were shaped, justifying certain border enforcement practices during the pandemic.

The findings draw on the critical discourse analysis of 48 documents. The data examined refers to the Center for Disease Control and Prevention’s (CDC) guidance documents, human rights reports, migrant stories reported in secondary sources, anti-migrant rhetoric in news articles, and border enforcement documents relating to the militarization of borders in Ecuador and Title 42 in United States from March 2020 to December 2021. Additional examined data include border control policies before the pandemic such as the

Migrant Protection Protocols Policy and detention in the United States that remained unchanged under the health crisis and the humanitarian visa in Ecuador. The empirical section of this article analyzes the data through three codes during the critical discourse analysis: (1) containing the spread of the virus, bare life, and human rights; (2) mobility control and securitization of health; and (3) xenophobia, national security, and intersectional inequalities. Documents were analyzed individually in relation to the codes; they were also considered together to identify the ideologies and power relations within them, resulting in two recurrent themes: (1) The health crisis exacerbated by the COVID-19 pandemic worsened the already precarious conditions of forced migrants treating them as bare life under a state of exception; (2) The securitization of health allowed the discrimination of forced migrants based on intersecting inequalities related to their immigration status, nationality, and low-income status. CDA offers insights into how understandings of forced migrants during the pandemic impact the framing of forced migrants as “carrier of the virus” and a “health security threat,” producing them as bare life.

### **Background: Restriction of Mobility of Forced Migrants in Ecuador and the United States**

I begin this section by explaining that in the last decade, direct and structural violence in Venezuela and Central America have simultaneously contributed to two forced migration crises in the Americas. I then discuss pre-pandemic rights restrictions of forced migrants in Ecuador and in the United States.

#### *Restriction of the Mobility of Venezuelan Forced Migrants in Ecuador*

The political and economic crisis in Venezuela has motivated the massive migration of Venezuelans in the region, mostly to neighboring countries. Due to its magnitude, the Venezuelan migration crisis has been compared to the Syrian refugee crisis (Welsh, 2018). The government of Nicolás Maduro is accused of political persecution of the opposition and the mismanagement of oil revenues, causing the worst economic crisis in the history of the South American oil-rich state (Donoso, 2022). After the election of Nicolás Maduro, in 2013, and as protests and repression intensified in 2014, the emigration rate from Venezuela grew. Since 2015, more than seven million Venezuelan forced migrants have left their homes (Government of Canada, 2023; United Nations Refugee Agency, 2023). The Organization of American States (OAS) and the United Nations High Commissioner for Refugees (UNHCR) recommended recognizing Venezuelans as refugees under the 1951 Refugee Convention and on the wider criteria of the 1984 Cartagena Declaration on Refugees (Almeida Silveira Correa & Monteiro Da Costa, 2020). The Inter-American Commission on Human Rights (IACHR) has urged the states of the region to take measures

aligned with the Commission's Resolution 2/18 on the Forced Migration of Venezuelans; this Resolution seeks to cease the closure of borders, the restrictive access of Venezuelans in need of international protection, the punishment of irregular entry or presence, the requirement for passports and criminal records, and immigration detention and hate speech (OAS, 2019). In the region, Ecuador has become the country hosting the third most Venezuelans (The International Rescue Committee, 2022) who fled their country due to food insecurity, economic devastation, and political repression. Ecuador currently hosts 551,000 Venezuelans (Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela, 2022). However, the solidarity of Ecuador has limitations considering that it has struggled with its own issues of inequality, insecurity, and high levels of unemployment (Gonzalez, 2022).

Despite having among the most progressive constitutions and mobility laws in the region, Ecuador's response to the current Venezuelan migration crisis had been inconsistent even before the pandemic. The 2008 Constitution of Ecuador became a landmark source of protection of mobility rights. The right to migrate (art. 40) and the right to seek asylum (art. 41) are clearly defined in the Constitution (Republic of Ecuador, 2008). Refugees and migrants with legal status can enjoy the same rights and duties as citizens; they have the right to free basic health care and education. Under the 2017 Human Mobility Law, individuals with refugee status receive an Ecuadorian national identity document and temporary resident status; these benefits grant them the right to work and study, and the option to renew their temporary residency or to request permanent residency after two years (Organization of American States, 2017). Most importantly, the second article of this law includes the prohibition of criminalization; therefore, illegal entry is not a crime in Ecuador as in many other countries, including the United States. Regarding deportation, Article 143 of the Human Mobility Law (Presidencia de la República del Ecuador, 2017), which is titled *Reasons for Deportation*, states that foreign nationals who entered through a non-authorized port of entry shall be deported from the Ecuadorian territory, except for persons subject to international protection such as refugees. Finally, although the 2017 Human Mobility Law commits Ecuador to the principles of non-*refoulement*, non-discrimination, integration, and non-criminalization,<sup>2</sup> Ecuador has struggled to keep up with new arrivals, adapt services for newcomers, and assist host communities (Miller & Panayotatos, 2019). Moreover, policy changes appear politically motivated, coming in response to surges in arrivals and shifts in public opinion due to a spike in

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<sup>2</sup> Under international human rights law, the non-criminalization principle understands that irregular entry and stay by migrants should not be treated as a criminal offence, because the mere fact of crossing a border or staying in a country irregularly is not a crime per se against persons or national security. However, by exceeding their legitimate interest in regulating migration, states criminalize people based on their migration status, justifying discriminatory profiling, arbitrary detention, family separation, and the inability to access health care, housing, or education.

xenophobia; these policies undermine the initial intent of the law. The dramatic decline in the recognition of refugees compared to the number of applications occurred before the pandemic and is the consequence of pronouncements made by former President Lenín Moreno in national media in January 2019, associating immigrants with increases in crime and high unemployment rates (Herrera, 2020). The murder of a 68-year-old woman, committed by a 19-year-old Venezuelan citizen, led Moreno to ask the National Assembly to reform the Human Mobility Law so that foreign citizens who commit crimes can be deported (Jacome, 2020).

The proliferation of xenophobic discourses led to the adoption of multiple security measures. At the beginning of 2018, Ecuador declared a state of emergency in three border provinces because of which all Venezuelan citizens would have been required to have a passport to enter Ecuador. This controversial measure was not implemented due to advocates' criticism and activism (Donoso, 2022). Criminal records became a requirement for Venezuelans after a femicide was committed in January 2019 by a man of that nationality against his pregnant Ecuadorian girlfriend. This killing was the first reported murder perpetrated by a Venezuelan immigrant since hundreds of thousands of Venezuelan immigrants had arrived in Ecuador (Valencia, 2019). On January 20, 2019, President Moreno posted xenophobic declarations on social media:

I have ordered the immediate setting up of units to control Venezuelan immigrants' legal status in the streets, in the workplace, and at the border... Ecuador is and will be a country of peace. I will not allow any criminal to take that away from us. (Valencia, 2019, para. 5)

This femicide became the excuse to criminalize the Venezuelan population rather than addressing the event as an act of violence against women regardless of the nationality of the abuser (Donoso, 2022). Consequently, in July 2019 Presidential Decree 826 introduced the humanitarian visa as a requirement for the regularization of Venezuelans already in Ecuador;<sup>3</sup> but it was available only to those who had entered legally and had not broken any laws (Almeida Silveira Correa & Monteiro Da Costa, 2020). Jacques Ramírez (2020) examines the requisites and the number of humanitarian visas that were granted to Venezuelan applicants. First, he explains that this visa was granted at the end of October 2019 but only applied to those who entered until July 25, 2019. In August 2020, the granting of humanitarian visas ended. Second, as a prerequisite, Venezuelan applicants interested in obtaining this visa had to register online through the Ministry of Government's online portal, fill out an online form and answer 44 questions related to health history and labor-economics. Third, at the end of the process, only 38,243 humanitarian visas were approved. The number of humanitarian visas granted compared to the

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<sup>3</sup> Once the humanitarian visa was granted, Venezuelans were able to legally work in Ecuador and have access to public health care and education.

number of people who registered online (approximately 235,000) confirms that very few visas were issued, just 16% (Ramírez, 2020, p. 17). Prior to the humanitarian visa, the UNASUR visa was in place.<sup>4</sup> Ramírez (2020) concludes that while the UNASUR visa was designed as a permanent mechanism for all South American citizens under a rights-based approach granted by the Ecuadorian Ministry of Foreign Affairs and Human Mobility, the humanitarian visa was temporarily issued by the Ministry of Government and was exclusively for Venezuelan citizens based on a national security approach.

### *Restriction of Mobility of Central American Forced Migrants in the United States*

Central Americans are fleeing widespread poverty and unemployment in their native countries. The Northern Triangle (Guatemala, El Salvador, and Honduras) is one of the poorest regions in the Western Hemisphere. The rate of informal employment averages 77% (Savoy & Sady-Kennedy, 2021, p. 2). Informal workers engage in multiples activities such as street vending, unregistered small businesses, and subsistence farming. These workers encounter numerous hardships in the informal economy, including job insecurity, low wages, absence of employment benefits, and minimal legal protections (Anand, 2024). Unemployment disproportionately affects young people between the ages of 15 and 29, who comprise the largest part of the population: 30% in Guatemala and Honduras and 28% in El Salvador (Savoy & Sady-Kennedy, 2021, p. 2). Because of the COVID-19 pandemic, the average formal unemployment rate increased significantly between 2019 and 2020, from four percent to seven percent (p. 2). Without sufficient job creation, the working-age population must choose between pursuing precarious employment opportunities in the unregulated informal sector in their country of origin or seeking better economic opportunities in the United States.

Violence and crime have also negatively impacted northern Central America. While transnational criminal organizations infiltrate government institutions to secure trafficking routes, the Mara Salvatrucha (MS-13) and 18th Street (M-18) gangs constantly resort to violence to control local drug distribution, extortion, and other illicit activities. According to the United Nations Refugee Agency (2020a), at least 71,500 Salvadorans and 247,000 Hondurans had been displaced internally by violence as of 2018 (para. 2); similar data for Guatemala are unavailable because the government does not recognize internal displacement associated with violence (Congressional Research Service,

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<sup>4</sup> Before Ecuador decided to withdraw from the Union of South American Nations (UNASUR) on March 19, 2019, the law permitted less restrictive immigration procedures for citizens of member states. Venezuelans thus were able to enter Ecuadorian territory with just a national identity card and to obtain a tourist visa valid for up to 180 days. Once inside the country, they were able to apply for the UNASUR visa, which granted them the right to stay and work for up to two years.

2023). Consequently, victims of violent crime who have been displaced multiple times have higher migration motivations than those who have not. By the end of 2022, the number of asylum-seekers and refugees worldwide from El Salvador, Guatemala and Honduras reached 665,200 and more than 318,600 have been internally displaced (The UN Refugee Agency, 2023). Despite this complex insecurity scenario in El Salvador, Honduras, and Guatemala, the criminalization of asylum seekers in the United States justifies their detention and *refoulement*.

Finally, widespread gender-based violence affects Central America. Gang members rape, torture, and carve tattoos on the bodies of women, girls, and members of the LGBT community (Gamboa, 2017; Moloney, 2017; Sanford, 2008). These gangs have also forcibly recruited women and girls; the women are not only expected to serve as drug mules or carry contraband into prisons, but also to perform household duties (Organization of American States, 2018; Ribando, 2016). In this adverse context, female detainees who were fleeing gender-based violence receive inadequate mental health care while in detention facilities in the United States, exacerbating their pre-existing trauma and increasing their already complex levels of anxiety and depression (Donoso, 2020). Moreover, U.S. border security authorities have turned away Central American asylum seekers fleeing from gang-related violence (Schatz, 2017), violating the non-*refoulement* and non-criminalization principles.

The Inter-American Commission on Human Rights (IACHR) has called on the United States to prevent hate speech and hate crimes against migrants. Representatives from the IACHR visited the United States' southern border on August 19 to 23, 2019, to observe the situation of human rights, including the conditions of reception at the border, access to asylum and international protection procedures, conditions of detention for migrants, and the practices associated with such detention in Laredo and San Diego. During this visit, the IACHR expressed concerns about the implementation of policies aimed at securitizing the Southwest border and criminalizing forced migration; these policies are the Zero Tolerance Policy and the Migrant Protection Protocols (MPP). According to the U.S. Customs and Border Protection Agency (CBP), of the 760,370 people who had been detained in 2019, 69,157 were unaccompanied children and adolescents and 432,838 had entered the country in family units (IACHR, 2019, para. 7). Policies along the US-Mexico border dramatically impacted asylum seekers forcing them to stay in Mexico under dangerous circumstances, waiting to enter the U.S. and apply for asylum. During the first Trump administration migrant children were separated from their families to deter migration.<sup>5</sup>

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<sup>5</sup> Since Trump regained the presidency in 2025, immigration policy has continued a similar anti-immigrant direction as his previous administration. His second administration has implemented mass deportations, expanded expedited removals and arrest priorities to anyone in the country illegally, not just people with criminal convictions, and stopped resettling refugees who are vetted abroad before entering the United States until further review.

*Asylum Process in the United States*

An individual may apply for asylum in the United States through one of three processes: affirmatively, defensively and via the Asylum Processing Rule. Through the affirmative process an individual who is not in removal proceedings (or an unaccompanied child even if in removal proceedings) may apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). If the USCIS asylum officer does not grant the asylum application and the applicant does not have a lawful immigration status, the applicant is referred to the immigration court for removal proceedings. In this case the applicant may renew the request for asylum through the defensive process and appear before an immigration judge. In contrast, with the defensive process an individual who is in removal proceedings applies for asylum by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR). Unlike the criminal court system, EOIR does not provide appointed counsel for individuals in immigration court, even if they are unable to pay for an attorney. Lastly, since May 31, 2022, the Asylum Processing Rule has allowed some individuals entering the United States to be processed under an interim final rule. These individuals are first put in expedited removal and are given a credible fear interview if they have expressed fear of persecution; this process initiates a defensive asylum claim. However, people processed under this rule do not have their case sent directly to an immigration judge; they are referred to an asylum officer for a non-adversarial Asylum Merits Interview between 21 and 45 days after the credible fear determination. An asylum officer can then either grant asylum or deny asylum. If denied, the case is referred to an immigration judge (American Immigration Council, 2024).

The asylum process in the United States poses various challenges for applicants. First, all three processes require that a person be physically present in the United States or at a port of entry before they can be initiated. Second, an asylum seeker must apply for asylum within one year of their most recent arrival in the country. Third, backlogs were already long before the pandemic and grew longer due to COVID restrictions and closures in some courts and asylum offices. As of October 31, 2023, there were 105,0620 affirmative asylum applications pending with USCIS. At the end of fiscal year (FY) 2023, 782,067 defensive asylum applications and 155,544 affirmative asylum applications initially denied by USCIS were pending in immigration courts. Individuals with an immigration court case who were granted asylum in 2023 had waited more than 1,364 days on average for that outcome (American Immigration Council, 2025). Similarly to the Ecuadorian case, in the United States the health crisis brought by the pandemic has only worsened these enforcement policies, allowing the treatment of forced migrants as bare life and potential carriers of the virus, a discussion I return to below.

### **Bare Life and Intersectionality in the Context of Forced Migration during the Pandemic**

Bare life is a crucial concept that enhances our understanding of the exclusion of the “other” under a state of exception. For Giorgio Agamben, bare life is a zone of continuous transition between man and beast (Leban, 2017) or between human and non-human. Agamben (1998) identifies bare life in the life of *homo sacer*, who may be killed and yet not sacrificed. In Roman law, the *homo sacer* refers to the human life included in the juridical order solely in the form of its exclusion. The *homo sacer* or the sacred man is the one whom the people have judged on account of a crime, confirming the sacredness of the person but at the same time authorizing its killing with impunity. Thus, the violence done to the *homo sacer* does not constitute a sacrilege. Since the production of bare life constitutes a component of sovereign power, the sovereign “suspends law in the state of exception and thus implicates bare life within it” (Agamben, 1998, p. 83). Subsequently, necessity is the foundation of the state of exception, in which a particular situation is released from the obligation to observe the law (Agamben, 2005). Previous studies show that the irregular immigrant appears as a subject dispossessed of human rights and reduced to bare life, constantly struggling to survive under the threat of removal; thus, the irregular immigrant’s removable body exemplifies Agamben’s *homo sacer*, whose naked life is exposed to the threat of sovereign violence (Oudejans, 2019; Schinkel, 2009). The pandemic has clearly shown that the state of exception has become a normal condition. In this vein, the pandemic offers the ideal pretext to spread insecurity and fear in the consciences of individuals, creating a sense of collective panic. The state of exception during the COVID-19 pandemic will be remembered as the longest suspension of legality without the objection of citizens (Agamben, 2020). This study demonstrates that during the COVID 19 pandemic, the lives of forced migrants were viewed as bare life under a permanent state of exception executed by the sovereign power.

The most popular measures taken by countries to reduce exposure to infectious diseases have been implemented through a border control regime, backed by declarations of national emergency. By exploring the relationship between migration and contagious diseases, Horner et al. (2013) demonstrate the tendency of public health to function as a geopolitical exercise to prevent dangerous migrations and foreign risks. During the COVID-19 pandemic, declarations of a state of emergency have been decreed by the sovereign power of states to contain the spread of the virus; this new national security threat determines who is undesirable in a territory. In such a context, the forced migrant body has been reduced to bare life and constructed as “the ill body” that carries the virus. This state of exception justifies the treatment of Venezuelan and Central American forced migrants as bare life and the failure to protect their human rights amid the COVID-19 pandemic due to the securitization of health. However, this treatment cannot be fully understood without an analysis of the intersecting inequalities of these forced migrants.

A feminist intersectional approach to mobility control and border enforcement during the pandemic extends beyond a singular focus on forced migrants as bare life. Kimberlé Crenshaw (1989), one of the founders of critical race theory in the U.S. legal academy, introduced the term intersectionality to examine the experiences of discrimination of women of color. Intersectionality conceptualizes the relation among systems of oppression as they construct a person's multiple social locations in hierarchies of power and privilege (Carastathis, 2014). Thus, we can understand the interaction between gender, race, class, and other categories of difference "in individual lives, social practices, institutional arrangements and cultural ideologies and the outcomes of these interactions in terms of power" (Davis, 2008, p. 68). Several feminist scholars have applied intersectionality to different contexts. For instance, Crenshaw (1991) examines structural intersectionality in gendered and racialized structures of power in law in the United States. Gómez Cervantes et al. (2017) discusses the gendered and racialized justification for detaining Latin American women in the United States. Using the story of a Mexican woman victim of domestic violence who was denied refugee status, Salina Abji (2020) applies a feminist intersectional approach to the "cimmigration system" in Canada. Freedman et al. (2022) explore the risk of reducing gender-based violence (GBV) to a cultural or racialized "other" in the country of origin because it ignores GBV in the host countries. By adopting a feminist intersectional analysis on GBV in a migration context, their study recognizes that the experience of forced migrants is not homogeneous and that this type of violence occurs at different stages of the migration process (before migration, during migration, and upon arrival at "safety"). In what follows, I offer an intersectional analysis of the treatment of forced migrants as bare life during the COVID-19 pandemic due to the intersection of their identities rooted in their immigration status, nationality, class, and ethnicity. In the context of the pandemic, the Inter American Commission on Human Rights (IACHR) stressed the need to adopt an intersectional approach based on age, gender, race and ethnicity. In this respect, women and girls in situations of human mobility are subjected to additional risks, which mean greater exposure to domestic violence, often accompanied by the continuous contact with their aggressors and contemporary forms of slave labor and sexual exploitation (Organization of American States, 2020a).

### **Findings and Discussion**

The findings draw on the critical discourse analysis of 48 documents, including Center for Disease Control and Prevention-CDC's guidance documents, academic articles, human rights reports, migrant stories reported in secondary sources, anti-migrant rhetoric in news articles, and border enforcement documents related to the militarization of borders in Ecuador and Title 42 in United States from March 2020 to December 2021. Additional examined data

include border control policies before the pandemic, such as the Migrant Protection Protocols Policy and detention in the United States that remained unchanged under the health crisis and the humanitarian visa in Ecuador.

### *Ecuador*

The critical discourse analysis developed in this study permits us to understand the failure to enforce the protection of vulnerable Venezuelan forced migrants during the pandemic due to the Ecuadorian government's representation of forced migrants as bare life and carriers of the virus. Three codes were examined in this analysis: (1) containing the spread of the virus, bare life, and human rights; (2) mobility control and securitization of health; and (3) xenophobia, national security, and intersectional inequalities.

*Code 1: Containing the spread of the virus, bare life, and human rights.* This code analyses data related to regulating the mobility of Venezuelans through border closures and militarization of the border region with Colombia and Peru during the health crisis. Thus, the data examined shows how mobility and human rights were suspended and restricted through presidential decrees and the closure of borders to protect public health and avoid the increase of contagions. The code also covers the suggestions made by the IACHR to Ecuador regarding the treatment of vulnerable persons in situations of mobility during the global pandemic. For instance, the IACHR urged Ecuador to strictly observe the special protection of populations forced to flee because of violence, persecution, and serious threats to their personal integrity, indicating specifically that Ecuador must respect the principle of *non-refoulement* and the best interests of children and the family unity of all persons in situations of mobility (Organization of American States, 2019). During the pandemic, forced migrants' rights to asylum were delegitimized, stripping them from international humanitarian protection and simultaneously constructing them as bare life. The health crisis discourse legitimized the contention of the virus. Thus, the rights of forced migrants as international subjects of protection were removed, constituting them as bare life through their legal non-existence.

*Code 2: Mobility control and securitization of health.* This code displays information about how the process of regularizing Venezuelan migrants was implemented during the pandemic, allowing exceptionalism through the declaration of a state of emergency in the name of public health. For instance, critical discourse analysis reveals that the humanitarian visa was suspended as a mechanism to control contagion (Noboa, 2020).

*Code 3: Xenophobia, national security, and intersectional inequalities.* This code analyses enforcement policies and stigma against Venezuelan forced migrants due to their intersecting identities (immigration status, nationality, and class). The data analyzed demonstrates power relations through security

mechanisms such as the deployment of soldiers on the Ecuadorian side of the border with Colombia. This deployment in the border town of Tufiño took place after the government announced the closure of borders to all foreigners due to coronavirus on March 15, 2020. Data included in this code demonstrate that compulsory restrictions such as isolation and the limitations for work and obtaining food motivated the departure of 55,888 migrants from Ecuador between March and May 2020 (Herrera, 2020, para. 1). Due to border closures, hundreds of Venezuelan migrants were stuck on the northern and southern Ecuadorian borders without shelter, protective masks, and social distancing. Desperation to cross the border provoked outbreaks of border violence led by security forces aimed at maintaining restrictions during the pandemic. On April 28, 2020, Venezuelan migrants waiting at the Ecuador-Colombia border suffered repression by the Colombian police, which prevented them from crossing the international bridge. Ecuadorian security authorities supported this repression. A commander of the Ecuadorian police in the border region indicated that “immigrants have not shown the best attitude to cross the border” (González, 2020, para. 28). Additionally, the mayor of the border city of Tulcán mentioned that the presence of immigrants had caused discomfort because they do not comply with the restriction measures: they continue to sell products on the street and do not wear masks. However, a local journalist described the situation as a “new humanitarian crisis” because immigrants had been waiting to cross the border for more than three days and had nothing to eat (González, 2020, para. 30). The lockdown adversely affected low-income Venezuelan forced migrants who are largely involved in the informal market and depend for their daily income on the goods they sell on the streets. Before the pandemic, Deisi, a female Venezuelan migrant, made \$15 US a day selling tobacco and breakfasts on the street to feed her three children. The strict lockdown forced her to stop working. Since she was not able to pay rent, her Ecuadorian landlord became aggressive and cut her internet, water, and electricity services. Although the Ecuadorian authorities highlighted the importance of staying at home, as a single mother she simply could not afford to follow the rules and continued working. Deisi said she feared hunger more than the virus (Rojo Mesones, 2020). Deisi’s story tells us that her gender, class, nationality, and migratory status exposed her to complex vulnerability during the health emergency, triggering the xenophobia of her landlord and creating further obstacles to her family wellbeing.

Based on the three codes examined through the critical discourse analysis, the Ecuadorian case shows that the health crisis exacerbated by the COVID-19 pandemic worsened the already precarious conditions of Venezuelan forced migrants, framing them as bare life under a state of exception. Additionally, the securitization of health allowed the discrimination of Venezuelans based on intersecting inequalities related to their immigration status, nationality, and low-income status.

*United States*

The same three codes were examined to understand how in the United States, the Trump and Biden administrations displayed exceptionalism in the treatment of asylum seekers, framing them as bare life in the context of the pandemic.

*Code 1: Containing the spread of the virus, bare life, and human rights.* The data analyzed under this code shows concerns and suggestions made by the IACHR to the United States on the treatment of asylum seekers during the global pandemic. This code also demonstrates the effects of the Migrant Protection Protocols (MPP) and the March 20, 2020, Center for Disease Control and Prevention (CDC) Order under a public health law known as Title 42 to stop the spread of COVID-19 across the United States' land borders with Mexico and Canada. Some sources explicitly explain that these two policies violate the constitutional rights of asylum seekers under the Fifth and 14th amendments when they fail to protect asylum seekers from deprivation of life and liberty without due process of law (Beck, 2020). Particularly, Title 42 has been denounced by human rights activists as a blanket deportation policy that deprives people of the right to apply for asylum. The IACHR highlights that the continuity of the Migrant Protection Protocols (MPP) and the Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists (issued by the United States' Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic) have made it more difficult for asylum seekers and migrant persons who may require protection to access legal processes in compliance with the international obligations and commitments of the United States (Organization of American States, 2020b). Furthermore, the data demonstrates that refugee admissions were suspended in the United States for five months beginning in March 2020. On July 17, 2020, the Department of Justice postponed all hearings for immigrants returned to Mexico under the MPP. Many immigration court hearings were suspended and the few courts that remained open had limited services. Cinthia, a woman from Honduras, stayed at the Pan de Vida Migrant Shelter in Juárez while she waited out her asylum case, which was delayed by almost a year due to the pandemic. Levis, another Honduran asylum seeker, who stayed in the same shelter in Juárez for more than a year with her three children, could not reunite with her husband who arrived in the United States before the Trump administration implemented MPP (Falk, 2020). The MPP and CDC mandates established power structures that have served to make certain policies seem natural and legitimate, producing low-income Central American female forced migrants as bare life when they were denied access to human rights through delays and an exclusionary framing that produces them as "expedient" and "socially dead" persons (Leban, 2017, pp. 76-77).

*Code 2: Mobility control and securitization of health.* Concerned about the danger to public health, in May 2020 CDC extended the order suspending the introduction of certain persons from countries where a communicable disease exists, arguing that immigrants pose a threat to U.S. citizens (Department of Health & Human Services, 2020); this order has prevented thousands of asylum seekers from proceeding with their claims and removed them to Mexico (Human Rights First, 2020). As the delta variant of COVID-19 became predominant, the CDC under President Biden extended the order in August 2021, but made an exception for unaccompanied children (Kimball, 2022). This controversial emergency health order did not end on December 21st, 2022, as planned; the U.S. Supreme Court ruled to keep it in place for at least two more months to rapidly turn away asylum seekers on account of their COVID-19 risk. Lastly, because an Arizona-led coalition of 19 states – including Texas – successfully challenged Biden’s efforts in court, his administration was unable to eliminate Title 42 at that time (García & Ura, 2022). It seems contradictory that Texas Governor Greg Abbott supported Title 42 while he ended the mask mandate with Executive Order GA-34 in March 2021 (Office of the Texas Governor, 2021). Title 42 expired on May 11, 2023, when the public health emergency for COVID-19 was lifted (Carnegie Corporation, 2023). State, county, or city offices and facilities cannot require masks under Section 81B.002 of the Texas Health & Safety Code. These restrictions were in Senate Bill 29, which became effective September 1, 2023. (Texas State Law Library, 2025).

This code also refers to the fact that asylum camps located in border states such as Tamaulipas did not provide access to health care for those forced migrants who were not allowed to enter the United States to file for asylum. Even with the arrival of the pandemic asylum seekers lived in crowded tents. The lack of proper sanitation could lead to infections in the Matamoros camp (Peña, 2020). In these camps, approximately 2,000 asylum seekers have been living in tents spaced six feet apart, sleeping head to toe to attempt protection from infection (McDonnell, 2020). In addition, insufficient information about cases and delays in processing claims in the U.S. have contributed to potential asylum seekers approaching the border on incorrect dates, putting themselves at risk of contracting COVID-19 (Prendergast, 2020). Framing forced migrants as carriers of the virus reinforced punitive treatment, forcing them to remain in Mexico without proper health care.

The data show that the treatment of asylum seekers as bare life also impacted those already in the detention system. Tens of thousands of people remained in immigration detention despite the high risk of COVID-19 transmission in crowded spaces (Loweree et al., 2020). In 2020, U.S. Immigration and Customs Enforcement (ICE) tested 80,200 detainees for COVID-19, identified 8,622 positive cases (10.8%) in all detention centers, and recorded eight deaths. In addition, ICE identified 14,729 high-risk detainees in its custody nationwide among whom 528 (3.6%) tested positive for COVID-19 (U.S. Government Accountability Office, 2021).

The treatment of people as bare life in immigration detention during the pandemic was evidenced by several advocates of migrants' rights. The Global Detention Project (2021) shows that in the United States infection rates in immigration detention centers were far higher than in criminal prisons, leading to outbreaks in neighboring communities where facility staff members lived. The situation was worsened due to poor hygiene and sanitation facilities, minimal ventilation, overcrowding, and restricted access to medical care. These outbreaks have been tied to authorities' indifference and their refusal to decongest facilities. Detainees with medical vulnerabilities were denied release. Due to this neglect, many undocumented migrants in detention died due to COVID-19 (Niu et al., 2021). The body of the low-income detainee was treated as bare life; such a life has been sacrificed even during the health crisis. Certainly, this policy is targeted at poor Latin American asylum seekers, demonstrating the extent to which their intersecting identities justify their treatment as bare life.

*Code 3: Xenophobia, national security, and intersectional inequalities.* This code refers to border closures, deportation and detention during the COVID-19 health crisis, delays in processing, and rejections of asylum claims of forced migrants facing intersecting discrimination due to their nationality, ethnicity, and class. Data analyzed indicate that between February 3 and April 24, 2020, U.S. Immigration and Customs Enforcement (ICE) carried out 232 deportation flights to Latin America and Caribbean countries (Human Rights Watch, 2020, para. 2). During the pandemic, visa processing overseas by the Department of State and United States Citizenship and Immigration Services (USCIS) came to a near standstill. The entry into the United States of Central American asylum seekers and unaccompanied children was restricted. In contrast, on March 11, 2022, a Department of Homeland Security memo instructed officers at the US-Mexico border to exempt Ukrainians on a case-by-case basis from the public health restrictions used to prevent Central American, Haitian, and other asylum seekers from entering the country. Immigrant rights advocates claim that the U.S. government response to the arrival of Ukrainians illustrates racial prejudice and a double standard in how the U.S. immigration system treats non-white migrants (Shoichet, 2022).

The analysis of these three codes shows us that the lack of health care exacerbated by the COVID-19 pandemic worsened the precarious conditions of potential asylum applicants, producing them as bare life and forcing them to stay in Mexico or remain in detention in the United States. The direct impact of Title 42 has been the rapid removal of all asylum seekers and unaccompanied children arriving at the border seeking protection, even if they express fear of persecution upon return (Zak, 2020).

### **Concluding Remarks and Recommendations**

By comparing the practices of exclusion and restriction of human mobility in the United States and Ecuador during the COVID-19 pandemic, the discourse analysis conducted in this study demonstrates the continuity of pre-pandemic rights restrictions; the Migrant Protection Protocols Policy (MPP) and detention in the United States continued during the health crisis. In the Ecuadorian case, pre-pandemic xenophobia and securitization of Venezuelans remained unchanged. During the pandemic, Venezuelan forced migrants at Ecuadorian borders and Central American asylum seekers at the US-Mexico border were framed as carriers of the virus and threats to public health. The treatment of forced migrants as bare life was aggravated by their intersecting identities, justifying the implementation of security measures such as border closures, detention, the Remain in Mexico policy, Title 42, the militarization of borders in both states, and state of emergency decrees. Comparably, Venezuelans in Ecuador and Central Americans in the United States faced human rights violations due to their migratory status, nationality, and class before and during the COVID-19 pandemic. Unlike Ecuador, the United States implemented draconian policies such as family separation and detention of asylum seekers.

As of March 2020, due to COVID-19-related border restrictions, entry and processing of forced migrants decreased significantly and permitted their discrimination. Forced immobility became a COVID-19 border management tool, creating a migration crisis within a health crisis. Amidst the pandemic, Ecuador increased the militarization of its borders; this situation was accompanied by outbreaks of discrimination and xenophobic violence against low-income Venezuelans who attempted to cross Ecuadorian borders and continued to work in the informal sector without proper social distancing and face masks. Forced migrants attempting to cross borders were portrayed as security threats and as subjects that fail to abide by pandemic policy (Alrob & Shields, 2022). Meanwhile the United States maintained the Migrant Protection Protocols (MPP) program and Title 42, forcing poor and racialized asylum seekers to stay in unhygienic shelters in Mexican border cities and overcrowded U.S. detention facilities, where they were at higher risk of contracting the virus.

The norm of non-*refoulement* was not carefully taken into consideration by both states' measures to respond to COVID-19. Although states have the sovereign power to regulate the entry of non-nationals, international law emphasizes that exercising that power may not stop those seeking asylum from persecution (United Nations Refugee Agency, 2020b). Consequently, a state cannot return asylum seekers to unsafe foreign territories. The removal of forced migrants to a country with poor and limited health care during and after the pandemic must be prohibited as it creates serious threats to life and an irreparable decline in health. Forced migrants such as refugees and asylum seekers were not exempted from border closures and limitations on entry.

Simple and effective health measures such as screening, testing, and quarantine could enable states to manage arrivals safely while respecting the principle of *non-refoulement*.

To avoid exceptionalism and resistance to international humanitarian law, it is recommended that both states protect the right of freedom of movement. One first step could be the removal of financial and bureaucratic barriers to the regular entry of Venezuelans and Central Americans respectively into both states. This step should include increasing the capacity for immigration and asylum processing and reducing fees for obtaining visas. It also means upholding the United States' and Ecuador's commitment to *non-refoulement*, non-discrimination, integration, and non-criminalization of irregular migration. Both states also need to expedite asylum claims and refugee status determinations to ensure that Central Americans and Venezuelans with credible claims to asylum under the UN Convention Relating to the Status of Refugees have access to international protection. Asylum seekers should receive financial and social support while waiting for their hearing at a U.S. immigration court; they have limited or no access to shelters, food, health care, and legal aid. Since they are not authorized to work their human security in relation to economy, food, and health is compromised. This lack of support seeks to deter asylum applicants. The integration of displaced Venezuelans into Ecuador's economy could be achieved by creating opportunities for livelihoods and access to the labor market. Work visas should be made more affordable and mechanisms to transfer professional certificates should be made accessible to displaced Venezuelans (Miller & Panayotatos, 2019). Both Ecuador and the United States, must invest in anti-xenophobia campaigns to combat discrimination and anti-migrant rhetoric.

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