

Cumberland Advisors Market Commentary – Borders

“You have a platform. Can you write about this issue?” The email from D. triggered this longer commentary, and we hope our remarks will trigger some much-needed discussion about the means our country is employing to protect its national borders, and about the subject of conflict across borders more generally. Readers will need 20 minutes.



The article that D. referenced is here: “‘There Is a Stench’: Soiled Clothes and No Baths for Migrant Children at a Texas Center,” New York Times, June 21, 2019: <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

We pondered why American law permitted this horror story. With help from Barry Ritholtz and the WAP0, we have come to see that the today’s nightmare at the border has its origins in the 1929 actions of a white supremacist South Carolina Senator. That’s right, the Trump administration is using 90-year-old Section 1325 of Title 8 of the United States Code to separate parents and children at our Mexico border.

In the 1920s, Section 1325 of the Immigration Code was conceived as the solution for what nativists perceived to be a problem – Mexican immigration. Those who desired a predominantly white America had already enacted quotas on immigration from the Eastern Hemisphere, but Mexico was another matter. Western farmers relied heavily on Mexican labor. They did not want their source of workers cut off, though most wanted Mexican workers to come north to work and then to go back home again. (Source: <https://theconversation.com/how-crossing-the-us-mexico-border-became-a-crime-74604>).

As populations of Mexicans living in the United States grew, so did nativists' concerns. As Kelly Lytle Hernandez documents in her book *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*, it was unapologetically racist South Carolina Senator Coleman Blease who came up with an alternative to the strict quotas that would have denied farmers their Mexican laborers: Simply make crossing the border without authorization a misdemeanor. Using Section 1325, the flow of Mexican workers could be permitted or turned off like a spigot, and unauthorized immigrants could be deported rather than settling in the US.

In this way, too, Blease could get around Supreme Court rulings in the cases *Fong Yue Ting* and *Wong Wing* that living in the US without authorization was not a crime. Section 1325 did not address living in the US, only crossing its borders to enter the country.

In the wake of the passage of Section 1325, the US federal prison system swelled to accommodate those who were arrested and imprisoned under the new law. Of those imprisoned, the percentage who were Mexican never fell below 84.6% and ranged up to 99% in the years that followed. (See Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*.)

Such are the ignominious origins of Section 1325, which serves as the basis today for the inhumane and traumatic policy of separating families at the border, as adults are charged with crimes and those who try to seek asylum through proper channels are rejected. Absent Section 1325, those applying for asylum would await their hearings without being charged with a crime and being incarcerated at great expense. Families would remain together.

Former HUD secretary and Democratic presidential candidate Julián Castro has challenged his rivals to back the repeal of Section 1325, and fellow candidates Senator Elizabeth Warren and Senator Cory Booker have expressed support for repeal, while former congressman Beto O'Rourke has not. See https://www.washingtonpost.com/nation/2019/06/27/julian-castro-beto-orourke-section-immigration-illegal-coleman-livingstone-please/?utm_term=.9cd956911e3f .

In a separate chapter of the border saga, here's what happened when a family seeking asylum walked hundreds of miles, then properly knocked on our American front door and was turned away. Desperate, the family attempted to cross the Rio Grande near Brownsville, Texas; but the father and daughter were swept away and drowned. The story is graphic, and it is true: <https://www.theguardian.com/us-news/2019/jun/26/a-young-family-left-el-salvador-for-a-better-life-their-tragedy-focused-the-immigration-crisis> .

And here is the first-person account of a journalist's encounter with the folks who are supposed to be protecting America's borders. Seth Harp, a professional journalist and war correspondent, had been in Mexico, reporting a story for Rolling Stone about some guys from Texas and Arizona who sold helicopter machine guns to a Mexican cartel. On May 13, 2019, he flew into Austin, Texas, from Mexico City, where he had interviewed a government official. Since Austin is his hometown and he often travels abroad, Harp usually gets waved through immigration; but this time the US Customs and Border

Protection officer was more aggressive than usual in his questioning. He wanted to know not just where Harp had been and what he was doing but also the substance of the story he was currently working on. That rubbed Harp the wrong way; he politely refused; and the officer pulled him aside for "secondary screening," a law enforcement process that takes place in the Homeland Security zone of the airport.

Harp was aggressively questioned; his luggage was ransacked; and his journal was read and sections copied. Then the officers demanded that he hand over his laptop and phone, with their passwords. They made it clear that they had legal authority to confiscate the devices and forcibly crack them if he refused, so he complied. At this point he asked to be allowed to contact an attorney, but he was told that he couldn't because he wasn't under arrest; he just wasn't allowed to enter the United States.

The officers spent the next three hours searching the entire contents of Harp's phone and laptop, reviewing hundreds of photos and videos, emails, calls, and texts. He was questioned further about what the officers found. They asked about Harp's conversations with editors and colleagues. They asked him about his political opinions. They wanted to know how he felt about Trump's trying to pull troops out of Syria (where Harp had reported).

They copied Harp's laptop's serial number and wrote down several alphanumeric sequences found deep in his phone's settings, including the phone's IMEI number, which can be used to track its physical location. They removed his devices from the room for long periods of time, presumably to copy their contents.

Finally, some four hours after he was detained, Harp was anticlimactically informed that he was free to go.

Harp notes that secondary screening searches of travelers'

cellphones and laptops at airports and border crossings numbered 33,295 in fiscal 2018. The searches have nearly quadrupled since 2015, according to this report from the Associated Press: "US searches of phones, laptops at airports rising, suit says," AP, April 30, 2019: <https://www.apnews.com/9cab32c02ca4474ea80fa88e16ba7967>.

(Sources: "I'm a Journalist but I Didn't Fully Realize the Terrible Power of U.S. Border Officials Until They Violated My Rights and Privacy," *The Intercept*, June 22, 2019; <https://theintercept.com/2019/06/22/cbp-border-searches-journalists/> . Additionally, serious readers may wish to access a Congressional Research Service report entitled "Protecting the U.S. Perimeter: Border Searches Under the Fourth Amendment," June 28, 2009: <https://fas.org/sgp/crs/homsec/RL31826.pdf>.)

This is not the first time we've written about violations of our First Amendment rights by the US Border Patrol and Homeland Security. On April 5, 2019, we published a commentary on the US government's harassment of journalists, attorneys, witnesses, and others who had accompanied the migrant caravan that approached the US-Mexico border in late 2018. See <https://www.cumber.com/cumberland-advisors-market-commentary-defending-first-amendment-freedoms/> .

Readers may wish to think not only about the Trump administration's resorting to the enforcement of obscure, racist 90-year-old legislation but also about congressional failures by both political parties last week in the fight over \$4.6 billion in funding for border protection. The Democrats, in particular, shot themselves in the foot and lost the opportunity to ensure better protection of human rights at the border, when Senate Minority Leader Charles Schumer (D-NY), and House Speaker Nancy Pelosi (D-Calif.) feuded bitterly over the handling of Pelosi's counterproposal in the House to the Republicans' Senate bill. (For the whole sad knock-down, drag-out affair, see " 'A betrayal': Inside the bitter rift between Pelosi and Schumer over border bill," *Washington Post*, June

28,

2019:

https://www.washingtonpost.com/powerpost/a-betrayal-inside-the-bitter-rift-between-pelosi-and-schumer-over-border-bill/2019/06/28/26fbb3b8-99bf-11e9-8d0a-5edd7e2025b1_story.html?utm_term=.4fac48477a78 .)

The Deferred Action for Childhood Arrivals (DACA) program is another contentious border-war issue that the president and House and Senate have been unable to get together to resolve, even as the majority of the country supports the program. Avoiding political risk compounds border-war risk, causes innocents to suffer, and society loses. Now, the Supreme Court has announced it will hear arguments over the administration's termination of DACA. At stake are protections that allow 669,000 so-called "dreamers" to live and work in the United States legally. See "Supreme Court will hear arguments over DACA termination," *Politico*, June 28, 2019: <https://www.politico.com/states/new-jersey/story/2019/06/28/supreme-court-will-hear-arguments-over-daca-termination-1082288>.

This failure in congressional leadership doesn't excuse the Trump administration's behavior, but it puts it into perspective.

Were it not for First Amendment protection of journalism – key to the uncovering of all the events we have discussed above – I shudder to think what our country might become. Here are some additional thoughts about borders and conflict.

Borders and wars – and walls, too – have a long history. The Trojan War with Greece and the Great Wall in China are examples from antiquity. On the Gettysburg battlefield thousands died when the then very visible border was contested during the Civil War. Today the Canada-US border divides the 1000-plus-year-old Passamaquoddy Tribe. There are two Passamaquoddy communities in Canada and two in the US (in Maine). In their history this tribe fought regional wars with other tribes and also found itself alternately on both the

British and French sides during the era of great-powers warfare in North America. At Camp Kotok we take our group to Passamaquoddy reservation land as guests. We don't trespass. We respect the history of the region where the French and Indian War occurred. (Here's a primer on that war: <https://www.history.com/topics/native-american-history/french-and-indian-war> .)

I mention the Passamaquoddy Tribe because they offer an example of a border peace. Their history includes various wars, but now they are Native Americans or Native Canadians, with the border in the middle of their region. Across that border, the tribe has well-aligned interests, consistent internal governance, and external diplomacy. One of the communities has a woman as chief, a first-time event after 1000 years of male chiefs. The tribal representative to the Maine legislature is also a woman. The example shows that border peace is possible.

Modern border warfare involves people, money, climate change, political oppression, cybersecurity, currency issues, and many other factors. But borders don't necessarily have to be barriers.

There are many examples of positive border agreements. There is a border between Pennsylvania and New York. Many cross it every day, either directly or through New Jersey. No one imposes a barrier on transit, commerce, or telephone or internet usage. Yet in history this border once divided Dutch from British and then British from revolutionary Americans. Borders worked best when there are shared and aligned common interests. Peaceful borders allow sovereignty without oppression but with acceptable governance. A driver from Pennsylvania must still observe the NJ speed limit or be penalized by a sovereign government. And he pays the speeding ticket in a common currency (US dollars) issued by another sovereign, by transferring payment across the border freely.

On the other hand, borders can be divisive and destructive, whether through the imposition of tariffs, restrictions on personal passage, or interference with electronic communications. We all know about the Trump trade war and tariffs initiatives. But how many of us have focused on the Trump administration's profiling of Chinese Americans to the detriment of Americans' health? Here is a report about how the US-China dispute now weakens the global fight against cancer. Please take time to read it, then share it with anyone you know who has been touched by some type of cancer. See "The U.S. Is Purging Chinese Cancer Researchers from Top Institutions," *Bloomberg Businessweek*, June 13, 2019: <https://www.bloomberg.com/news/features/2019-06-13/the-u-s-is-purging-chinese-americans-from-top-cancer-research> .

As the article states,

"The globalization of science, in particular basic science, has been sweeping. 'Faculty don't see international borders anymore,' says Adam Kuspa, dean of research at Baylor College of Medicine in Houston. 'If someone in another country has a piece of the puzzle, they want to work with them.' Relationships often begin at academic conferences, jell during invited visits for symposiums or lectureships, and culminate in the melding of research into scientific papers. Since 2010 the NIH itself has offered about \$5 million a year in special grants for U.S.-China collaborations, with 20% going to cancer research, and a counterpart in China has pitched in an additional \$3 million a year. The joint projects have produced a number of high-impact papers on cancer, according to an internal NIH review."

Now, however, cancer research efforts that used to be open international collaborations, including between US and Chinese scientists, are being quashed by the NIH and FBI.

Clearly, border wars can affect your health and not just your consumer choices.

Meanwhile, on a positive note, we have just seen President Trump breach the North Korean border. *Politico* said of Trump's rendezvous with Kim Jung Un,

"It's hard to imagine any other president taking a bold step like this, let alone warmly embrace a third-generation tyrant who starves and imprisons his own people. But Trump has silenced the doubters within his own party, while Democrats have largely embraced his diplomatic efforts with Kim because they'd rather he try that than threaten ye olde fire and fury.

"It remains to be seen, of course, whether Kim is simply using Trump to advance his own agenda, or whether he genuinely believes, as he said today, 'we want to bring an end to the unpleasant past and try to create a new future.' Even Trump sometimes seems aware of this; as he put it, 'It's just a step. It might be an important step, it might not.'" (<https://www.politico.com/newsletters/playbook/2019/06/30/big-moment-trump-waltzes-into-north-korea-452223>)

If North Korea does change its behavior, Trump's charm offensive will properly be deemed a success. As Ronald Reagan proved with "Mr. Gorbachev, tear down this wall," a border-war barrier can be removed when political interests and willingness become aligned.

Currency wars are border wars by definition. They jeopardize banking systems, which tend to be nationally focused. In this monetary realm we can date the latest evolutionary development to the 2008 Global Financial Crisis and the reaction to it. Quantitative easing (QE) triggered currency wars and the disruption of finance. Consider that today, a decade after the financial crisis, \$14 trillion of sovereign debt has a negative interest rate. Consider that only 6.5% of developed-country sovereign debt currently offers a higher yield than the fed funds rate. Remove long-maturity Treasury bonds and the number drops to 1.2%. In 2015 it was 60%. (Source: Jim Bianco) Currency exchange rates and worldwide interest rates

were disrupted by this phenomenon of QE, and competitive devaluations – the primary mechanism of currency wars – ensued.

I'll list a few more items about current and potential border wars. Here's the American Enterprise Institute's description of millions of people crossing different borders around the Red Sea Corridor: "People problems between the Gulf and the Horn of Africa": <http://www.aei.org/publication/people-problems-between-the-gulf-and-the-horn-of-africa/>.

And here's Brookings on the pessimistic outlook for the US-China relationship: "Can the US-China crisis be stabilized?": <https://www.brookings.edu/blog/order-from-chaos/2019/06/26/can-the-u-s-china-crisis-be-stabilized/> .

Here's the UN warning on climate change and risk of disruption to borders, to governance, and to our freedom: "'Climate apartheid': UN expert says human rights may not survive," <https://www.theguardian.com/environment/2019/jun/25/climate-apartheid-united-nations-expert-says-human-rights-may-not-survive-crisis>.

While we're on the subject of disruptive climate change, here's *Politico* magazine on the US Agriculture Department's suppression of agricultural research. Remember, America is a huge food exporter. Hungry people make global border wars worse. See "Agriculture Department buries studies showing dangers of climate change": <https://www.politico.com/story/2019/06/23/agriculture-department-climate-change-1376413>.

Until the last two years I felt positive about globalization and the integration of people, information, and finance. And there are still glimmers of hope. The multinational focus on the Boeing plane problems is an example of a positive cross-border collective effort to address a worldwide concern. See

“Everything you need to know about the Boeing 737 Max airplane crashes” :

<https://www.theverge.com/2019/3/22/18275736/boeing-737-max-plane-crashes-grounded-problems-info-details-explained-reasons>.

But I must confess a loss of optimism. The Trump administration’s trade war approach seems to be doing long-lasting global economic damage and is intensifying distrust among allies while encouraging enemies. Trump’s reality-TV style coupled with continuous bullying and belligerence has upended diplomacy. Before the recent G-20 meeting convened in Japan, the US president insulted nearly everyone in attendance, including the host country.

Rampant false-fact creation makes the situation worse. Continual charges of “fake news” damage the national and global body politic and the integrity of the White House.

Dear readers, like the father and daughter lying dead in the river on America’s border, there are thousands of other victims of border wars every day. We don’t see many of them, because there is no free press on those borders that is able to tell us about them. The world seems a lot more dangerous now than it was just a few years ago. And the economic damage is global, and risk seems to be rising.

We financial types are inclined to say “Hope is not a strategy.” It appears to me that tariffs; cyberwarfare; currency wars; the weakening of international research efforts on the health, climate, agricultural, and other fronts; the intensification and resulting suppression of people movements across borders; and other forms of border conflict are likely to worsen. It’s not an encouraging outlook.

Thank you for taking the time to read. I look forward to your comments.

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Chairman of the Board & Chief Investment Officer

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