

Family Matters: Claiming Rights across the US-Mexico Migratory System

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Executive Summary

The Immigration and Nationality Act of 1952 (INA) created an immigration system favoring the immigration of spouses, children, and parents of US citizens, thereby establishing family unity as the cornerstone of US immigration policy. Despite this historical emphasis on family unity, backlogs and limited visas for non-immediate relatives of US citizens and legal permanent residents, the militarization of the US-Mexico border, punitive measures for those who enter without inspection, such as the forced separation of children from their parents at the US border, and an aggressive policy of deportation have made it more difficult for members of Mexican binational families to unify.

How do members of Mexican binational families manage the hardships that result from US immigration policies that prolong and force family separation? Immigrants and return migrants alike may not be aware of their rights and the legal remedies that exist to enforce them. Structural barriers such as poverty, legal status, fear of deportation, lack of proficiency in English, and lack of familiarity with government bureaucracies no doubt prevent many migrants in the United States and return migrants in Mexico from coming forward to request legal assistance and relief in the courts.

Despite these barriers, when it comes to family matters, members of some Mexican binational families *can* and *do* assert their rights. In this article, we analyze an administrative database of the Department of Legal Protection of the Mexican consular network that documents migrant legal claims resulting from family separation, along with findings from 21 interviews with consular staff and community organizations in three consular jurisdictions — El Paso, Raleigh, and San Francisco — to investigate the sociolegal processes of claims. Our investigation centers on the mediating role the Mexican state — via its consular network — has developed to assist binational families as they attempt to assert their rights and resolve child support and child custody problems resulting from prolonged and forced family separation. We find that the resolution of binational family claims in part depends on the institutional infrastructure that has developed at local, state, and federal levels, along with the commitment and capacity of the receiving and sending states and the binational structures they establish. These binational structures transcend the limitations of national legal systems to achieve and implement family rights and obligations across borders.

Keywords

US immigration policy, migrant rights, Mexican consulate, family separation, family unification, migrant claims

Introduction

The Immigration and Nationality Act of 1952 (INA) created an immigration system favoring the immigration of spouses, children, and parents of US citizens, thereby establishing family unity as the cornerstone of US immigration policy. Despite this historical emphasis on family unity, backlogs and limited visas in our current immigration system for non-immediate relatives of US citizens and legal permanent residents (LPRs), the militarization of the US-Mexico border, punitive measures for those who enter without inspection, such as the recent forced separation of children from their parents at the US border, and an aggressive policy of deportation have made it more difficult for members of binational families to unify.

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Because of the narrow definitions and requirements for family-based immigration and extensive backlogs, millions of binational families live in prolonged periods of family separation (Kandel 2014; Enchautegui and Menjivar 2015; Menjivar, Schmalzbauer, and Abrego 2015; Gubernskaya and Dreby 2017). This situation is exacerbated by the militarization of the US-Mexico border, which makes it difficult and dangerous for family members to cross freely back and forth as they have historically done (Massey, Durand, and Pren 2015). The 1996 amendments to the INA and subsequent punitive policies have further increased deportations of noncitizens, many of whom have been forcibly separated from family members at the border and in the United States (CLINIC 2000; Hagan, Eschbach, and Rodriguez 2008; Enchautegui and Menjivar 2015; Kandel 2014; Juarez et al. 2018).

Latin American migrants and return migrants, especially Mexicans, are disproportionately affected by immigration backlogs and aggressive deportation policies (De Genova 2005; Gonzalez-Barrera and Lopez 2013; Kerwin 2014). The current wait time for family-sponsored immigrants from Mexico ranges from about four years for spouses and minor children of LPRs, to over 100 years for siblings and adult children (Jones 2011; AILA 2018); in fiscal year (FY) 2016, Mexicans comprised almost three-fourths of the 340,000 persons removed from the United States (DHS 2017).

Scholars who study immigration policy and deportation trends in the United States have documented the effects of immigration enforcement programs on the stability of Mexican families. In 2013 alone, Immigration and Customs Enforcement (ICE) reported deporting roughly 72,000 parents of US citizen children (ICE 2014a, 2014b). By 2016, this number dropped to 28,860 (ICE 2017a, 2017b). In some cases, children of deported parents are placed in the care of Child Protective Services (CPS), and in the process sometimes parents lose their parental rights (Wessler 2011; Zayas 2015; Menjivar 2016). In 2011, more than 5,000 children, some of whom are US-born children of Mexicans, were placed in foster care because of the detention or deportation of a parent (Wessler 2011). More recently, according to data prepared by the US Office of Refugee Resettlement, a division of the Department of Health and Human Services, since October 2017, more than 700 children have been taken from their parents as they entered the United States (Dickerson 2018).

How do members of Mexican binational families manage the hardships that result from US immigration policies that prolong and force family separation? How does a mother in Mexico rightfully claim child support from the absent parent who lives in the United States? How does a deported father in Mexico locate a child left behind in the care of CPS in the United States? Immigrants and return migrants alike may not be aware of their rights and the legal remedies that exist to enforce them (Schumann 2004; Gleeson 2014). Moreover, structural barriers such as poverty, legal status, fear of retaliation and deportation, facility in English, and lack of familiarity with bureaucracies no doubt prevent many migrants in the United States and return migrants in Mexico from coming forward and requesting legal assistance and relief in the courts (Hagan, Castro, and Rodriguez 2010; Abrego 2011).

As we have found, when it comes to family matters, members of some Mexican binational families *can* and *do* assert their rights. These families seek to accomplish their legal goals by turning to an entity to which they are tied through citizenship and that has developed diaspora policies to protect and help them assert their rights across borders. In this article, we investigate the sociolegal processes of claims-making, examining the cross-border connections that the Mexican state — via its consular network — has developed to assist binational families as they attempt to assert their rights and resolve two related legal problems resulting from family separation — child support and child custody.¹ These processes reveal the developing principles and practices of extraterritorial legal interventions that serve to transform what were once national responsibilities to cross-border obligations undertaken by transnational bureaucratic structures and networks.

The Study: Methods and Research Questions

Methods

This study is based on a mixed-method and two-stage sociolegal analysis of civil claims processed by the Mexican consular network in the United States. Stage One included an analysis of an administrative database developed in 2010 by the General Directorate for the Protection of Mexicans Abroad (DGPME) to document social- and legal-related problems of Mexican migrants who seek assistance at Mexican consulates while living outside of Mexico or at DGPME offices in Mexico after returning home. The database, maintained for administrative reasons, has never before been reviewed or analyzed for research purposes. It includes narratives of varying length for each case. Consular officials document the claims process, which can last from one week to multiple years. The narratives, although often incomplete and unresolved, include information about the claimant, the social contexts and circumstances under which the claims were made, and the agencies involved in helping to resolve the claims.

¹ The Mexican Consulate network also provides cross-national support for numerous other types of cases including, for example, involvement in labor cases for plaintiffs who have returned to Mexico, transfer of school records for children moving to Mexico, assistance with locating persons abducted, and repatriation of ill or deceased Mexicans.

From January 1, 2010, through December 31, 2014, more than 18,000 child support and child custody cases were processed through Departments of Legal Protection (DLPs) within the Mexican consular network in the United States.² Because of the large number of cases and our interest in the political geography of migrant claims in the United States, we sampled claims across three consulate jurisdictions with very different political, social, and cultural histories and relations with Mexican populations: the Mexican Consulate in Raleigh, North Carolina; the Mexican Consulate in San Francisco, California; and the Mexican Consulate in El Paso, Texas. We randomly sampled 54 child support cases and 62 child custody cases from the three consulate districts. Our final sample of 116 family-related cases is representative of the custody and child support cases each consulate handled between 2010 and 2014. To better understand the problems facing migrants at the local level, and to identify the organizational networks that consular staff developed with local, state, and federal organizations to resolve them, we also conducted interviews with key informants in each of the three sites, for a total of 21 interviews with consul generals, consular staff, key institutional actors, family lawyers, and community organizations serving immigrants.

Research Questions

Studies investigating the development of diaspora policies by the sending state generally focus on either the economic and political rights that keep emigrants tied to their homeland, such as absentee voting or tax benefits (Smith 2003; FitzGerald 2016), or the extension of social services to facilitate integration in the country of destination, such as English language or citizenship classes to meet naturalization requirements (Laglagaron 2010). As Roger Waldinger observes, many studies of cross-border ties in the contemporary era of globalization give little attention to the common and emergent ties developed by migrants and emigrants that stretch from receiving to sending state and then back again (Waldinger 2015, 5–6). Our investigation examines family claims within this cross-border social field of activity, focusing on how the Mexican state has forged new cross-border connections at national and subnational levels to protect and enforce fundamental family rights among the ever-growing number of binational families. Our research addresses questions about the boundaries of rights among complex binational family relationships and the expanding role of diaspora policies in facilitating family rights among emigrants, return migrants, and nonmigrant Mexican nationals. Consequently, our analysis speaks to the boundaries of citizenship and sovereignty in the US-Mexico migratory system. Three broad questions guide our analysis:

1. How does the contemporary US immigration system motivate Mexican sending-state engagement in the protection and management of child custody and support rights on behalf of binational families?
2. What do the child custody and support claims and the profiles of the claimants who come to a Mexican consulate requesting assistance tell us about the structure of binational families and the circumstances and social mechanisms that facilitate their contact with the sending state?
3. What is the mediating role of the Mexican consular infrastructure in promoting family unity across borders — vis-à-vis the array of transnational, federal, state, and local bureaucracies, civil society organizations, and local social networks — and is it influenced by the social and political characteristics of consular jurisdictions?

We begin with an overview of the literature that examines rights protection at different levels of analysis, from the expanding role of the Mexican sending state in safeguarding emigrants abroad to the shifting and variable role that local context could assume in promoting or impeding the claims-making process. We then profile claimants in a random sample of child custody and support cases to illustrate the complexity and needs of binational families — the aim of our second question. Next, we draw on our analysis of the claims data and findings from our interviews to illustrate how the resolution of claims in part depends on the institutional infrastructure that has developed to support immigrants, along with the commitment and capacity of the receiving and sending states and the binational structures they establish. Our study demonstrates that emerging binational legal relationships established through the DLP and the bureaucracies and civil society organizations with which they work transcend the borders of the nation-state and serve to protect the legal rights of Mexican citizens who no longer live within the borders of Mexico.

Contextualizing Binational Family Rights Protection at National, State, and Local Levels

The Expansion of Mexican Consular Services in the United States

Embassies have long been recognized as institutions of extraterritorial sovereignty through which sending states can engage with their citizens abroad (Torpey 1999; Waldinger 2015). This status is formally codified through the 1963 Vienna Convention of

²About 60,000 human rights, penal, migratory, labor, civil, and administrative claims were processed through the El Paso, Raleigh, and San Francisco consulates; child support and custody claims (both under the consulate category of civil) constituted about 950, or less than two percent, of these claims.

Consular Relations establishing the rights of embassies and consulates to protect, assist, and help nationals (United Nations 2005). Embassies provide a myriad of services and activities for their citizenry abroad. The extension of services via the embassy and consular infrastructure has expanded in content and scope in recent decades because of the increase in the numbers of migrants living abroad and their rising demand for services (Melissen and Fernandez 2011; Waldinger 2015).

The more extensive the consular network, the greater its institutional capacity to engage with nationals abroad (Waldinger 2015). With one embassy and 50 consulates dispersed throughout the country, the Mexican consular network is the largest in the United States and serves the largest immigrant population in the country, which in 2015 numbered close to 12 million persons (Zong and Batalova 2016). Once restricted to diplomatic headquarters in Washington, DC, and traditional Mexican settlement corridors of the southwestern United States, in recent decades Mexican consulates have sprung up in new immigrant destinations, from North Carolina to Oregon, with mobile consulates providing for the needs of Mexican nationals living in rural hinterlands far from the cities where consulates are located.

The Mexican consular network offers resources in two broad categories that address concerns in their homeland and in the United States. First, the consulate helps Mexican emigrants maintain connections with the state and municipal organizations in their communities of origin, enabling a variety of transnational initiatives ranging from the promotion of productive investment to the construction of local infrastructure and other development projects (González Gutiérrez 1999). Second, and most relevant to our study, the consulate provides an array of services and programs to promote a collective Mexican identity and protect the individual rights of Mexicans who live or have lived in the United States. These activities include (1) coordinating cultural activities and educational integration programs through the Institute of Mexicans Abroad (IME), (2) providing administrative services and identity documents, and (3) providing legal-related services to safeguard the rights of Mexican migrants (and in some cases the rights of return migrants and their families back home) through the establishment of the DGPM and DLPs within Mexican consulates.

The DLP maintains the administrative database used for the analysis in this research project. It also secures legal representation for Mexicans detained and held in custody, and it assists Mexican nationals in family matters, including child custody, reunification of minors, child support, and domestic violence, and in cases involving labor rights violations, human trafficking, and other human rights concerns (González Gutiérrez 1999; Délano 2009; Bada and Gleeson 2015; Weissman et al. 2018). The DLP recruits US licensed attorneys through a program known as Programa de Asistencia Jurídica a Mexicanos a través de Asesorías Legales Externas (PALE), and it develops collaborative relationships with lawyers who specialize in issues affecting migrants. These services demonstrate the enduring relationship between the sending state and its citizens who have left its borders, and reveal how rights protections extend beyond the boundaries of territorial residence. Moreover, because the DLP relies on US agencies and organizations to resolve legal conflicts, we can decipher the ways in which the host state may facilitate rights regardless of citizenship status, thus bridging the divisions between migrants and citizens (Bauböck 1994).

Historically, the Mexican state devoted scant attention to its diaspora, especially in the area of family rights protection. Although consuls from Mexico were formally recognized in the United States as early as 1824, their functions were largely limited to administrative activities (Délano 2009). The shift from limited to active engagement with its diaspora in the United States began in the late 1970s and has accelerated since then in response to political and economic concerns at the domestic, transnational, and international levels (Délano 2009). Passage of the Immigration Reform and Control Act of 1986 (IRCA) interrupted the cyclical nature of migration in the US-Mexico migratory system and led to heightened enforcement efforts along the US-Mexico border, thereby making it more difficult to cross into the United States and exacerbating family separation. In addition, since the mid-1990s, the United States has enacted a series of laws that expanded the authority of the federal government to arrest, detain, and deport noncitizens (Hagan, Castro, and Rodriguez 2011), further contributing to family separations. Since the 2000s, Mexico's increased engagement in protecting its citizenry abroad can be explained in large part as a response to unprecedented anti-immigrant US legislation at federal and local levels that targets Mexicans, making them more vulnerable to discrimination in all areas of life and in need of greater assistance, especially in areas of work, health, and family matters (Délano 2014; Weissman et al. 2018). Following the 2016 US election and President Trump's call for tougher deportation standards, Mexico launched Centers of Defense of Mexican Migrants in all its US consulates to provide additional assistance and legal representation to migrants, including helping them in planning for custody and financial arrangements in the event of deportation of one or both parents.³

Because consulates are endowed with resources and legitimacy, they are important outposts for the safeguarding of rights (Laglagaron 2010). They mediate the processes of transnational bureaucracies and advise agency staff and advocates about procedures for asserting the rights of both US citizens and Mexican nationals (Blum 2008). The DLP has established working relationships and signed memoranda with organizations and agencies at federal, state, and local levels, and thus functions as an important actor in a system of "transnational management" to promote constitutional protections for migrants (Rodriguez 2010). These formal agreements reflect new principles and emerging structures that respond to the realities of mobile populations and affect the social fabric of families and communities (Reisman 1996).

³We met with the consul general of the Raleigh consulate the day its Center of Defense opened in March 2017. Scores of Mexicans lined up at the Center requesting assistance with documentation in anticipation of forced return and family separation.

Consulates are limited in their capacity to directly defend the legal rights of their nationals in family matters and thus rely on collaboration with domestic organizational partners to address the rights of their diaspora abroad. The DLP's primary purpose is to provide assistance to Mexican nationals to assert their legal rights. Yet those rights can be constrained by the social and political environments within which they are located (Weissman et al. 2018). In the following section, we explore how political and social contexts of reception in each of our three research sites may influence the ability of Mexican migrants to access consular services and the ability of the consulate to process and resolve claims.

Consular Opportunities and Constraints in Local Contexts

Migration scholars recognize that place matters when it comes to the lives of immigrants. In the migration literature, "context of reception" refers to the structural and cultural characteristics of specific localities that affect how immigrants are incorporated into those places (Portes and Böröcz 1989; Portes and Rumbaut 2001). Studies of immigrant incorporation focus on three dimensions of reception at the local level: economic, political, and social. In this article, we limit our examinations to the political and social dimensions, reserving discussion of economic contexts for future research that focuses on how the economic profile of a given place may be associated with levels and types of labor claims.

Scholars examining immigrant incorporation identify the central role of the political contexts of reception, including government policies regulating migration flows, integration programs, and immigrants' rights once in the destination (Portes and Böröcz 1989; Reitz 2002; Portes and Rumbaut 2014). These policies exist on a spectrum of receptivity toward immigrant integration ranging from active encouragement to passive acceptance to discouragement (Portes and Böröcz 1989). While earlier conceptualizations of political contexts focused primarily on federal immigration policies (Portes and Böröcz 1989; Portes and Rumbaut 2001), scholars increasingly highlight the importance of subnational legislation that shapes immigrants' incorporation experiences and their ability to claim rights. Examples of these policies include local-federal partnerships that authorize localities to engage in immigration enforcement (e.g., the 287(g) program and the Secure Communities Program) and alienage laws that determine whether or how immigrants can participate in a local community (e.g., driver's license policies, employment verification programs, and in-state tuition policies).

Scholars find substantial variability in political contexts of reception. In general, new immigrant destinations with little recent history of immigration and areas experiencing rapid demographic change, regardless of immigration histories, implement more anti-immigrant local policies and exhibit more hostility to immigrants than established immigrant gateways that tend to be more welcoming of immigrants through the provision of state and local laws protecting their rights (Motomura 2008; Varsanyi 2008; García 2014; Weissman et al. 2018).

The social context of reception refers to an existing community of co-ethnics in a receiving community and the institutional infrastructure that has developed to support immigrant newcomers. Scholars find that the presence of co-ethnic communities and institutional supports eases immigrants' social and economic integration (Portes and Rumbaut 2014), while immigrant-serving organizations facilitate immigrants' incorporation and civic engagement (Bada, Donnelly, and Selee 2010; Bada and Gleeson 2015). Studies find that new and emergent immigrant gateways provide limited social capital to newcomers, while traditional areas of reception have a rich co-ethnic social fabric to ease their integration.

The Mexican Consulate in Raleigh, North Carolina, was established in 2000 and provides services to Mexican nationals residing in North and South Carolina. The Carolinas represent a new but maturing destination for migrants. Both Carolinas were among the top 10 states with the fastest growing Latino populations between 2000 and 2011. By 2016, the Latino population in the Carolinas had climbed to over a million (US Census Bureau 2016).

Studies of Latino immigrant incorporation in the Carolinas find that immigrants have less developed co-ethnic networks and institutional support from community organizations compared with those in traditional destinations (Bada, Donnelly, and Selee 2010; Singer, Svajlenka, and Wilson 2015). The relatively weak structures are apparent within US bureaucracies such as CPS. Social services have fewer bilingual resources and little experience with legal issues affecting immigrant families (Wessler 2011; Peavey 2017). As a result, the DLP is often the most important resource for facilitating rights protection.

North and South Carolina have demonstrated strong anti-immigrant sentiment and have fully embraced federal-state immigration enforcement programs such as 287(g) programs (ICE partnerships) and Secure Communities. Both states' alienage laws generally reflect nativist tendencies, including heightened requirements for employment authorization. North Carolina prohibits localities from adopting "sanctuary ordinances" and prevents any government official from accepting consular matricula cards or any type of local or community-issued identification. South Carolina enacted legislation in 1987 making English the official language of the state. Both states have refused to issue driver's licenses to unauthorized immigrants, and neither permits in-state tuition status to unauthorized or DACA students.

DLP staff in the Raleigh consulate reported immigrants' fear of seeking assistance services from social service agencies as the major barrier for Mexicans seeking to claim rights.⁴ Racial profiling, anti-immigrant threats, and local law enforcement

⁴Interview with attorney, North Carolina, April 4 2016; interview with attorney, North Carolina March 18, 2016; interview with consular official, February 5, 2016.

checkpoints discourage attendance at DLP events organized through the consulate's mobile unit, which serves the Carolinas' rural population.⁵ The DLP's PALE (local lawyer) program suffers from a dearth of bilingual lawyers and interpreters, limiting their efforts. In 2017, the Mexican Consulate funneled bilingual staff and attorneys to its Center of Defense to provide for the legal needs of its citizens, many of whom are members of binational families.

The Mexican Consulate in San Francisco, California, a second study site, serves San Francisco and surrounding counties, as well as the state of Hawai'i. Founded in 1848, it is one of the oldest Mexican consulates in the country. Located in downtown San Francisco, it is easily accessible to the Mexican community via public transportation. The area represents a new established gateway immigrant corridor with a large co-ethnic Latino population. In San Francisco County alone, 15 percent of the city's population is Latino/a, and half of the Latino/a population is of Mexican origin (US Census Bureau 2016). In addition, immigrants benefit from strong community supports, and a variety of state and local policies that promote immigrant integration (Suro 2015; Weissman et al. 2018).

California offers immigrants the most welcoming reception of the three research sites. Both California and Hawai'i have kept at bay federal-state immigration partnerships, and localities have declined to enter into 287(g) agreements. California has passed numerous state statutes to protect the rights of immigrants regardless of status and is considered a "sanctuary state" (Villareal 2015). It has enacted statutes to punish employers who exploit immigrant workers and penalize those who would use threats to expose an individual's perceived immigration status to gain something of value. In 2017, California passed a law to prohibit employers from allowing ICE to enter the premises without a signed judicial warrant. The state has also enacted a law to reduce family reunification barriers for immigrant families involved in the child protection system. California has its own DREAM Act that allows undocumented students to pay in-state tuition. Unauthorized immigrants are also eligible for driver's licenses.

Unlike the DLP in the Carolinas, the DLP in San Francisco is well integrated into the local Mexican community and works closely with advocacy networks. The consulate coordinates outreach efforts and migrant services with organizations throughout San Francisco and outlying areas.⁶ They also work closely with government agencies, many of whose staff are Latino.⁷

The Mexican Consulate in El Paso, established in 1848, serves parts of west Texas and southern New Mexico. Located in the center of El Paso close to the border with Mexico, the consulate is easily accessible to Mexican nationals through public transportation. Eighty percent of El Paso's population is Latino/a, mostly of Mexican origin (US Census Bureau 2016). The city operates within a bilingual and Mexican and Mexican-American cultural environment. According to the consul general, most residents are familiar with the Mexican Consulate and the legal services provided by its DLP.⁸ The consulate has an active outreach program with the Mexican community and the organizations that serve it. El Paso has a strong bilingual legal aid community that works collaboratively with the consulate and other organizations. However, while migrants in El Paso benefit from the presence and support of a co-ethnic community and social infrastructure, the political context of reception at the state and local levels has shifted from welcoming to hostile in recent years.

Like North Carolina, Texas has embraced federal-state immigration enforcement programs and ranks number one in the nation in the number of 287(g) signed agreements (Weissman et al. 2018). Texas is also one of two states that voluntarily implemented the Secure Communities Program before it was mandated at the national level. Texas does not grant driver's licenses to unauthorized immigrants.

As part of expansive anti-immigrant legislation, in 2017 Texas implemented SB 4, which authorizes local police to question individuals about immigration status if stopped. Texas requires all state agencies to use the federal E-Verify system. The state grants in-state tuition for undocumented students, but legislators continue to try to repeal this benefit.

El Paso has been transformed by the geopolitics of xenophobic security and jingoistic narratives that equate migrants with "illegals" and "criminals." Customs and Border Patrol (CBP) and ICE regularly stop and question residents about their immigration status (Rodriguez and Hagan 2004; Heyman 2013). Local leaders and consular officials share concerns that immigration enforcement along the border has disastrous implications for the city's immigrant community, who experiences increased surveillance and racial profiling.⁹

Although the El Paso DLP is well integrated into the local Mexican community and works closely with advocacy networks, the local political context of increasing anti-immigration sentiment presents barriers to Mexican migrants who wish to claim their rights.

⁵Interview with consular staff, North Carolina, February 5, 2016.

⁶Interview with consular staff, San Francisco, March 16, 2017.

⁷Interview with consular staff, San Francisco, December 11, 2015.

⁸Interview with attorney, El Paso, August 10, 2016; interview with consul general, El Paso, April 17, 2016.

⁹Discussion with community leaders and government officials at Immigration and Community Conference, University of Texas at El Paso (UTEP), April 17, 2016.

Table 1. Selected Claimant Characteristics by Family Subtypes (Percentage Distributions).

	Child Support					Child Custody				
	El Paso	Raleigh	San Francisco	Full Sample	χ^2	El Paso	Raleigh	San Francisco	Full Sample	χ^2
Age ^a	36.36 (7.95)	35.77 (6.19)	34.7 (5.68)	35.72 (6.52)	N/A	36.29 (8.96)	30.56 (12.6)	31.27 (14.58)	31.44 (12.56)	N/A
Female	100%	100%	91%	98%	3.98	71%	53%	40%	52%	1.92
Migration Status										
Undocumented (US)	0	4	0	2	1.10	29	18	0	15	3.95
US status not specified	12	19	55	24	7.33*	43	38	47	40	0.40
Return migrant (Mexico)	29	0	9	11	9.06*	0	33	27	27	3.17
Nonmigrant (Mexico)	59	77	36	63	5.64	29	13	27	18	2.13
Marital Status										
Married/civil union	41	65	64	57	2.68	29	38	20	32	1.58
Single	35	19	36	28	1.83	43	33	40	35	0.46
Divorced/widow	12	12	0	9	1.41	29	18	7	16	1.85
Status not specified	12	4	0	6	2.04	0	13	33	16	5.02
Has US citizen child(ren)?	24	8	9	13	2.47	43	49	43	47	0.19
Total number of cases	17	26	11	54		7	40	15	62	

Note. Column percentages by variable may not add to 100 due to rounding.

^aMean and standard deviation.

* $p < .05$. ** $p < .01$. *** $p < .001$.

Notwithstanding differences among the three consulates that relate to their political geography, all three sites attend to the legal claims of migrant families, and they have expanded their engagement with Mexican nationals and the various organizational entities that serve them for that purpose.

Claiming Child Support and Child Custody Rights among Migrant Families

Tables 1 and 2 address our second and third research questions: (1) what can we learn about binational family structures and experiences based on types of family claims and profiles of the claimants? And (2) what kind of organizational linkages and collaborations seem especially important in resolving these two types of family claims?

Table 1 displays the claimant characteristics across each consulate for the sample of child support and child custody cases. The claimant in each case includes only those family members who reached out to a Mexican state entity in Mexico or to one of three Mexican consulates in the United States. Table 1 illustrates that the families included in the sample are complex and include Mexicans living in Mexico, migrants with undocumented or unspecified US statuses,¹⁰ US citizens, and return migrants.

Child Support Claims

There are differences in the gender, citizenship status, and location of members of families by type of family claim. As Table 1 shows, across all three jurisdictional sites, women filed nearly all of the child support claims. From our review of the narratives, we can infer that the claimants are primarily nonmigrant or return-migrant mothers or close kin residing in Mexican sending communities who are requesting support from a father and a current or ex-partner residing in one of three consular sites in the United States. The children for the most part are Mexican and residing in Mexico with their mothers or kin. The exception is El Paso, a border city with strong cross-border familial and social ties, where almost one-fourth of the cases include US-born children. There is no clustering in terms of the residential locations of the mothers who filed claims through the Raleigh or San Francisco consulates. But mothers who filed child support claims through the El Paso consulate resided primarily in the adjacent Mexican state of Chihuahua, which suggests that the sharing and dissemination of information might be better in border areas. This was confirmed by consular officials who told us that some state offices, including those situated along the border and in well-established migrant

¹⁰Consular officials across all three jurisdictions suggested in interviews that the majority of the people they serve are undocumented.

Table 2. Organizational Characteristics and Claims-Making Steps for Child Support and Child Custody Cases (Percentage Distributions).

	Child Support					Child Custody				
	El Paso	Raleigh	San Francisco	Full Sample	χ^2	El Paso	Raleigh	San Francisco	Full Sample	χ^2
Pre-consulate Contact^a										
No previous contact	24%	8%	18%	15%	2.17	57%	58%	73%	61%	1.21
US civil society	0	0	0	0	—	14	0	0	2	7.99*
US government entity	0	4	0	2	1.10	0	5	0	3	1.14
Mexican government entity	76	85	55	76	3.83	14	20	7	16	1.45
Lawyer(s)	0	0	0	0	—	0	18	0	11	4.34
Unclear	0	4	27	7	8.17*	14	0	20	7	8.03*
Consulate Action^a										
Nothing/no details	0	4	10	4	1.55	0	25	7	18	4.21
Mediation	100	96	90	96	1.55	29	35	60	40	3.29
Mediation and referral	0	0	0	0	—	0	3	0	2	0.55
Mediation and economic support	0	0	0	0	—	0	5	0	3	1.14
Lawyer referral	0	0	0	0	—	29	10	13	13	1.83
Lawyer referral and economic support	0	0	0	0	—	29	10	0	10	4.47
Inform/advise	0	0	0	0	—	14	5	0	5	2.12
Economic support	0	0	0	0	—	0	3	7	3	0.87
Administrative	0	0	0	0	—	0	3	0	2	0.56
Locate person	0	0	0	0	—	0	3	7	3	0.87
US government referral	0	0	0	0	—	0	0	7	2	3.18
Institutions Involved^b										
US civil society	0	0	0	0	—	29	5	0	6	6.85*
Faith based	0	0	0	0	—	14	0	0	2	7.99*
US government entity	82	92	91	89	1.09	0	55	67	52	9.01*
Mexican government entity	88	100	91	94	3.04	29	63	47	55	3.30
Lawyers/legal services	6	0	0	2	2.22	57	38	20	35	3.08
Law enforcement	6	0	0	2	2.22	0	3	0	2	0.56
Total number of cases	17	26	11	54		7	40	15	62	

^aColumn percentages by variable may not add to 100 due to rounding. ^bColumn percentages by variable may not add to 100 due to the involvement of multiple institutions in a single case.

* $p < .05$. ** $p < .01$. *** $p < .001$.

sending areas, are better organized and more responsive to claims requests than others, especially those from poor states in southern Mexico with few resources and little emigration history.¹¹

Child support cases thus result from transnational family structures, a historical feature of the US-Mexico migratory system. Scholars explain the predominance of fathers who migrate from Mexico to the United States as a function of a “culture of migration,” which places strong emphasis on the male migrant as breadwinner (Kandel and Massey 2002). Others trace its origins to the Bracero Program (1942–1964), when male migrants who were recruited by US employers to work in agriculture often temporarily left their spouses and children in Mexico. Although family separation as a result of outmigration was common during this period and long after, men maintained connections with families back home, with male partners and fathers traveling freely back and forth across the border. The militarization and increased fortification of the US-Mexico border since the mid-1980s have made it increasingly difficult for husbands and fathers to travel home to visit or reunify with family in Mexico, or for mothers and children to reunify with partners in the United States.

Binational child support claims are complex endeavors, and DLP plays a central and ever-expanding role in resolving them through mediating transnational bureaucracies. A successful claim requires substantial communication and bureaucratic transactions among local, state, and federal government entities in Mexico and the United States. These entities depend on the intermediary function of the Mexican Consulate but, unlike other DLP matters, generally do not involve collaboration with nongovernmental community organizations on either side of the border. Table 2 lists the organizations and steps involved in the claims-making process.

¹¹Interview with consular official, October 14, 2016.

Restricting our focus to binational child support claims only, which are highlighted on the left columns of the table, we can see that nearly all claimants for whom we have information commenced the process by directly reaching out to the Mexican state either in Mexico or in the United States through its consular network. No campaign or public program encouraging parents to use the binational child support program exists. In many cases, mothers depend on information passed through personal networks in Mexico and the United States. One official told us that mothers residing in Mexico regularly reach out to family and friends in the United States to take the first step in the claims process, often relying on them to call the consulate staff, who provide information and paperwork to the caller or to the mother in Mexico.¹²

As Table 2 shows, in all binational child support cases for which there was available information, the consulate assumed the principal mediating role in coordinating communications — both bureaucratic and financial — between Mexican and US bureaucratic entities. Although not specified in the tables, our interviews and research show that the Mexican entities include the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia [DIF]), which is Mexico's equivalent of CPS, and branches of Mexico's Ministry of Foreign Affairs (SRE), or the DGPME offices in Mexico. In the United States, the consulate works primarily with the child support agencies at state and local levels. While each county in most US states has its own child support agency, municipalities in Mexico have their own DIF offices, and most Mexican states have an SRE delegation.

A careful review of the child support narratives illustrates the steps involved in the binational claims-making process. Claimants in Mexico go to the local municipal office in Mexico associated with the DGPME to initiate a case and establish a child support order.¹³ The DGPME office assists the claimant with obtaining the documentation required by the Uniform Interstate Family Support Act (UIFSA), a US statute that regulates and enforces child support orders between and among US states and allows enforcement reciprocity with foreign countries. Once the requisite paperwork is completed, the DGPME sends the UIFSA documentation packet to the consulate jurisdiction where the father resides in the United States. In its intermediating role, the consulate forwards the packet to the appropriate state or local child support agency, a process that varies according to federal, state, and local agency practices and thus by consular jurisdiction.¹⁴ The consulate also may assist in efforts to locate a father, often a challenging process because of US data collection confusion with the practice in Latino/a cultures of using two surnames, and because an undocumented parent, by virtue of his status, endeavors to remain “in the shadows” to avoid detection. DLP staff attempt to locate fathers through the consular databases developed by the consular network to provide documentation for unauthorized Mexicans living abroad. If a child support order is established, and the absent parent has the resources to pay child support, a binational payment plan is implemented. The local child support agency collects the funds and sends them to the consulate to be remitted to the custodial parent in Mexico.

Binational child support practices have varied considerably among the consulates. However, from interviews with DLP staff in Raleigh and San Francisco, we learned that all consulates appear to be converging toward a formal standardized payment policy. Initially, some consulates mailed checks to the claimant in Mexico through the DGPME offices. Due to delays, bureaucratic challenges, and claimants' complaints, consulates have initiated and monitor a program that allows child support payments to be sent directly to the claimant's bank in Mexico via a debit card, a process that also requires binational financial transactions and cooperation.¹⁵

Despite progress in resolving binational child support claims, there is variation in the organizational capacity of state and local government offices in Mexico and the United States to resolve these claims. Interviews with consular staff revealed that states with fewer financial resources (e.g., Chiapas) are less able to respond to binational support claims than those with more resources and more experience working with nationals abroad. Many of the narratives revealed that delays and communication barriers were commonplace and reflect the challenges associated with transnational bureaucracies. As one case from El Paso revealed, not all claimants in Mexico can make use of the new debit card child support payment. Claimant access to local municipal offices in Mexico was also reported to be a problem. The successful resolution of a case is also influenced by the strength of the collaboration between consulates and the local child support agency in the United States. The consulate staff in El Paso and San Francisco described well-established relations with the central child support offices, who readily contact them when funds are not being submitted for distribution. Other child support agencies go further by assisting with remittance procedures when a retroactive amount is collected, so that a mother in Mexico does not have difficulty cashing a check for a large sum.

Often fathers cannot be located, but when they are, barriers remain. As one El Paso case revealed, a father may be unable to provide child support because of his precarious employment situation. In another case, an undocumented father claimed he was not able to pay child support because he had formed a new family in the United States. Unable to return home because of border

¹²Interview with consular official, Raleigh, October 14, 2016.

¹³In some cases, claimants in Mexico reach out directly to consulates in the United States.

¹⁴In California, the cases are sent to the county child entities. In the Carolinas, the claims are addressed to the central registry of either the North Carolina or South Carolina Department of Social Services Child Support Enforcement Division. In Texas, these cases are managed by the Office of the Attorney General's Child Support Division.

¹⁵Interview with consular official, San Francisco, October 20, 2016.

security issues and stringent legal structures for family reunification, his circumstances reflect the experience of some migrants who cut ties with families and stop sending child support remittances as a result of new loyalties and obligations to family relations forged north of the border (Dreby 2010). This phenomenon may be gendered, because at least one study found that immigrant mothers are more consistent in sending remittances even when they have established new partners and families abroad (Abrego 2014).

The collaboration between Mexico and the United States with regard to child support enforcement demonstrates that states are not always limited to their territories when administering or enforcing laws. Indeed, our study of the processing of binational child support claims reveals that citizens of one state who move across borders do not necessarily relinquish their rights or obligations; they may neither escape the control nor lose the protections of their state of origin.

Child Custody Claims

Child custody claims are complex to analyze and present legal, cultural, and social challenges for consulates to resolve. First, as the right column of Table 1 shows, child custody claims are both domestic and binational, and may be filed by fathers, mothers, or relatives. Sometimes even children are listed as claimants, a situation that occurs if a bureaucracy such as CPS encounters a child with at least one Mexican parent and contacts the local consulate. About half of all custody cases across our research sites involved a US-citizen child.

Second, there is rarely one factor motivating child custody claims. Custody cases often intersect with domestic violence matters when a victim parent seeks custody and, sometimes relatedly, when claims of family violence trigger the deportation of the abusive parent, the removal of the children, and their placement in the care of CPS. The narratives also show that drug abuse and mental health issues may result in the removal of a parent, resulting in the need for a custody determination. Custody claims also arise due to the death of a parent, a kidnapping, and other family disputes.

Although many of the factors underlying custody cases can affect all families, custody cases in migrant families are further complicated by the effects of deportation. A parent's removal results in collateral damage to all family members in addition to the hundreds of thousands of children left behind, many of whom are placed in foster care. In almost a quarter of the child custody cases we reviewed (15 of 62), detention or deportation was an underlying factor, raising concerns about the relationship between custody issues and localities with aggressive immigration enforcement policies. Interviews with consular staff in Raleigh in 2016 revealed an increase in the numbers of recent custody cases resulting from detention and deportation; these cases were estimated to constitute 70 to 80 percent of all custody matters in the Raleigh consulate.¹⁶ It is important to note, however, as DLP staff in Raleigh reminded us, that the actual number may be much higher because many custody cases do not come to the attention of consular staff, a fact reflected in the relatively small number of custody cases, compared to the number of deported parents.¹⁷ Although children of a deported parent may also remain in the United States with the nondeported parent or other relatives, their cases would not be likely to come to the attention of CPS and the Mexican Consulate (Capps et al. 2015).

The complexity of child custody cases is evident in the process of claims making. As Table 2 reveals, there are many organizations involved in processing child custody claims. A slightly larger share of claimants in El Paso (at least 14 percent) and Raleigh (at least 23 percent) initially sought help from sources other than the Mexican state,¹⁸ including US civil society organizations, such as immigrant advocacy groups, lawyers and legal aid, or US bureaucracies such as CPS. While the consulate maintains a mediating role in facilitating communication among local, state, national, and binational entities, it undertakes additional steps to assist families. Consulates also: (1) assist with locating the children of the claimant seeking custody or locating a parent or relative to take custody when the claimant is the child, (2) provide economic assistance to the claimant, (3) mediate between CPS and parents or relatives who want custody, and (4) provide legal assistance through its PALE program. The third panel in Table 2 lists the varied organizations involved in custody cases, including US civil society and faith-based organizations (which are more active in custody cases in El Paso), along with US government entities, including CPS, ICE, and law enforcement. A little over one-third of all the custody cases we examined involved legal counsel, a resource often provided through funding from the Mexican state via its PALE program.

The collaboration of family and government agencies in both Mexico and the United States is often required to resolve binational custody issues. Many cases demonstrate the need for the development of binational bureaucracies involving state and societal networks. This is particularly important in nonborder jurisdictions and new destination areas like North and South Carolina, where local courts and child welfare staff have little knowledge of or experience with binational child custody claims (Wessler 2011; Peavey 2017). In cases involving a detained or deported parent, Mexican consular staff in Raleigh served as brokers, playing a vital role in reunifying families by mediating among a variety of institutions on both sides of the border (Peavey 2017). However, consular

¹⁶Interview with consular official, North Carolina, February 5, 2016; and interview with consular staff, North Carolina, October 14, 2016.

¹⁷Interview with consular official, North Carolina, October 14, 2016.

¹⁸A nontrivial share of claimants' pre-consulate contact in San Francisco's pre-consulate remained unclear in the case narratives for both child support (27 percent) and child custody (20 percent).

staff and CPS caseworkers also work as gatekeepers, and a successful reunification depends on their ability and willingness to take appropriate action and dedicate time and resources to the case. To facilitate better collaboration between the two entities, and to address the lack of knowledge on the part of many CPS workers about the challenges of reunification across borders, the Mexican Consulate in Raleigh has conducted outreach to CPS workers in recent years. They have also formalized bureaucratic structures by entering in 2015 into a Memorandum of Agreement with the North Carolina Department of Health and Human Services.

The emergence of these bureaucratic structures appears to foster better outcomes for families separated by the border. The collaborative binational networks help to overcome the impediments otherwise inherent in discrete sovereign family law systems. Migratory processes, often circulatory in nature, do not necessarily attenuate fundamental family ties. The deep attachments migrants maintain with family members who reside on the other side of the border are justification for the DLP and its networks to take on the role of rights protectors of children and parents. These binational structures thus provide migrants with better opportunities to protect family rights irrespective of the territorial boundaries that separate family members (Bauböck 1994).

A review of a successful custody case from the Raleigh consulate illustrates the complexity of custody claims and the need for family, community, and legal support, as well as collaboration with local and federal governmental agencies in Mexico and the United States. The case demonstrates the crucial role that the DLP plays in mediating these interactions and unifying families. The matter involved a three-month-old girl born in North Carolina, abandoned by her US citizen mother, and left in the care of her undocumented father. The father was subsequently arrested and sent to an immigration detention center hundreds of miles away in Georgia. The child was placed in the care of the local CPS office. While in detention, the father procured the assistance of a pro bono attorney, who learned from ICE officials that the child had been placed with CPS. At the request of the father, his attorney then contacted the Mexican consulate to help the father's sister in Tabasco, Mexico, gain custody of the child, who had been placed in foster care. The consulate acted as an intermediary between CPS and its local Mexican counterpart, DIF. Both agencies shared similar concerns about placing the child with her father. CPS also had concerns about sending the child to Mexico, and the CPS attorney and social worker involved in the case were unfamiliar with the legal and logistical process of sending a child to a family in another country.

This case provides an example of the mediating role of the consulate and the importance of the DLP and binational bureaucracies. DLP staff worked closely with CPS to respond to their concerns and provided assurances to them that Mexican officials from DIF would investigate the sister's home to determine whether it was suitable for the child. The case narrative documented that DIF investigated the home and conducted a background check. As a result of these binational collaborations between social service agencies in Mexico and the United States, the child was placed in the legal custody of the aunt and transported by airplane in the company of consular staff to the aunt's home in Mexico, avoiding the placement of a child in the foster care system. The cooperative nature of this binational collaboration was further evidenced by communication about the well-being of the child between DIF and CPS, facilitated by the consulate.

The disposition of the case reflects a level of trust between the sending and receiving states established through the development of bureaucratic processes and protocols designed to achieve the best interests of the child. It illuminates emerging binational approaches that seek to honor the fundamental principles that underlie custody decisions: that the family is the natural and fundamental unit of society deserving of the widest protection possible, and that it is in the best interests of children to grow up in a family environment (Mrazik and Schoenholtz 2010). Child welfare agencies on both sides of the border worked together to corroborate the fitness of the paternal aunt and suitability of her home for the child in this case and resolved the dilemmas that can sometimes arise in the "triangulated relationship of parent, child, and state" (Neuman 2002, 515). Moreover, the coming together of child welfare specialists endows these binational initiatives with legitimacy and may serve as a model of other transnational efforts to administer the law.

Our sample of consulate cases, in conjunction with interviews of consulate staff in all three sites, allows us to draw some general conclusions. Custody cases may require the support of the consulate, whose staff play a crucial role, particularly in binational cases in which CPS gatekeepers are either unaware of or disregard the rights of Mexican parents or the child. While they can provide only limited guidance to Mexican nationals in private custody disputes, consulates are essential actors in coordinating the various agencies and can formalize the process through memoranda of agreement (MOAs) to better protect the rights of parents and children. In a new destination, as reflected in the Raleigh data, child welfare agencies often rely on the DLP for guidance and may depend on the consulate to mediate the binational processes involved (Peavey 2017). In contrast, interview data from San Francisco demonstrate that child protection agencies there are fully familiar with binational processes and require less assistance. Our findings are consistent with those of other researchers and professionals who study binational custody issues and who have urged child protection agency staff, attorneys, and family and child advocates to establish close working relationships with consulates to assist with family reunification of children with parents who have been deported (Wessler 2011; Molina & Kohm 2013).

Conclusions and Discussion

Migrant families are increasingly vulnerable to separation under the Trump administration, which has proposed new restrictions to family-based reunification and increased arrests, detentions, and deportations of Mexicans. These developments will exacerbate problems for binational families and no doubt result in an increase of child support and child custody claims. In the absence of comprehensive immigration reform, we should expect a continued expansion of Mexican state efforts to resolve binational family

problems. The Mexican consular network is the central mediating actor in these endeavors, and local consulates and Spanish language media must reach out to Mexicans in the United States to alert them of their services. Through collaboration with local, state, and binational bureaucracies, the Mexican consular network can provide legal counsel, interpreters, funding, documents, and referrals to resolve child support and child custody claims that result from forced or prolonged family separation.

We find that the effects of local context on claims making are mixed. Regardless of the political environment in which unauthorized Mexicans reside or the size or presence of a co-ethnic population at the local level, US immigration policies and practices of exclusion through enhanced deportation efforts subject families to prolonged, if not indefinite, separations. The legal problems arising from these circumstances require binational bureaucracies operating in tandem. We observe that the Mexican consulate's efforts to strengthen collaboration and mitigate the effects on families of living separated by the border are "heavily intermediated" by actors at the state and local levels (Peck and Theodore, 2010, 170; Délano 2014).

On the local level, access to Mexican consulates and the strength of the collaboration between the consulates and local government, faith-based and immigrant advocacy organizations, and especially child welfare services are vital. The consulate location also matters. Those in central urban areas close to public transportation arteries and those along the border where a bicultural environment exists draw more immigrants to their doors than consulates located some distance from rural immigrant communities or those in urban areas that are not accessible via public transportation, like the Raleigh consulate.

Social context matters, too. The establishment of a social infrastructure with bilingual resources can provide help for newcomer immigrants and facilitate effective collaboration with the DLP. When these institutional mechanisms are in place, the possibilities for maintaining and protecting family unity and well-being are enhanced. Given the success of the Mexican consulate in mediating claims, other Latin American countries are following this lead and expanding the role of their consulates in engaging with their emigrants (Délano 2014).

The consular network, which can neither expand nor eliminate immigration-related restrictions that separate families, has nonetheless succeeded in extending family rights across borders and helped to reconfigure "notions of sovereignty, territory and identity" (Délano 2014, 99). Just as Mexico and the United States have extended cross-border relations with regard to law enforcement, immigration control, and human smuggling, this study illuminates the ways in which the boundaries of sovereignty have been extended beyond geographic lines to follow migrants in matters relating to family rights and obligations. These initiatives serve as a means to reimagine global migration governance more broadly (Délano 2018).

Policy Recommendations

Based on our findings and research, we have identified five key recommendations that would assist with the resolution of binational child support and child custody claims. First and foremost, rather than dismantling the US family-based immigration system as some members of the US Congress and administration propose, we should make every effort to strengthen family reunification, which has long been a core principle of US immigration policy. Limited visas and backlogs for relatives of US citizens and legal permanent residents and an aggressive policy of deportation have made it increasingly difficult for members of Mexican binational families to unify.

Second, collaborative efforts should be enhanced to identify areas of strengths and weaknesses within existing consular networks, including issues pertaining to language access and interpreters available in state agency and civil society organizations, the availability of attorneys with whom to collaborate, and knowledge and familiarity with existing binational structures that support family rights.

Third, efforts should be made to develop formal protocols that identify the ways in which consular staff and officials work with government agencies, nonprofit immigrant advocacy organizations, and attorneys in host and sending states to facilitate the rights of migrants living outside of their home countries. For example, MOAs between state agencies that regulate and administer child support payments and CPS and consulates should be expanded to include all states in the United States.

We further recommend that local-level political actors attempt to reduce the frequency and depth of burdens that family separation cases pose to local-level social services by limiting the role of local officials in the enforcement of immigration law, especially the deportation of parents (i.e., by passing so-called sanctuary resolutions). Some evidence suggests that such policies can have additional benefits with regard to general public safety (Martínez-Schuldt and Martínez 2017).

Finally, we recommend that the Mexican government share best practices with other consulates, particularly those from Latin America, which provide for the needs of large numbers of binational families.

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