

A stylized map of the United States and Mexico in a dark grey tone. Overlaid on the map are numerous red dashed lines with arrowheads, representing various migration routes. Some routes connect different parts of the United States, while others cross the border into Mexico. The background is a solid dark grey.

# WHERE DO WE GO FROM HERE?

Challenges facing transnational migrant families between the US and Mexico

## Executive Summary



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The Family Unity Project is a collaborative project with the Women's Refugee Commission.

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IMUMI is an NGO that advocates for women in the migration process in the Mexican context, whether they are women living in communities of origin, in transit through Mexico, immigrants residing in Mexico or Mexican migrants in the United States. IMUMI works from a rights-based perspective to ensure that women have the resources to take advantage of the positive aspects of migration, avoid the negative consequences, and remain in their communities of origin should they choose.

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A special thanks to the mothers and fathers who shared their stories with us with the hope of creating better mechanisms of support for other families. We are grateful for their bravery and honesty.

## **Glossary of Commonly Used Terms**

**CBP:** Customs and Border Protection; encompasses both the Customs Agents at ports of entry and also Border Patrol, which focuses on enforcement efforts in border areas between ports of entry.

**Civil Society:** Non-governmental organizations in Mexico.

**CPS:** Child Protective Services. While there are many different titles for CPS throughout the US, the acronym CPS is commonly understood to represent state and county entities tasked with protecting the safety and best interests of children.

**DIF:** Sistema de Desarrollo Integral de la Familia; Mexico's child welfare and family services agency.

**DHS:** US Department of Homeland Security.

**DHHS:** US Department of Health and Human Services.

**DOS:** US Department of State; responsible for the operations of US Embassies and consulates throughout the world.

**ICE:** Immigration and Customs Enforcement.

**INM:** Instituto Nacional de Migración; Mexico's immigration agency.

**MOU:** Memorandum of Understanding.

**NGO:** Non-governmental Organization, also known as Civil Society Organization in Mexico.

**SRE:** Secretaría de Relaciones Exteriores (Foreign Ministry); responsible for overseeing Mexican consulates throughout the world and regional offices throughout Mexico.

# FORWARD

In 2011, a woman visited IMUMI's office in Mexico City and reported that she had been separated from her 2-month old baby boy when she was arrested and later deported from the United States. She showed us pictures of her child and explained that because she had been unable to participate in her family court proceedings from Mexico, she had lost parental rights and her son had been given up for adoption. The adoption was closed, her baby's name had been changed, and the only thing IMUMI could do was help record her name in the state adoption registry should her son ever inquire about his biological mother 16 years later.

IMUMI requested court files, began making calls to organizations in the US, and soon discovered that migrant family separation was actually quite common. As internal immigration policies were becoming more aggressively enforced through state-level collaboration with ICE, the numbers of people with families, jobs, homes and long-standing community ties being deported had reached an unprecedented level.

In the US, the Women's Refugee Commission encountered similar stories when speaking to women in immigration custody and published a report (*Torn Apart by Immigration Enforcement*), documenting the consequences of US immigration detention and removal on children and their parents and the due process violations experienced by families caught between the immigration and family court systems. Migrant organizations and advocacy groups were working hard toward immigration reform and administrative policies to mitigate the damage. At the same time, academic institutions and think tanks published multiple studies documenting that the build-up at the border was actually trapping migrants in the US by impeding traditional flows that allowed people to continue their lives on both sides of the border. In addition, reports demonstrated that increased law enforcement along the border had not reached its objective of reducing levels of drugs and arms trafficking, but had pushed migrants into more dangerous geographic areas and made them more vulnerable to organized crime.

Viewing the situation from outside of the US, these policies and their results seemed counter-intuitive and contradictory to values professed by leaders in both the Republican and Democratic Parties. What was clear to us was that transnational families between Mexico and the US had transcended laws in both countries, often leaving them in impossible situations: should they leave their children in the US in the care of others, or risk their lives to cross the border? Should they bring their children with them to Mexico, confront the challenges of economic survival, and watch their children struggle to adapt to poverty, a new language and educational system? What responsibilities would they be neglecting in either situation?

We began to look at ways that government agencies and NGOs within Mexico and the US could improve their collaboration to help families access the most reliable information and legal remedies available to comply with their legal and emotional responsibilities. This report is a first step in the process of identifying what should be done to help families that continue to live *transnationally* in spite of legal frameworks that have not caught up with their creativity, flexibility and tenacity.

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## EXECUTIVE SUMMARY

Over the last decade, an unprecedented number of transnational families with ties to both the US and Mexico have been separated as a result of the tightening of immigration policies and practices in the US and the deportation of more than a million Mexican migrants. For these transnational families, reunification has become a major challenge, and in some cases, families have been separated permanently when children are placed in adoption in the US.

Under a broken immigration system that does not allow families to circulate legally between Mexico and the US in order to respond to labor markets, educational, health and emotional needs, undocumented migrants must remain in the US or risk extortion, abuse and death if they visit Mexico and then attempt to re-enter the US to be with their families. Parents who return to Mexico with US citizen children often find that their children struggle to adapt, and must return to the US — provoking further separation. Transnational families must be given every opportunity to remain together; in the event that separation does occur, governmental agencies and NGOs need to be equipped with information about how to reunify, and tools to help families make decisions about how to re-organize themselves.

While available statistics do not accurately measure the number of separated Mexican families or the details of their separation, the following data provides an indication of the dimensions:

- Approximately 11 million people born in Mexico reside in the US – nearly 10% of Mexico’s population. Approximately 6 million Mexicans are undocumented residents, many of whom have US citizen children.<sup>1</sup>
- In 2011, the US Immigration and Customs Enforcement agency (ICE) returned 323,542 Mexicans along the border<sup>2</sup> and removed 293,966 detained throughout the US.<sup>3</sup>
- Approximately 5.5 million children in the US live in mixed-status families of all nationalities; 4.5 million of those children are US citizens.<sup>4</sup>
- In 2012 alone, one or both parents of 152,426 US citizen children were deported. Since 1998, more than 660,000 children have been affected by such deportations.<sup>5</sup>
- In 2011, the Applied Research Center estimated that at least 5,100 children whose parents were detained or deported were in the custody of child welfare authorities.
- A 2013 survey of 203 women migrants in the US-Mexico border region found that over a fourth had children residing in the US and that reunification was the main factor motivating the mothers to return.<sup>6</sup>
- In 2010, the Mexican census reported 597,000 US-born children living in Mexico.<sup>7</sup>

Organizations in the US-Mexico border region have had a long-standing awareness of family separation issues, and have developed best practices and innovative programs to respond to the urgent needs of recently deported parents. However, many families are returning to other areas in Mexico, where local agencies and organizations have limited awareness and resources to respond to their needs.

This report identifies key actors in both the US and Mexico that provide services to families following a return to Mexico, examines gaps in services and policies that impact transnational families, and highlights best practices developed to attend to families’ complex needs. The research also discusses ways in which the current social, political and economic context in Mexico affects transnational families. Finally, it outlines recommendations to the US and Mexican governments for preventing the separation of families and improving support mechanisms for those that have been separated.

Interviews with a cross-section of professionals in the US and Mexico, as well as separated families, identified three principal situations affecting families that require changes in policies and practices:

### **1. CHILDREN LEFT BEHIND IN THE CUSTODY OF A FAMILY MEMBER OR FRIEND WHEN ONE OR BOTH PARENTS RETURN TO MEXICO**

These cases involve questions of how to organize custodial arrangements pre and post-return, whether “voluntary” or due to deportation.

#### **Key Challenges**

- Parents who leave their children in the US with friends or other family members often make decisions with limited information about state laws regarding procedures for arranging temporary custody for their children.
- When one parent remains in the US with the children and another parent is deported, families lack information to make transnational decisions about their children’s education, health, social and economic well-being.
- Families experiencing a permanent separation may require information about custodial parents’ access to child support, or how to navigate divorce or child custody disputes transnationally.

### **2. CHILDREN LEFT BEHIND IN CHILD PROTECTIVE SERVICES (CPS) CUSTODY IN THE US WHEN A PARENT HAS BEEN DEPORTED OR RETURNED TO MEXICO**

These situations include cases in which a child is taken into CPS custody when a parent is detained or deported by immigration authorities. They also include families already involved with child welfare authorities when immigration enforcement interrupted the proceedings, as well as incidents during which families caught the attention of law enforcement and child welfare officials simultaneously.

#### **Key Challenges**

- Parents often lose contact with the social workers during detention and after deportation.
- Parents face difficulties establishing housing and employment upon their return to Mexico within the short time frames required by CPS and the family court in order to regain custody.
- Parents are not always guaranteed legal representation throughout family court proceedings and often cannot participate from a distance. Parents who *are* provided with legal representation often face language barriers when communicating with their attorneys.
- Service providers in both the Mexican and US Child welfare systems lack understanding of their agencies’ respective procedures and requirements, including time frames and legal standards.
- Government, families and civil society advocates have limited knowledge of social services throughout Mexico for returning migrant families.

### **3. FAMILIES RETURNING TO MEXICO ARE AFFECTED BY LEGAL AND SOCIAL REINTEGRATION ISSUES**

These situations include people who reunify with their children in Mexico, but whose lives are complicated by identity documentation requirements, lack of employment and community integration problems. These issues affect families with children born in the US as well as children born in Mexico and taken to the US at a young age.

### **Key challenges**

- Limited access to school and social services due to requirements of original birth certificates and apostille<sup>8</sup> certifications.
- Difficulties adapting to school settings due to language barriers, lack of supplemental language assistance, and social and cultural differences in the educational system.
- Rural communities do not have sufficient programs to help returning migrants and their families.
- Parents may be forced to decide between coping with these challenges in Mexico or sending their children back to the US, causing a new separation.

## **THE ROLE OF GOVERNMENT AND CIVIL SOCIETY IN MEXICO**

Four main groups of governmental and non-governmental organizations currently work with families in Mexico in situations of separation:

### **Mexican Foreign Ministry (Secretaría de Relaciones Exteriores – SRE):**

The SRE is responsible for the protection of Mexicans abroad. SRE has developed protocols to respond to the needs of families in situations of separation.

### **Child Welfare and Family Services Agency (Sistema de Desarrollo Integral de la Familia – DIF):**

Mexico's child welfare and family services agency is responsible for providing services to transnational families going through child welfare proceedings initiated in the US. As DIF does not have a standardized protocol for working with these families, services vary depending on levels of awareness in the various DIF offices.

### **State-level Migrant Assistance Agencies:**

Many Mexican states have offices that provide assistance to migrants and are members of a national network of state-level organizations. These offices may provide direct services such as free or low-cost translation of documents, information about how to apostille documents, financial assistance to returned migrants, and in some cases, legal advice.

### **Civil Society:**

Many non-governmental shelters and legal and social service providers for migrants offer guidance and assistance to families in situations of separation and reintegration. These organizations need detailed information and training on US immigration law, child welfare and Mexican social services to provide adequate referrals and direct assistance to families.

Both the US and Mexican governments need to make policy changes in order to prevent family separation and provide adequate services to those who have been separated.

## RECOMMENDATIONS

The US and Mexican governments should invest in regional integration, taking advantage of the benefits of circulation and the strengths of transnational families in order to enhance opportunities for social development and economic cooperation.

While this report focuses on challenges for transnational families between the US and Mexico, these issues also exist between the US and other countries in Central America, particularly Guatemala, Honduras and El Salvador. These countries should be included in regional solutions.

### MEXICO

The Mexican Foreign Ministry should engage more proactively with the US Government regarding deportation policies and practices that have caused the separation of families.

#### Family Separation

##### Mexican Family Services Agency – DIF:

- National, state and municipal DIF offices should develop programs to address the vulnerability of returned migrant families living in situations of separation and reintegration.
- DIF should create a set of guidelines with models for best practices, standardized home studies, and procedures to work with international agencies.
  - DIF could create — or reinforce — an international liaison office to serve as a resource for state and municipal level DIF offices as they work with child welfare counterparts in the US.
- DIF should develop a standardized questionnaire and database for municipal and state-level offices to quantify the number of returned migrant families requesting services in order to develop improved programming and to identify funding and human resource requirements.

##### Mexican Foreign Ministry - SRE:

- SRE should improve data collection of requests for assistance with family separation issues from consulates in the US and regional offices Mexico.
- Adequate funding should be provided to SRE to strengthen consular protection offices who can recognize and respond appropriately to cases concerning US child welfare issues.
- The budget that SRE allocates to consulates in the US should prioritize funds for Mexican parents in cases in which they face the potential termination of their parental rights.
- SRE should train staff in protection offices in both the consulates in the US and throughout the regional offices in Mexico to ensure that they have appropriate skills to handle complex situations of families that have been separated. Protection officers should be kept up-to-date on protocols for assisting families and engaging with civil society to identify emerging risks and trends affecting families.
- SRE should ensure that the consulates have the material and human resources and training to assist parents in detention and/or deportation proceedings to make appropriate arrangements for their children, e.g. assisting with legal documents, passport applications, and travel arrangements.
- The consular personnel of Institute for Mexicans in the Exterior should work closely with protection personnel to share timely information regarding family rights and resources for separated families with community partners throughout the US.

##### National Migration Institute – INM:

- The National Migration Institute's Repatriation Program should train personnel to screen repatriated people at the point of entry to Mexico to identify family unity issues, and notify SRE of cases requiring intervention, when families agree to such assistance.

#### Access to identity documents and public benefits

- The Mexican government should issue a birth certificate to every Mexican national, and

should institute an aggressive program of retroactive birth registration for the millions of people currently without birth certificates, whether in Mexico or the US.<sup>9</sup>

- SRE should be granted authority to act as a liaison between Mexican nationals in the US and state civil registries to assist with birth registration and to correct birth registration errors through consulates in the US for Mexicans who cannot return to Mexico.
- The Secretaries of Public Education and Health should eliminate internal policies that currently require original, apostilled birth certificates to register children for education and health services, and disseminate these policies to remote municipalities.<sup>10</sup>

### Reintegration

- The Mexican Congress should increase funding for services for migrants who have returned to Mexico and to SRE for consular protection abroad. Protection programs should be adequately funded to meet the needs of increased numbers of Mexicans facing custody issues and other consequences of detention and deportation.
- The Secretary of Public Education should develop supplemental language programs for migrant children.
- States should prioritize information sharing about available resources for returnees with NGOs, SRE, and the Repatriation Program, so that referrals can be made at the moment of return to Mexico for people moving on to other communities throughout Mexico.

### Migration Policy Unit, Secretary of the Interior (SEGOB)

- The Center for Research within the Migration Policy Unit should identify statistics indicating the number of separated families between the US and Mexico.
- The Migration Policy Unit of SEGOB should incorporate the recommendations of this report in the National Migration Program.

### Civil Society

- NGOs should proactively seek training opportunities on child welfare and immigration issues, to improve services offered to returning migrant families.
- NGOs should identify ways to strengthen relationships and collaborate with governmental offices as well as other NGOs that provide services to migrant families.

### UNITED STATES

#### Detention and deportations of parents of children in the US should be avoided whenever possible

##### ICE:

- Prosecutorial discretion should be used when possible.
- In cases in which removal proceedings must continue, alternatives to detention should be used whenever possible.
- In extreme situations in which a parent must be removed, ICE should ensure that parental rights are protected during the detention and deportation processes, especially if the parent is already involved in family court proceedings in which termination of parental rights is at stake. The August 2013 Parental Interest Directive is a good start but must be fully implemented and should be expanded.
  - ICE should provide mandatory access to phone calls at the time of apprehension to arrange for immediate and temporary care of children.
  - ICE should implement the Parental Interest Directive, which provides access to participation in reunification plans and court hearings; phone access and visitation for maintaining contact with children in foster care; procedures for ensuring that detained parents can make arrangements for their children to travel and return home with them, if desired; and a streamlined process through which ICE can facilitate humanitarian parole requests of parents who need to

return to the US temporarily to participate in child custody termination proceedings.

- Humanitarian parole options for parents who are involved in family court proceedings should be expanded to facilitate their participation in all steps of the family court process, not just final determination hearings.
- In the absence of comprehensive immigration reform, Deferred Action should be expanded to cover spouses and parents of US citizen youth.

#### **CBP:**

- CBP should develop policies to take into consideration family unity issues.
- Upon apprehension at the US-Mexico border, CBP should screen repeat crossers for family unity issues that may be motivating their attempts to re-enter the country.
- CBP officers should be afforded discretion to consider family unity and other humanitarian concerns in all decisions related to referring migrants for criminal prosecution, removal proceedings, or to return them directly to Mexico.

### **Comprehensive immigration reform must reflect the reality of transnational families**

- Congressional initiatives should provide a clear, accessible path to citizenship for the majority of the 11 million undocumented people in the US, an accessible mechanism for future legal migration flows, respect family unity, be inclusive of women and children, protect women and children in situations of domestic violence and other situations of vulnerability, and provide avenues for reunification of families that have already been separated due to immigration enforcement policies.
- While immigration reform is pending, deportation of parents with children living in the US should be placed on hold, so that parents can benefit from future legalization measures.
- Legislation should eliminate the 3 and 10 year bars in order to facilitate the legalization of

mixed-status families already eligible for adjustment of immigration status. At a minimum, the “stateside waiver” should be made into law, allowing immediate relatives of US citizens to re-enter the US and those living in the US without authorization to adjust status from within the US, without having to return to their home countries and face bars to re-entry. The waiver should be expanded to include cases in which a US citizen child would experience hardship as a result of prolonged separation from a parent.

- Parents who have been deported should be allowed to apply for legalization programs and to reunite with their US citizen or permanent resident children; parents should be allowed to re-enter the country based on the application of a US citizen spouse or child, even if that child is a minor.
- Legislation should allow for legal avenues for children to join parents who have registered or obtained temporary legal status in the US.
- ICE and CBP should engage with and support NGOs and DHHS to reach out to child welfare departments and family court judges and staff to provide training on immigration and child welfare issues and resources, focusing on areas in the US with increasing numbers of immigrant families entering into the child welfare system.
- DREAM Act eligible youth<sup>11</sup> who have been deported should be given the opportunity to re-enter the US to continue their studies or reunify with their families.

### **Child Welfare and family court authorities in the US**

- Families in Mexico must be given every opportunity to participate in reunification plans and in family court proceedings that could lead to reunification with their children.
- To make a child’s transition to Mexico smoother, child welfare and other service providers should work with families and government partners to ensure that documentation is properly prepared prior to a child’s departure from the US. Recommended actions include:

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- Secure certified copies and apostille all documents – school records, birth certificates, etc.
- Work with the consulates to obtain certificates of birth abroad and to begin the process to register children as dual nationals in Mexico prior to their departure from the US.
- Work with the consulates to report all situations involving parents in Mexico or potential placements with other relatives in Mexico, even if there is no emergency and the particular CPS jurisdiction does not have an MOU with the Mexican Consulate.
- Talk to children and parents in advance about the changes that they may face in Mexico and help find healthy ways to adapt to the new experience.
- CPS agencies and family courts should collaborate with federal authorities (DHHS, DHS and DOS) to develop and disseminate best practice guidelines and to establish MOUs with consulates to facilitate family reunification and address needs of transnational families.
- Each state or county jurisdiction should review its policies related to CPS involvement with immigration officials. CPS should avoid contacting immigration officials in cases in which involvement could represent a potential threat to family unity.
- CPS should establish policies to ensure that children are placed with relatives when possible; immigration status alone should not be a disqualifying factor for placement. Additional foreign documents should be accepted for purposes of background checks.
- Family courts should develop policies that discourage judges from considering removal as a factor in determining the termination of parental rights.
- Parents facing detention and removal should be educated on basic parental rights and responsibilities, including information about the implications of signing a power of attorney, guardianship agreements, child support payments, and other legal instruments that impact the custody and well-being of their children.

### **US Department of State:**

- The US Department of State and the state-level secretaries of states should create a system to facilitate apostille certifications for US citizen children living in Mexico.

## NOTES

- <sup>1</sup> Pew Hispanic Center (2013). "A Nation of Immigrants" Found online at: [http://www.pewhispanic.org/files/2013/01/statistical\\_portrait\\_final\\_jan\\_29.pdf](http://www.pewhispanic.org/files/2013/01/statistical_portrait_final_jan_29.pdf)
- <sup>2</sup> "Returns" include apprehensions of people who were not admissible to the US as well as people apprehended in transit by Border Patrol.
- <sup>3</sup> 2012 Yearbook of Immigration Statistics (2013). Washington, DC: Office of Immigration Statistics, Department of Homeland Security. Available online at: [www.dhs.gov/yearbook-immigration-statistics](http://www.dhs.gov/yearbook-immigration-statistics)
- <sup>4</sup> Passel, J. y Cohn, D. (2011). *Unauthorized Immigrant Population: National and State Trends, 2010*. Washington, DC: Pew Hispanic Center.
- <sup>5</sup> Satinsky, S., Hu, A., Heller, J. & Farhang, L. (2013, June). *Family unity, family health: How family-focused immigration reform will mean better health for children and families*. Oakland, CA: Human Impact Partners.
- <sup>6</sup> Danielson, M. (2013). *Documented Failures: The consequences of Immigration Policy on the U.S.-Mexico border*. Nogales, AZ/Sonora: Kino Border Initiative.
- <sup>7</sup> Censo Mexicano de Población y Vivienda (2010) INEGI. Found: <http://www.inegi.org.mx/est/contenidos/proyectos/ccpv/cpv2010/Default.aspx>
- <sup>8</sup> An "apostille" is a form of authentication applied to documents for use in countries that participate in the Hague Convention of 1961. As the US Embassy does not issue apostille certifications, in order to obtain an apostille for a document from the US, it must be presented to the Secretary of State in the state where the document was issued. For example, if a migrant farmworker family had a child in Washington, Idaho, and California, respectively, they must contact the Secretary of State in each of those states in order to obtain apostilles for their children's birth certificates.
- <sup>9</sup> According to the National Population Registry, in 2007 there were 7 million Mexicans without birth certificates. States that have poor levels of birth registration include Chiapas, Guerrero, Oaxaca, Puebla, Veracruz, Morelos and Michoacán; these states have also seen a recent rise in emigration. Source: Mercado, K. (2013). "El derecho a la identidad jurídica de nuestros migrantes mexicanos." *Impactos de la reforma migratoria de Estados Unidos en México*. México: Iniciativa Ciudadana para la Promoción de la Cultura del Diálogo, A.C.
- <sup>10</sup> Some schools adapt these requirements by allowing children to register and providing a time frame in which parents or caregivers must present the necessary documentation. The Secretaries of Public Education in the US and Mexico have a "Transfer Document" for bi-national students which does not require additional certification. See also: Secretaría de Educación Pública, *Normas de Control Escolar Relativas a la Inscripción, Reinscripción, Regularización y Certificación en la Educación Básica*.
- <sup>11</sup> While the DREAM Act has failed to pass Congress multiple times, this recommendation refers to the many youth who continue to be eligible for such a program should it be enacted. Many young people have benefited from the Deferred Action for Childhood Arrivals (DACA) program which grants work permission and a temporary stay from deportation.





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