

A stylized map of North America, including the United States, Canada, and Mexico, rendered in a dark gray silhouette. Overlaid on the map are numerous dashed orange lines with arrowheads, representing various migration routes. Some routes originate from Mexico and point towards the United States, while others originate from the United States and point towards Mexico. The routes are scattered across the continent, with a higher density in the central and southern regions of the US and Mexico.

WHERE DO WE GO FROM HERE?

Challenges facing transnational migrant families between the US and Mexico

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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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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.

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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.¹
- In 2011, the US Immigration and Customs Enforcement agency (ICE) returned 323,542 Mexicans along the border² and removed 293,966 detained throughout the US.³
- 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.⁴
- 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.⁵
- 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.⁶
- In 2010, the Mexican census reported 597,000 US-born children living in Mexico.⁷

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 apostille⁸ 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.

INTRODUCTION

Maria,⁹ an undocumented mother of 5 US citizen children who had lived for 10 years in Texas, left two of her young children alone at home one night under the supervision of one of their older siblings. When a neighbor called the police, Maria was arrested for leaving her children unsupervised, and Child Protective Services (CPS) placed them in a foster home. Following two months in city custody, she was flagged by Immigration and Customs Enforcement (ICE) and transferred to an immigration detention center. Maria did not have the opportunity to participate in her family court proceedings while in jail or detention, and was unable to complete any of the CPS required services. Fortunately, the family was represented by an external advocate¹⁰ who worked to keep the family informed of the court proceedings and sought assistance from the court and the Mexican Consulate. Maria was deported to Mexico and the court began considering the children's maternal grandparents, who resided in Mexico, for reunification. The advocate walked the family through the bi-national reunification process, and the children were ultimately placed in the custody of their grandparents in Mexico, where they were able to continue their relationships with their mother. During the experience, Maria stated that she felt as though her "heart had been ripped out."¹¹

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.

While migration has always implicated some form of family separation, this report distinguishes an individual's or family's decision to migrate to a new country to seek opportunities from the involuntary, or forced, separation caused by immigration enforcement. While the former type of separation also has complex and often painful implications for the family remaining in the home country, there is likely a process of decision-making prior to departure, despite the social and economic conditions that lead many to migrate with little choice. This report addresses separation caused by an unforeseen interruption to a family's life, often with little or no opportunity to make decisions about how to organize family dynamics, or most importantly, custodial arrangements.

Recent research conducted in the US explores the impact of immigration enforcement on families, and in particular, where it intersects with the child welfare and family court system. This study extends that work to explore what happens to families experiencing separation, or facing the risk of separation, once they return to Mexico. It also discusses conditions in Mexico that impact a transnational family's ability to remain together.

IMMIGRATION ENFORCEMENT AS A CAUSE OF FAMILY SEPARATION

Since the beginning of the Obama administration, there has been a sharp increase in deportations. In fiscal year 2012 alone, 409,849 people were removed from the US,¹² 293,966 of whom were Mexican nationals.¹³ In addition to removals from the US, there have also been changes in repatriations by Customs and Border Protection (CBP) at the US-Mexico border. While repatriations of Mexicans along the border have decreased from approximately 1 million in 2005 to 286,000 in 2011,¹⁴ many migrants apprehended are parents who are trying to return to the US to join their families after removal or a voluntary visit to Mexico to take care of personal or family issues. Many of these people have lived in the US for extended periods of time and may be experiencing their first apprehension.¹⁵

The increase in removals responds to a combination of factors including policies and practices that have increased immigration enforcement in the interior of the country. By expanding the participation of state and local law enforcement agencies in immigration enforcement, Secure Communities and 287(g) agreements have allowed direct involvement with unauthorized migrants living in communities throughout the US, and have led to the apprehension and deportation of unprecedented numbers of people¹⁶ who have lived in the US for extended periods and have established families, homes, and businesses. The economic crisis in the US, combined with xenophobia, have fomented a climate of fear and political pressure to enforce immigration policies, even at the cost of family unity.

Federal, state, and local laws throughout the country have contributed to the conflation of immigration violations with criminal infractions,

leading to the misperception that migrants are “criminals.” Increased prosecution and the use of ICE detainers have led to prolonged detention and steep criminal sanctions that could impact migrants’ eligibility to adjust status should immigration reform be enacted. Despite much mobilization in favor of preserving the unity of immigrant and mixed-status families,¹⁷ US Congress has continuously failed to pass significant immigration reform, and deportations of parents continue.

For example, between 2010 and 2012, the US government removed approximately 205,000 mothers and fathers of US citizen children.¹⁸ This data reflects only the parents who reported having US citizen children at the time of their detentions or deportations; it does not include parents who failed to report their children due to fear of the authorities, or parents of children who are unauthorized immigrants or Legal Permanent Residents in the US. A recent report by Health Impact Partners, *Family Unity, Family Health*, indicates that the number of children in the US impacted by deportations during the last decade exceeds 660,000.¹⁹

When parents are deported, they must ensure that children are cared for appropriately. While some parents are able to leave their children in the custody of a second parent or with family or friends, others decide to take their children to Mexico with them. In the worst cases, children remain in the custody of CPS departments throughout the country, and some have been given up for adoption.²⁰

Child welfare officials and service providers for transnational migrant families in the US lack information about the support systems available to families in Mexico, and service providers in Mexico are often unaware of the processes facing families who have children in the US. As a result, parents who have children in the custody of CPS departments are often forced to navigate their family reunification processes with limited support and awareness of the steps involved.

The economic crisis in the US has also led to high rates of voluntary return migration to Mexico. The 2010 Mexican census reported 597,000 children with US citizenship living in Mexico.²¹ Although these families may have had the opportunity to organize their returns to Mexico, they still confront challenges reintegrating into Mexican society.

Few studies have been conducted to determine what happens to families once a parent returns to Mexico. While some agencies such as the *Secretaría de Relaciones Exteriores* (SRE, or Foreign Ministry) have developed protocols to respond to situations of family separation, most governmental agencies have not developed mechanisms to identify cases nor have they standardized services for these vulnerable families. In addition, migrants who have returned are often unaware of the services offered by governmental and nongovernmental offices, so these agencies may not come into contact with returning families. In some cases, people are discouraged from seeking assistance due to discriminatory attitudes against migrants. As a result, accurate statistics about how many families are living in situations of separation in Mexico are not available.

“WHY CAN’T THE PARENTS JUST GO BACK LEGALLY?”

Under current US immigration law, US citizen children are ineligible to confer immigration rights on their parents until they are 21 years old.²² Mixed-status families have largely remained as such, despite marriages to US citizens, home ownership, and a variety of investments in communities, because of rules regarding admissibility of people who initially entered the US without authorization. These rules state that people who were unlawfully in the US for 6 months to one year would have a 3-year bar applied to their re-entry (once they

leave the US as they are required to do to receive their immigrant visa), and those people who were present unlawfully in the US for more than one year would have a 10-year bar applied to their re-entry. Many mixed-status families have been forced into a state of limbo as a result. A policy change in January, 2013 allows for a “Stateside Waiver” which would enable some unauthorized migrants who are eligible for legal status on the basis of their relationship with a US citizen to apply for a humanitarian pardon to the re-entry bar before leaving the country. This reduces the risk that they will be stuck outside the US for as long as a decade and is intended to encourage eligible individuals to obtain legal status. But many families still remain uncertain as to whether they should risk applying for available relief, because the eligibility rules are unclear. In addition, this policy paradoxically does not apply when US citizen children will be harmed by a parent’s prolonged absence. The hardship must be to the applicant’s parent or spouse. Provisions in Senate Bill 744²³ would extend this policy to consider hardship to US citizen children.

Once parents are deported to Mexico, under the current immigration law, few options exist to allow for reunification of a family in the US. In this context, parents who decide to send their children back to the US do so with the knowledge that they may continue to be separated for an undetermined length of time. In a moment of desperation, parents may also feel that their only option is to attempt to return to the US without authorization. According to the Center for Investigative Reporting (2013), of 364,768 apprehensions by the Border Patrol in 2012, 100,735 of those arrests were of people who had been arrested at least two times previously.²⁴ Between January and June of 2013, Kino Border Initiative conducted a survey of 203 women migrants; 27% percent of women interviewed reported that they had minor children residing in the US and that their children were the main factor motivating them to return to the US.²⁵ Given the context of family separation, authorities in both the US and Mexico should

identify the motives behind incidences of recidivism in order to determine whether or not family reunification is one of the primary motivating factors, and explore appropriate solutions. Efforts to reform US immigration laws should take into account and respond to the changing demographics of migrant flows, which are increasingly driven by the dynamics of mixed-status families.

The interests of separated migrant families must be represented in the current immigration reform debate in the US Congress, including possibilities for parents to be with their US citizen or permanent resident children if adaptation to life in Mexico is not possible. The recently passed S.744 includes provisions intended to protect the unity of some families that have already been separated due to

deportation, but these provisions are limited and it is unclear how they will be affected in the House debate.

International human rights treaties affirm the right of children to family life, and they call on States to act on obligations to protect the unity of families, and to abstain from enacting policies that explicitly violate that right, especially by separating families in immigration enforcement.²⁶ The principle Best Interest of the Child sets out guidings to ensure that children are provided with an environment in which they can grow and develop emotionally, physically, cognitively, and socially; generally, in the absence of abuse or neglect, this development occurs within the family unit.²⁷ These principles are not reflected in current US immigration enforcement policies and practices.

METHODOLOGY

This report is a qualitative study exploring situations of family separation caused by immigration enforcement policies and practices in the US. The project's goal was to identify the key actors involved in providing services to families following return to Mexico, whether voluntarily, or due to deportation.

The methodology included a review of research exploring the intersections of child welfare and immigration systems, community integration, and issues facing transnational families. Semi-structured interviews were conducted with a cross-section of service providers in the governmental and non-governmental sectors throughout Northern, Central, and Southern Mexico and in areas in the US that have experienced large numbers of transnational family custody cases, to explore regional differences in knowledge and practices affecting separated families, and the various responses to them.

Interviews were conducted with regional offices of SRE, DIF on the municipal and state levels, child welfare professionals in the US, migrant shelter staff, social workers, attorneys, advocates, human rights commissions, state-level migrant assistance offices, and immigration and child welfare policy experts. Information regarding specific cases was also reviewed and in some instances, we interviewed mothers and fathers currently living in situations of separation about their experiences during repatriation and while seeking assistance after arriving to Mexico.

mental health issues following detention and deportation²⁸ may impact parents' ability to seek assistance. Parents also sometimes exclude important information from their accounts due to fear and social stigma. Misinformation regarding parental rights, distrust in the efficacy of governmental systems, and a lack of information about existing programs affects the parents' willingness to call attention to their situations.²⁹

"People are very confused... they don't know what they want to do when they arrive in Nogales, they don't know what decision to make: cross again? Bring the children? They're still trying to process the situation... they're raw, in shock, trying to understand what happened to them, where to go from here, scared, and don't know who to trust... lots of issues that can keep people from reporting family separation." — Marla Conrad, Migrant Advocate and Caseworker, Kino Border Initiative, Nogales, Sonora

STATISTICAL LIMITATIONS

No statistics are available that quantify the number of parents living in Mexico whose children remain in the US. Difficulties in generating accurate information include:

Parents do not always report their situations.

Reintegration into Mexican communities with limited material support as well as possible

No criteria exist for identifying cases in SRE databases.

While SRE has a centralized database that tracks requests for assistance to consulates in the US and regional offices in Mexico, there are currently no criteria for distinguishing cases of separated families. Consulates and regional offices vary in how they collect and classify information, and do not currently ask questions to categorize and record family separation issues. If a parent approaches an SRE office or consulate with concerns related to a deportation, additional screening questions need to be in place to identify if there are custody or separation issues involved.

Information about DIF programs is decentralized.

DIF operates autonomously on the federal, state and municipal levels. When services are provided on the municipal level, no mechanism exists to share information that could be included in

AREAS IN MEXICO AND US WHERE INTERVIEWS AND BACKGROUND RESEARCH WERE CONDUCTED



statewide statistics. If the state-level DIF does not ask about specific populations, information will only be provided about pre-established programs. For example, if municipal offices are working binationally to provide home studies for families seeking to regain custody of their children, but there is no system to report that information, the service will not be reflected in statewide statistics. With 2,438 municipalities throughout Mexico, the fact that there is currently no structure in place to determine how many cases municipal DIF offices are managing is significant.

Information about children in CPS custody is decentralized.

Information regarding numbers of children in the custody of US child welfare authorities due to the detention or deportation of a parent remains limited. In 2011, the Applied Research Center report, *Shattered Families*, estimated that 5,100 children were in this category. Since that time, the US has failed to develop a centralized database to quantify children in foster care as a result of immigration issues.

Not all children are counted.

CPS procedures allow a short period for a child to be taken into temporary custody while alternative family members are identified, without opening a case in family court (barring allegations of abuse or neglect). Departments do not uniformly keep records of children who fall into this category, as they do not officially become “wards of the state.” Therefore, the numbers of children who pass through CPS custody when a parent is detained or deported could be much higher than current estimates.

Despite these limitations, available information indicates that hundreds of thousands of children have been separated from their parents, either temporarily or permanently, due to immigration enforcement policies and practices in the US. Mexican authorities and civil society must be prepared to receive these families and respond to their needs as rapidly and constructively as possible in order to mitigate the negative impacts of separation on families.

WAYS THAT FAMILIES ARE SEPARATED

“We are no longer just neighbors; we are family.” — Marco Castillo, Director, APOFAM



The term “transnational family” refers to families whose members live part or all of the time in more than one country, but maintain emotional and economic connections, and perceive their well-being as part of a whole.³⁰ Transnational families have established themselves in a new community, while maintaining identity and roots in another. While the legal term “bi-national” is also used to refer to families whose members live in two different countries, *transnationality* takes into account the identity, roots, and culture that shape a family’s environment and the way they perceive new environments.³¹

While families experience separation in many ways, this report focuses on situations that require support for families addressing reunification, custody issues, and community integration following their return.³² Three principal situations emerge when families are separated through immigration enforcement.

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

Josefina lived in the US as a migrant farmworker for 20 years. She and her husband had five children, including three US citizens. One day, her son, a minor at the time, was detained by ICE. Josefina and her husband, both unauthorized migrants in the US, decided that Josefina would present herself to ICE to request her son's release from custody. Josefina and her son were both placed in removal proceedings. After a long series of immigration court battles, the involvement of many attorneys, and extensive efforts to find ways to adjust their status, Josefina received a removal order. Her son was able to remain in the US due to his eligibility for the Deferred Action for Childhood Arrivals (DACA) program.³³ Josefina returned to Mexico and left her husband and four children behind, bringing her youngest child with her. Since returning to Mexico, she has been the victim of armed robbery, and experiences constant fear in her community. Due to problems with the registry of her US citizen child in Mexico, Josefina's daughter went without medical attention for an infection in her foot that led to the loss of a portion of her toe. Her daughter has also had problems adapting to school due to lack of Spanish fluency. Josefina works in the informal sector selling food out of her home. She says of two of her children in the US, "... Both graduated in June and I couldn't be with them. I've always given them a lot of encouragement even though it rips out my soul. It is very sad to be separated from my family but I am very proud to know that even though I am far away, my children listen to my advice to keep going forward to become someone in life and that education is the most important thing for their future."³⁴

According to the Pew Hispanic Center, there are approximately 5.5 million children living in mixed-status families of all nationalities in the US; 4.5 million of those children are US citizens.³⁵ These children live with the daily worry that one or both of their parents could be detained or deported.³⁶ Parents in this situation sometimes pre-designate temporary guardians for their children should they be forced to return to Mexico. However, many families have not yet established such a plan, and at the time of apprehension, they must make emergency decisions regarding custody and care of their children — if they are given an opportunity to do so.

ICE has recently released a Parental Interest Directive³⁷ which instructs field agents and detention centers to protect the rights of parents whose children are in CPS custody by providing access to court proceedings, communication with social workers and children, and detaining parents as close to their homes as possible. The directive does not establish a parent's right to make a phone call at the time of apprehension. Any opportunity that parents are given to make custodial arrangements at the time of apprehension depends on the discretion of particular officers. As a result the safety and



welfare of these children may be left to chance. Making decisions in an emergency fashion means that families often make informal arrangements that leave their children — and their legal custody — at risk. Some families are forced to make these arrangements following their arrival to Mexico and encounter limited knowledge of state procedures in the US.

Sometimes children end up with whoever happened to be available when the parent was detained. Situations have been identified in which parents leave children with someone they believe to be trustworthy, but when it comes time to return the children to the parents, they find that the person refuses to do so, or attempts to extort money from the parent for the custody of the child. Occasionally care arrangements deteriorate and CPS takes custody of children, further limiting the ability of parents to make their own decisions about who will care for the child in the US.

As Josefina's case illustrates, some children remain in the US with the other parent. These families must organize transnational custody and visitation arrangements and on occasion address relationship breakdown issues, including divorce. These families also make joint decisions regarding reunifying the entire family in Mexico, or whether the deported parent will attempt to return to the US. The group of families with one parent who remains in the US is most often comprised of fathers who are deported while the mother remains. Fathers are less likely to report issues of separation unless there is a problem with the family in the US that requires their presence. In some cases, undocumented women in situations of domestic violence may fall into this category of separation when they are forced to flee to Mexico, leaving the children behind with the father in the US.

Parents must ensure that children remaining in the US have adequate access to education, health care, and the public benefits to which they are entitled, while also protecting their parental rights.

CHILDREN IN CPS CUSTODY WITH A PARENT IN MEXICO

Guadalupe, a woman living in Phoenix, Arizona with her two children, was arrested following a report by the school alleging that the children were being sexually molested by their stepfather, and that the mother had known about the situation. The children, ages 10 and 4 at the time, were placed in CPS custody, and Guadalupe was charged with child endangerment. While in jail for a year, she made every effort to participate in the process to retain custody of her children. Guadalupe did volunteer work while in custody, attended parenting classes, and participated in her hearings. Despite these efforts, from county jail, she was transferred into ICE custody and deported. Once in Mexico, Guadalupe immediately went to DIF seeking help to appear telephonically at her next hearing. She worked with the local DIF office to contact CPS; however, her social worker had been changed and she was not informed. While in Mexico, Guadalupe took additional parenting classes, received a psychiatric evaluation, and continued to participate in hearings. If reunification is not approved at the next hearing, the children will be placed in adoption proceedings.³⁹

This testimony demonstrates the complex issues involved in the intersection between child welfare and immigration, as well as the result of being an unauthorized immigrant parent with limited access to information and resources in the US. Undocumented parents may be afraid to approach authorities for help due to fears that they could be deported. Many times parents make every attempt to cooperate with family court proceedings and CPS reunification plans, but their efforts are interrupted by immigration enforcement.

As reported by the Women's Refugee Commission in *Torn Apart by Immigration Enforcement* (2010) and the Applied Research Center in *Shattered Families* (2011), there are typically three ways that children of detained and deported parents enter CPS custody. The first is the "straight path," when a child enters foster care "as a direct result of their parent's arrest or detention." Parents are often denied the opportunity to arrange for child

care at the time of their apprehension, or they are given limited options as to who may be eligible to care for their children, including restrictions in some jurisdictions that require caregivers to be documented. The "parallel path" indicates an instance in which an interaction with the police brings the parent into contact with law enforcement, CPS and ICE simultaneously.⁴⁰

The third path, or the "interrupted path," involves families already interacting with the child welfare system when parents were detained or deported. Families who have had children removed due to allegations of abuse or neglect and which have begun their family preservation or family reunification plans often face interruptions to these processes due to detention and deportation. Once in detention many parents in this category fear reporting that they have children and are working through custodial processes, limiting their access to programs and services.

CHILDREN IN CPS CUSTODY DUE TO THE
DETENTION OR DEPORTATION OF A PARENT³⁸

5,100



Although advocacy and legislative initiatives have been passed in the US on state and federal levels to mitigate the risks of children being taken into CPS custody due to detention or deportation, families continue to be affected. While the Parental Interest Directive released by ICE in August, 2013 establishes guidelines to prevent permanent custodial consequences, the impact of its implementation remains unclear.

ONCE A PARENT IS IN MEXICO

“Challenges: Convincing the courts that even though these children are US citizens they still have the right to be with their family, even if it is in another country... one of the challenges is getting the courts to understand that... it’s not necessarily better to be here... they say that they’re better off in the States, they’ll have a better life — I’m not disputing that, but it’s not a better life without their family.” — Doris Foulkes, Director, LACES, Houston, TX

The fact that a parent has been returned to Mexico should not automatically impede the possibilities of pursuing reunification with their children. Even if a child is in CPS custody due to allegations of abuse, the parents — and the child — have the same rights to due process⁴¹ that they would have had were they still residing in the US. [View page 33 – Steps involved in the Child Welfare court process]

Parents pursuing reunification with a child in CPS custody must comply with certain requirements established by the CPS case plan and the court system. In Mexico, the

completion of this plan can be complicated by a variety of factors including the bias within some US courts against placing children in Mexico, biases against returning migrants within Mexico, limited access to services that are equivalent to those in the US, and insufficient knowledge about the legal requirements of the US child welfare system.

Governmental and non-governmental agencies in both the US and Mexico have many opportunities to assist parents with cases involving children in CPS custody.

Variable challenges emerge when parents of children in CPS custody return to Mexico

Contact with social workers:

Many parents report losing contact with their social workers upon returning to Mexico. Some CPS offices, especially those with international liaisons, collect information about how to contact parents or other family in Mexico, but many social workers do not register accurate last names, towns, or alternate contact information, making localization of parents or other family members difficult. Parents who have had contact with a particular social worker while in detention may not have received information about changes, and don’t know who to call. The transient nature of return migration makes it difficult to establish consistent communication with a parent who may not have access to a telephone. Large caseloads for CPS workers impact their time and willingness to make extra efforts to track down parents. Language barriers between social workers and parents, or social workers and agencies in Mexico are also a challenge. While CPS workers often use translators to communicate with families, these interactions can lead to miscommunication, inaccurate reporting, and limited information sharing.⁴² In both the US and Mexico, there is a shortage of bilingual case workers.

CHILD WELFARE AND COURT PROCEEDINGS*

When a child welfare agency receives a report of suspected child abuse, neglect or abandonment, the reported family can expect the following sequence of actions:

- 1 Child protective services (CPS) or law enforcement investigators follow up on the report of child abuse, neglect, or abandonment. Investigators may seek a court order if they need to search a home, interview a child, or arrange for a child to have a medical exam.
- 2 If the investigator determines that the child or children cannot remain safely at home, the investigator may file a motion with the court for temporary custody (an **emergency protection order**) and remove the children. In some States, the agency's attorney may file the motion and in some States, the children may be removed without a court order. The children may be placed with kin or in a foster home until there is further action on the case.
- 3 If the children are removed from the home, there is a **preliminary protective hearing** (sometimes called an **emergency removal** or a **shelter care hearing**) before a judge or judicial hearing officer. The CPS or law enforcement investigator presents evidence regarding the abuse or neglect, as well as information about the family and possible services. Based on the judge's determination of risk for the children, the judge either allows the children to return home until the trial or places them elsewhere, such as with a kin caregiver, until the trial. If the children are placed outside the home, the judge also addresses visitation and other issues. Generally, at least one person will be appointed to represent the best interests of the child. This representative may be a lawyer, a guardian ad litem, or a community volunteer called a court-appointed special advocate (CASA).
- 4 At the **trial** (also called the **adjudicatory, jurisdictional, or fact-finding hearing**), the judge listens to the facts of the case and decides whether there is enough evidence to prove, under State law, that child abuse, neglect, or abandonment actually happened. This is conducted without a jury. The judge could dismiss the case because of lack of evidence, or the judge could decide that there is enough evidence to prove the allegations.
- 5 If the case is not dismissed, the judge must decide whether the child or children should be removed from the parents or guardians, even temporarily. That decision occurs at a **dispositional hearing**. At this hearing, the judge may allow the children to return home under agency supervision, or the children may be placed in legal custody and in foster or kinship care. The judge will also determine what services the child and family should receive and renew a case plan which sets out the requirements that the parents will need to meet in order to reunify.
- 6 At least every 6 months, there will be **review hearings** before a judge or other officers to determine whether an appropriate case plan is in place and whether the parents are making progress. The court will determine how the children are doing in their placement as well.
- 7 In addition to these hearings, a **permanency hearing** should be held 12-14 months after the child was removed from the home and every 12 months after that. This hearing may be combined with the review hearings; the judge will decide where the child should live permanently. Many players may be involved in this hearing, and should include the parents.
- 8 Another hearing that may or may not occur is the **termination of parental rights** hearing. Under the Federal Adoption and Safe Families Act (ASFA) and most State laws, there is a specific timeframe for parents to meet the goals in their case plan in order for the child to be reunified with them. If parents are unable to do this and a child spends 15 out of 22 months in foster care, the child welfare agency is required to seek termination of parental rights or to document compelling reasons for requesting a time extension. A termination hearing may be scheduled sooner when a court determines that reunification of the child with the parents is not an appropriate permanency goal. When parents' rights are terminated in court, the parents no longer have any legal relationship to the child, and the child is free to be adopted by someone else. However, if the child is living with a relative and the State has decided that this is an acceptable permanency plan, then the agency does not need to ask the court to terminate the parents' rights.

*Reproduced thanks to the Child Welfare Information Gateway, Department of Health and Human Services.
Available online at www.childwelfare.gov/pubs/factsheets/cwandcourts.cfm

OPPORTUNITIES FOR INTERVENTION

1 Mom is arrested for a DUI and sent to jail. Mom decides to have kids stay with their babysitter in an informal arrangement until she is released. She is scheduled to be released on probation, but ICE intervenes and places her in immigration detention.

Staff of local court and local jail could ensure that mom has proper custody arrangements set up from the beginning.

2 In ICE detention, mom considers that the current custody arrangements are her only option, and says nothing about changing or formalizing them, and no one asks her if she has custody concerns. While in detention, she loses contact with her children and the babysitter.

ICE detention center staff, upon learning that mom has children in the community, could ensure that formal arrangements are made, that the children are in a safe place, or explore options for mom to bring them with her to Mexico. None of these things occur.

3 Mom is deported to Mexico. She is unable to get back in contact with her children and the babysitter, and becomes desperate to find them.

Repatriación Humana and Civil Society organizations could find ways to screen mom for custody concerns at the time of deportation and help her re-establish contact with her children.

4 Mom considers that her only option is to return to the US without authorization and search for her children. Upon her return, she finds that they have been mistreated in the babysitter's custody, and struggles to regain custody. One child is ill, and she takes him to the hospital. The hospital encounters injuries of an unclear origin, and refers the family to CPS. The injured child is taken into the custody of CPS, despite the fact that they had been in the custody of another person for the previous several months.

CPS could explore the immigration impacts on this family's situation, educate mom on her rights and responsibilities, and work with her to develop a plan in the event of another deportation.

5 Mom begins a reunification plan, including parenting classes and therapy. Someone in mom's social system reports her to ICE for being in the US without authorization. She is detained by ICE. She contacts the Consulate about her case, but later loses contact.

Mom goes before an immigration judge who indicates that she may have relief options, but mom does not understand how to access them, and is not represented by a lawyer or anyone who can explain the process to her. Mom, despite having suffered domestic violence and having been eligible for relief as a result, does not pursue an immigration case.

6

Mom is deported to Mexico again, and her reunification plan halts. She begins experiencing depression and loses contact with the family's social worker. She seeks assistance from Relaciones Exteriores, but indicates that she is seeking a humanitarian visa, for which she is not eligible. She later loses contact.

Upon learning about her request for a humanitarian visa, the SRE worker who screens her should explore her motivations for needing a visa and find ways to accompany the mom through a process that gets her re-involved in her custody proceedings.

7

She attempts to enter the US twice more, but is detained each time.

Border Patrol, upon noting her pattern of recidivism, could interview her about custody concerns to determine whether there are options for her.

8

In Mexico, mom approaches DIF and begins therapy for her depression over having lost contact with her children.

DIF therapist could work with mom to ensure that she is referred to the Procuraduría to explore her custody situation in the US, and that she has accompaniment and support to follow through with the process.

9

Mom hears through word-of-mouth of a community-based social worker in a migrant shelter who can possibly help her with her case. She approaches the social worker, who mobilizes a chain of events that gets case information, contacts the court to determine the case's status, reinitiates contact with the Consulate, and accompanies mom through the process.

Unfortunately, by the time this occurs, mom has been out of contact with the individuals involved in the case for nearly a year. The case has already been referred for adoption.

Governmental (both countries) and civil society organizations could work together to ensure that mom has legal representation through the termination of parental rights and adoption proceedings, to ensure that she has access to due process and to information about the court process, regardless of what the family court judge decides.

Establishing housing and employment:

Most case plans require that a parent establish living arrangements and formal employment within a short time frame in order to regain custody of their children. Returning migrants do not always have access to the resources needed to rent and furnish their own living space, especially those who have lost their possessions due to deportation; shared family arrangements are common and cultural expectations of shared space in Mexico often conflict with standards in the US. Unemployment rates in Mexico remain high and 6 out of 10 employed Mexicans work in the informal sector, complicating a parent's ability to prove income.⁴³ Additionally, interviews suggest age discrimination hinders parents' ability to find work in Mexico. Communities of origin may not have services that would facilitate integration such as housing and food subsidies. The challenges of deportation imply loss of social networks that assist in finding employment. Low wages and high costs of living, as well as lengthy commutes on public transportation increase the difficulties of returning migrant parents to establish a new home quickly in Mexico.

Legal representation:

Not all states in the US guarantee legal representation for parents during family court dependency proceedings. Indigent parents are granted representation for abuse and neglect cases in 37 states.⁴⁴ In cases in which parents do not have legal representation, the fact that they are not able to be physically present in the US impedes access to their court proceedings. In some situations, parents have been permitted to participate via telephone or Skype, but many courts do not have the technological capability to facilitate this participation. In the El Paso, TX border region, a program has been developed to secure border-crossing permits for some parents to attend their court hearings; the program is effective for the El Paso sector, but does not apply to parents with child welfare cases in other areas of the US. The fact that parents are not present for a hearing often

has a negative effect on CPS's and the court's perceptions of the parent's interest and commitment — regardless of the reason for the absence.

Lack of understanding and communication between systems:

Advocates on both sides of the border express concerns about the lack of understanding and communication between child welfare systems in the US and Mexico. Few formal agreements exist between US and Mexican child welfare entities in order to address communication barriers. Differences in legal standards and time frames pose key challenges to completing US court requirements in a timely manner. In the US family court process, hearings occur at least every six months, during which parents must report on the progress in their case plans. In Mexico, the time required to secure and complete services, conduct home studies, and file reports with the US court often exceeds six months.

Lack of information and resources upon removal:

Many non-profit and governmental agencies in Mexico lack sufficient information to assist families and accompany them through their family reunification processes. As a result, they often miss opportunities for intervention. For example, *Repatriación Humana*, a program of Mexico's immigration agency (INM), is the first point of contact for returnees upon their arrival to Mexico. INM officials fulfill a role of referring people to emergency services such as shelters and soup kitchens, but do not appear to play an active role in screening returnees for family separation issues. INM is one of few agencies that could have contact with nearly all returnees.

If parents do not have the information they need at the time of their removal, and if they do not seek assistance immediately, they risk losing contact with their children, the ability to participate in the reunification process, and the possible termination of their parental rights.

IDENTIFYING PLAYERS IN THE PROCESS IN MEXICO

While there is limited awareness of the presence of family separation issues in Mexico, interviews identified four main groups that play — or could be playing — significant roles in assisting families.

SECRETARÍA DE RELACIONES EXTERIORES (SRE)

SRE, Mexico's Foreign Ministry, represents and protects the interests of Mexicans abroad, managing the consular protection system throughout the world. Within Mexico, there are also regional offices in every state that provide assistance to citizens facing problems in another country. [View page 39 – Communication and Information Flow Between SRE, DIF, CPS, and the Family]

SRE protocols are designed to ensure the flow of communication between interested parties and to help facilitate families' access to services that they need to fulfill their US family court requirements.

SRE becomes involved with families through a petition to either the protection office in a consulate in the US, or to the regional offices throughout Mexico. In most cases consular petitions in the US are initiated by CPS departments or by detained parents. Many counties, and some states, have signed a Memorandum of Understanding (MOU) between the local Mexican consulate and child welfare authorities. In areas where an MOU exists and is honored by CPS, consulates are notified when a Mexican child, or child of a Mexican national, enters into custody. In some jurisdictions, no notification is made, and in others, only when a case presents complications.

SRE officials are often requested to search for parents or family members in Mexico. They may also help identify a social worker for a

particular case, identify stages of a family court case, and help a family communicate with child welfare officials.

Interviews indicated strengths of working within the SRE system, including:

Presence in court proceedings:

The presence of consular officials in court hearings in the US often serves as a reminder to CPS workers and judges that parents, despite being in Mexico, have a representative in the courtroom monitoring the proceedings.

Written documentation:

SRE reports family separation cases and creates a transnational paper trail, connecting families and governmental agencies between the US and Mexico.

Authorization and guidelines:

SRE requests services and provides guidelines to agencies such as DIF that do not currently have their own protocols.

Identity documents:

SRE can ensure that children who will be placed in Mexico have the appropriate identity documents before leaving the US and that dual citizenship processes have begun prior to placement, facilitating their access to Mexican social services.

Communication:

Relying on SRE to manage communication between the US and Mexico can prevent misunderstandings and breakdowns in the system, especially in CPS offices that have limited experience working with social service providers in Mexico and little awareness of cultural differences.

Interviews also indicated key challenges presented by SRE procedures:

Time consuming:

This formal process can be time-consuming, as it involves referring cases between US-based consulates, the Mexico City-based central office, and local offices in Mexican states.

Inconsistent services:

Knowledge and experience with family separation cases varies among SRE offices throughout Mexico. Some parents and advocates interviewed for this report had been told that “nothing could be done” and felt turned away by protection offices. NGOs reported frustrations with feeling locked out of the bureaucratic process, even while accompanying parents through their court cases and reunification plans.

Lack of resources and communication:

Consular protection officials in the US are often over-burdened with high caseloads and unable to communicate frequently even though they are working on a case. This lack of communication often discourages families and advocates from seeking the assistance of SRE offices because they feel ignored.

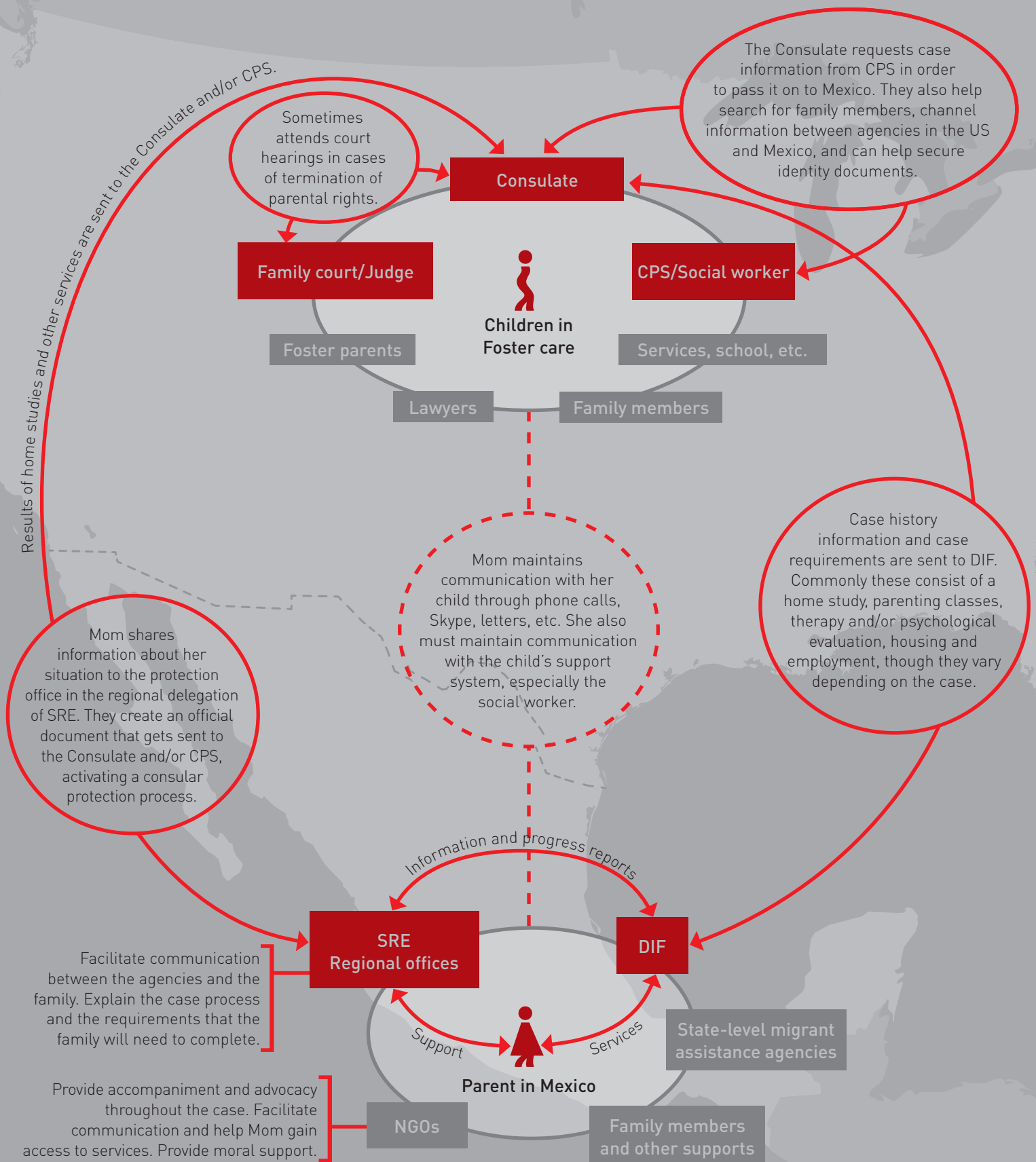
Limited expertise:

Protection officials in the regional offices do not always have a professional background that prepares them to handle complicated family dynamics of family separation cases, especially those that involve abuse. This can lead to a more “bureaucratic approach” to handling family situations, which may not provide the flexibility necessary for families attempting to deal with mental health and substance abuse issues, reintegration into Mexican communities, or who lack basic education and do not understand the processes in which they are involved.

These challenges often lead advocates to use informal solutions rather than waiting for an institutional response. In order to overcome institutional challenges, the central SRE consular protection office is often an effective intermediary.



COMMUNICATION AND INFORMATION FLOW BETWEEN SRE, DIF, CPS, AND THE FAMILY



Best Practices:

Orange County Social Services Agency & the Santa Ana Consulate

According to CPS Program Manager Raquel Amezcua,⁴⁵ the Mexican Consulate in Santa Ana is the Social Services Agency's (SSA) most important ally in their work with immigrant families in Orange County, California. The mutual trust, support, and leadership that have grown between the two agencies have facilitated coordinated, collaborative responses to serve families that have been separated as a result of the intersection between the child welfare and immigration systems. Like many counties in California, Orange County has a Memorandum of Understanding (MOU) with the Santa Ana Mexican Consulate. The consulate provides assistance to the SSA to locate parents or other caregivers in Mexico, supports the agency with dual citizenship documentation requirements, and facilitates communication between family in Mexico and DIF, when applicable.

CPS has worked with the consulate to create training modules that explain their work with immigrant families. They have created policies and guidelines for social workers and courts to use in order to protect the best interests of children whose parents or other family members are in Mexico and who may possibly be placed there. The training modules have been replicated by CPS offices and court systems in other states.

In order to ensure the continuity of these programs and compliance with the MOU, a recent amendment was made requiring at least two joint trainings per year. The MOU has institutionalized good practices and transcends changes in leadership.

EL SISTEMA DE DESARROLLO INTEGRAL DE LA FAMILIA (DIF)

DIF is the Mexican agency responsible for family welfare.⁴⁶ There are three distinct levels to DIF: national, state, and municipal. The National DIF system promotes three strategies:

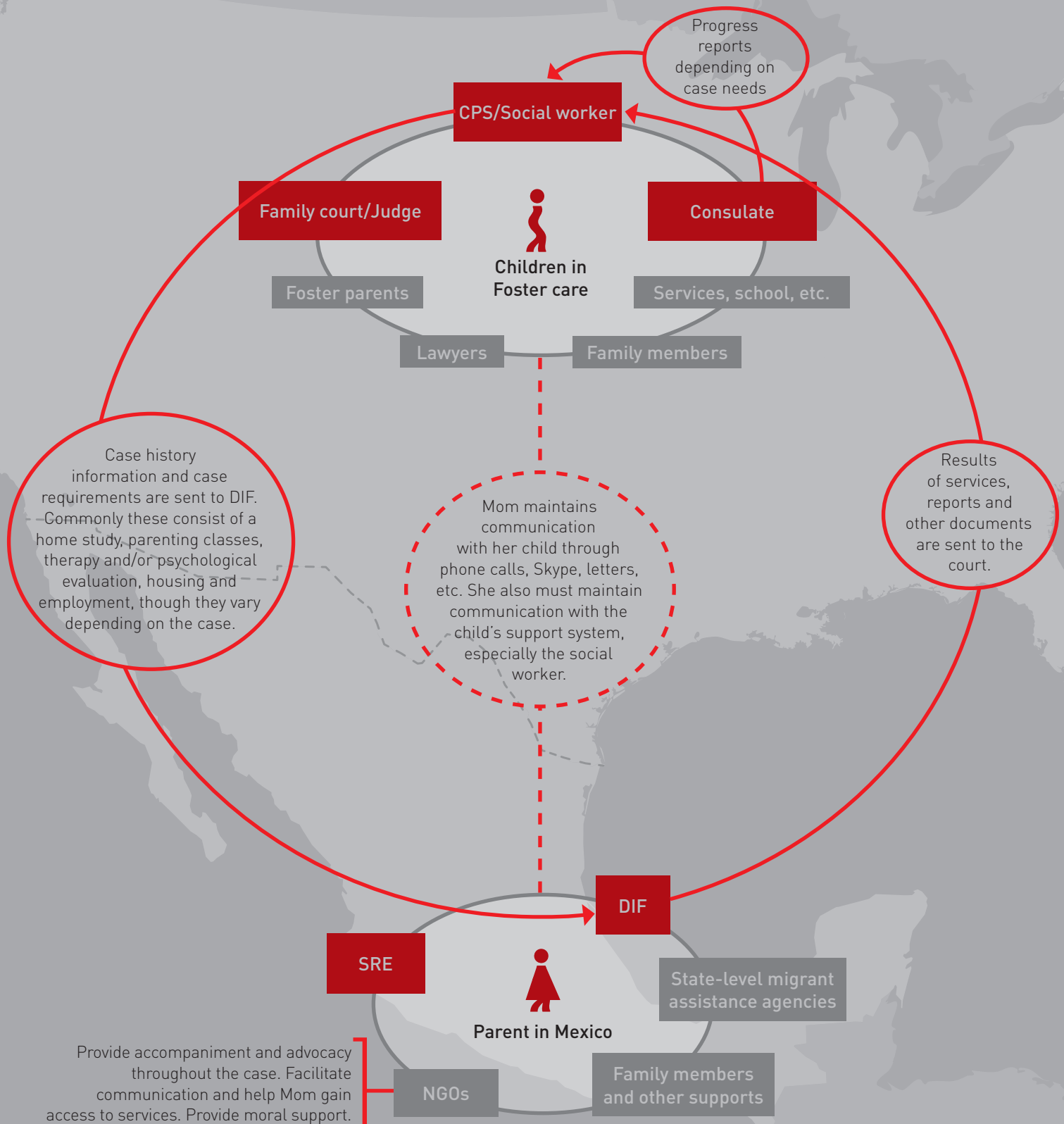
1. Prevention programs for populations at risk;
2. Co-responsibility, promoting the involvement and empowerment of affected populations, as well as coordination between government and civil society, and;
3. Professionalization of services.

While the National DIF System has been a leader in programs for unaccompanied migrant children, it has not yet created specific programs for separated migrant families. Many state-level offices provide assistance, but most services for separated migrant families are offered on the municipal level. SRE refers cases to DIF, or CPS may contact DIF directly. This practice is particularly common in states and counties in the US with an “international” or “border” liaison; such offices are dedicated to managing contacts and building relationships with DIF offices in Mexico that experience a high demand for services. California, Arizona and Texas each have liaison offices. While they regularly interact with local consulates, some CPS offices may not reach out to SRE for assistance to communicate with DIF unless there is an emergency. [View page 42 – Direct flow of information between CPS-DIF-family]

State and local DIF offices vary in their capacities to respond to requests for assistance from separated families. As DIF has yet to issue a national protocol defining services for separated families, local offices view their involvement as “good faith” efforts rather than a practice within their mandate. Most DIF offices require a written request from a governmental authority to initiate services. When SRE is involved, this request is generated by the Mexican government. When CPS contacts DIF directly, an official request from the court or child welfare authorities is usually sufficient. These requests are normally presented to the legal department within DIF. Interviews with families and advocates indicated that some families who approach DIF directly for assistance without a written request may be turned away. Rejection at such a critical time impacts a family’s access to crucial services.



DIRECT FLOW OF INFORMATION BETWEEN CPS-DIF-FAMILY



CHALLENGES TO COMPLETING CASE PLAN REQUIREMENTS IN MEXICO

CPS and family courts tend to establish common requirements for family reunification case plans:

- Home study
- Psychological evaluation and/or therapy
- Parenting classes
- Drug and/or alcohol testing
- Established living environment
- Established employment

AVAILABILITY OF SERVICES

In order for US courts to accept the services that parents complete in Mexico, they need to be similar to those provided in the US. Services are either provided directly by DIF or through contractors. For example, many DIF offices have psychologists available, while others refer families to local therapists who provide proof of services. When parents are referred to external counselors, they may have to pay for the therapy sessions. The availability of services varies between states and municipalities; many municipalities have scarce resources, lack infrastructure, and cover extensive geographic areas. For example, in some rural, mountainous communities, people travel 8-10 hours by bus to reach the nearest city for services.

Parenting classes are not always offered. Parenting classes include information on appropriate methods of discipline and communication with children. Classes on other topics, such as anger management, may be even more difficult to obtain. In areas where these programs are not offered, DIF often must work with the family to create alternatives or include the information in individual therapy sessions. Availability of drug and alcohol testing and rehabilitation services varies throughout Mexico. Rural communities may have Alcoholics or Narcotics Anonymous groups, but may not

have advanced treatment services that provide alcohol testing. If required, these supplemental services can be costly for parents.

HOME STUDIES

A home study is a thorough evaluation of the safety and appropriateness of a particular family prior to placement. While CPS offices have different criteria for home studies, they generally evaluate the physical conditions of a home, potential risks, and the family's social environment. CPS workers evaluate discipline styles, drug and alcohol abuse histories, and the involvement of extended family members' participation in family life.

DIF has no uniform home study format and criteria tend to be more general. Many DIF home studies focus specifically on a family's economic situation, including photographs of furnished rooms and information about income, but often include scarce information about family history and a parent's emotional capacities to care for their children. Despite the fact that DIF has its own criteria for home studies, when working with US family courts, home studies need to gather information comparable to what would be collected by CPS. When CPS and DIF develop strong working relationships, DIF develops the capacity to adapt home study formats CPS and family courts requirements. However, in areas of Mexico where DIF may be responding to a case for the first time, or where there is resistance to adapting protocols, communication about home studies and supplemental interviews can become time-consuming.

In addition, as home studies implicate on-site visits, geographic distances and lack of transportation may be an issue. In states such as Oaxaca, Guerrero and Chiapas, DIF workers often travel several hours, sometimes by bus or foot, to reach remote communities in which they must complete home study visits. DIF offices in these rural states adapt scarce resources to accommodate the requirements placed on them by CPS.

Cultural differences also need to be taken into account in the preparation and evaluation of home studies. For example, multiple members of an extended family living in a single home is a typical practice in Mexico, but does not always meet US standards. Differences also exist in expectations for supervision; in the US, state laws dictate the age at which it is appropriate to leave children home alone, but in Mexico these decisions are typically left to parental discretion.

SERVICES FOR CHILDREN WITH SPECIAL NEEDS

Juan lived in the US for 11 years, working in a restaurant in a Texas border town. He began a relationship with a US citizen woman who had 3 children and they later had a child together. Their relationship ended and Juan's former partner maintained custody of the children, including his biological child. Juan's former partner exhibited chronic mental health problems, developed a drug addiction, and left the children in unsafe living conditions. An incident with the police led CPS to remove the children from her custody. Juan was not immediately granted custody because CPS determined that he should have taken a more active role in protecting the children while they were living with their mother. Juan became involved in the dependency proceedings and began working on a reunification plan to gain custody of the children. While proceedings were underway, he was apprehended by Border Patrol while driving to an appointment, and was deported within 3 hours. He reports that he informed Border Patrol that he was involved in a state child custody process, but he was deported anyway. Upon deportation, his first phone call was to his social worker. Since returning to Mexico, Juan has made every effort to work with his pro-bono attorney, maintain contact with his children, and complete programs offered through DIF and contracted services. The case remains unsettled as CPS and the courts are concerned that appropriate services may not be available in Mexico for two of the children who have special needs and are receiving specialized care in Texas.⁴⁷

Juan's case demonstrates additional challenges that may arise when children require services for special needs, and the parent must prove that services would be provided in Mexico. In particular, if US citizen children go to Mexico without proper documentation, they are not always immediately eligible for public services. Although parents are not allowed to remain in the US where they could

provide for the child's needs according to US standards, US citizen children receiving Social Security disability benefits could be eligible to continue receiving this support in Mexico. In many cities where services are available for children with special needs, disability benefits could go a long way to secure specialized care in Mexico.

CPS and the family court should work with Mexican authorities, the US consulate, and advocates to find solutions that provide for a child's needs and also respect the right to family unity.

Best Practices: Border City CPS and DIF Collaboration

Several DIF jurisdictions in border towns have developed specialized services for family separation cases. For example, DIF Baja California in Tijuana offers parenting classes that meet CPS requirements in California. In Nogales, Sonora, when DIF realized that they lacked guidelines to address cases, they built cross-border relationships with CPS in Southern Arizona counties and began training on US family law procedures and CPS protocols to improve assistance to affected families in Sonora. These DIF offices have established proactive solutions in the absence of authorized protocols.

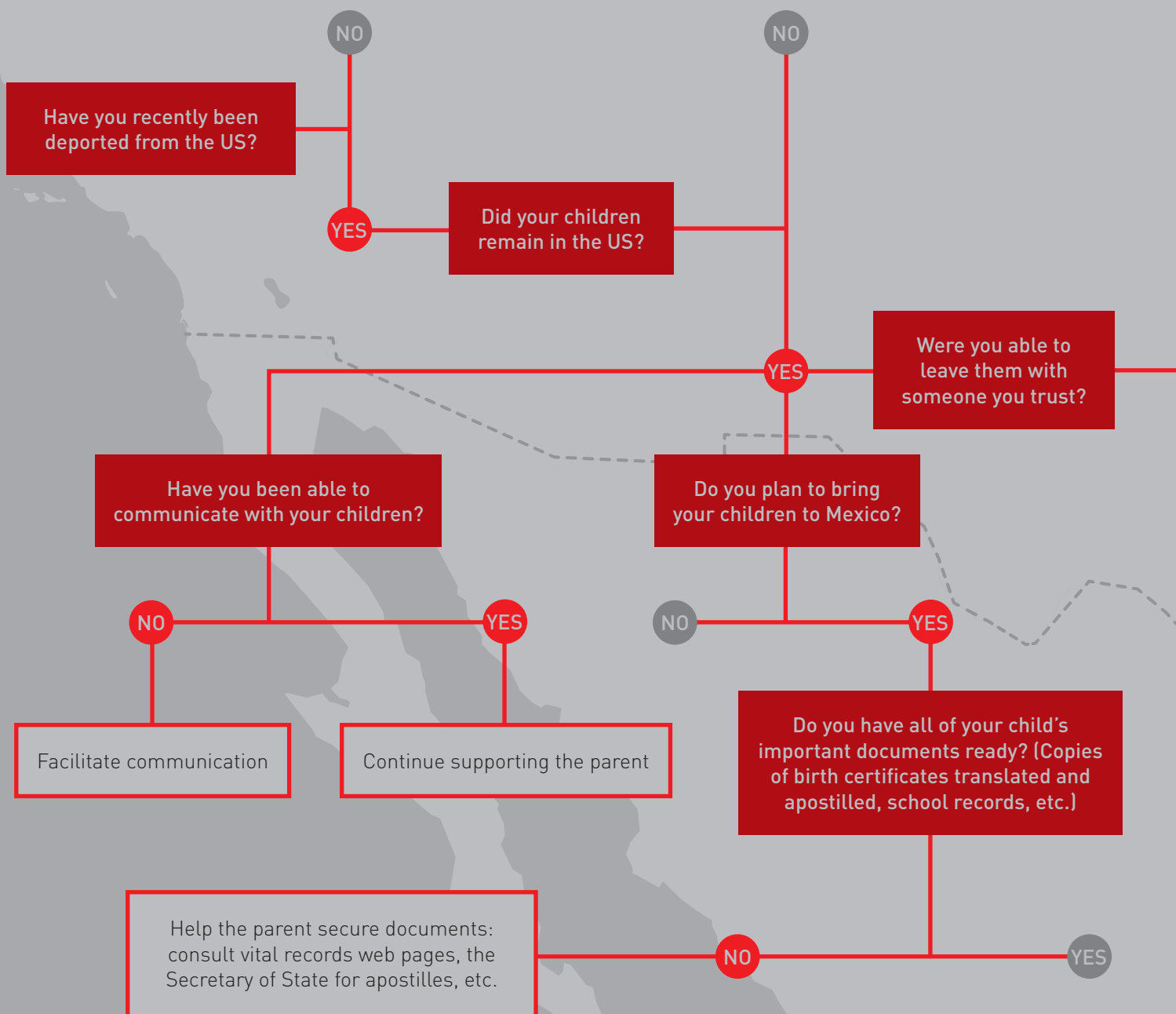
Texas Family Protective Services (TFPS) and DIF Chihuahua have a long-standing MOU to facilitate the professional collaboration between the two state-wide agencies to protect children and vulnerable adults. The MOU provides guidelines for preparing reports, assisting with repatriations, and providing evaluative services for families seeking placement of children in either country. The MOU recognizes the agencies' mutual dependency for resolving cross-border family situations. It also creates specific communication guidelines between CPS and DIF to ensure that requests are made appropriately.

The TFPS Border Liaisons provide resources to agency staff and social workers to search for parents and family in Mexico, communicate with Mexican agencies, identify resources and eligibility requirements in Mexico, and to facilitate requests for parents in Mexico who need permits to cross the border to attend family court hearings. TFPS has developed protocols with Customs and Border Protection, which authorizes these temporary permits.

ASKING THE RIGHT QUESTIONS

Sometimes parents ask questions about relatively simple procedures, but with a deeper look, it may be possible to identify family separation issues.

Sometimes it appears that governmental and non-governmental organizations are not in contact with transnational families, especially those that are separated. However, paying closer attention to the questions parents ask, and digging deeper for information, may help identify additional needs. For example, people may state, "I need a copy of my child's birth certificate from Georgia" or "I need to get an apostille because the school won't accept my daughter." These may indicate further challenges that the family is facing.



Seek out additional resources that could support the family. This may mean referring or providing the services.

- CPS, including international liaisons where applicable
- SRE consulates or regional offices
- DIF
- Pro-bono attorneys or social workers in your organization
- Other non-profit organizations or community supports

NO

Do you understand the court process and what requirements you have to follow?

YES

- Contact the CPS office in the state where your child is
- Contact SRE regional office or the consulate
- Begin following up with the process

NO

Do you know who your child's social worker is?

YES

Contact immediately to provide follow up to case.

NO

YES

Are your children in CPS custody?

NO

YES

Are your children in the custody of a friend or family member?

NO

YES

Did you write a power of attorney letter to authorize the person caring for your children to make decisions about their schooling and health care?

NO

YES

Are you worried about the safety of your children where they're currently living?

NO

YES

Explore other options for child care. Explore the need to report the situation to CPS, and consult the consulate in the area where the children live.

Help the parent write a letter and facilitate sending it.

CIVIL SOCIETY

Migrant shelters, service providers for deportees, and local educational projects in communities of origin are likely the first contacts for migrant families upon their return to Mexico. These organizations refer families to needed services, support them when they reach obstacles, and accompany them through their experience of separation and their efforts toward reunification. They play a crucial role in enabling access to due process.

“Knowing how to navigate the system can go a long way to help parents step into their own cases.” — Hannah Hafter, Co-Coordinator, No More Deaths, Tucson, AZ

NGOs provide moral support to parents. Families working through reunification plans need to find the personal resources to remain motivated throughout their processes and to confront challenges. Interviews with organizations that have worked with families during reunification cases report that the single most important factor is the determination and perseverance of the parents to move their cases forward.

To improve their services, organizations in Mexico require specialized training on CPS and immigration procedures in order to ask the right questions, identify specific issues and mobilize services.

Interviews conducted for this report indicate that the majority of **organizations and individuals that have been working with separated migrant families feel that they are working in isolation**. Organizations need to network with one another to share resources, experiences and build institutional relationships. These relationships will facilitate quicker response times to petitions for assistance, access to information, and help families contact the appropriate individuals or agencies in order to communicate

with their children, attorneys, and social workers. NGOs could improve their advocacy for families by strengthening their relationships with governmental agencies.

Advocates who have worked with separated families emphasize the importance of “thinking outside the box” to help families collect furniture for their new homes, help governmental offices understand what services a family requires, or advocate for the inclusion of parents in their court proceedings through various forms of technology. Because these families tend to be marginalized in Mexico, advocates will need to continue being creative and assertive.

STATE MIGRANT ASSISTANCE ORGANIZATIONS

In addition to NGOs, state-level governmental organizations that comprise a National Network of State Migrant Assistance Agencies (CONOFAM)⁴⁸ fulfill a similar role for migrant protection. These offices refer families to appropriate agencies and may provide direct services such as free or low-cost translations, information about how to apostille documents, financial assistance to returned migrants, and legal advice. These migrant assistance organizations are dependent on state funds derived from federal resources.

Human rights organizations on the state and federal level also have complaint procedures that can help advocates if they reach obstacles with Mexican governmental agencies that should be providing consular protection and other services to parents.

In order for advocacy to be effective, nongovernmental and state-level governmental organizations need to be recognized as legitimate parties working with families. CPS, family courts, DIF, and SRE need to grant advocates full access to the process, as they play important roles in accompanying families.

CHALLENGES FOR TRANSNATIONAL FAMILIES IN MEXICO

Magdalena migrated to the US approximately 20 years ago. She originally entered the US on a work visa, but when it expired, she remained without authorization. While living in the US, Magdalena's husband, who had been abusive, left her and their US citizen son without economic support.

After some time, Magdalena met another partner, who was also in the country without authorization. They lived together for many years and were both employed. They began to hear announcements in their community about a notary office that provided assistance to legalize immigration status. Magdalena's boyfriend decided that they should submit applications for legal residency, unaware that no immigration remedies existed for people in their situation. The notary fraudulently submitted applications to the US Citizenship and Immigration Service and when ICE became aware of their situation, both Magdalena and her partner were detained.

When Magdalena was deported to her community of origin in Mexico, she decided to bring her 15 year-old son with her. The family attempted to adapt to their new life in Mexico, with few resources. Magdalena's son had many problems at his new school. Some students made fun of him for his lack of Spanish fluency and for the way he interacted with other students. The teacher was strict with him to the point that he became afraid to attend school. After some time, Magdalena and her son decided that he would return to the US to live with an uncle while he continued his studies. In the US, he is a leader in his school.

Magdalena tried to return to the US to live with her son, but she was detained and deported three times in her attempts. She now continues living in her community in Mexico and sells food out of her home to survive. Her son remains with his uncle, studying and communicating with his mother as often as possible.

The family continues to be separated because there is no legal way for Magdalena to reunify with her son in their home in the US.⁴⁹

Some parents achieve reunification with their children following their return to Mexico, but their lives are complicated by identity documentation requirements, community integration problems, and lack of employment and material resources. Some families decide to seek ways to make integration

WHERE DO WE GO FROM HERE?

work, and others decide to send their children back to the US, experiencing a new separation. These families must then make custody decisions and require information to ensure that their children are protected in both countries.

For those who stay, including the population of nearly 600,000 US citizen children currently living in Mexico, many challenges arise.



DOCUMENTATION: BIRTH CERTIFICATES, APOSTILLES, AND DUAL NATIONALITY

*“Our families are bi-national families.” —
Janet Barragán, International Liaison, San
Diego County CPS*

Returning with children from the US presents challenges for transnational families. Children from the US often arrive in Mexico without having registered as dual nationals, often do not have their birth certificates apostilled (certified), and lack the appropriate school records. These obstacles may lead to situations of crisis for economically vulnerable families as they require funds for certifications, secure mailings, official translations, and copies of original documents. Particularly in rural areas, the dependency on these documents opens families up to situations

of fraud and corruption by local officials who may require families to submit their only original document, provide notarial services at high costs, or convince parents of US citizen children to re-register their children as if they had been born in Mexico — resulting in two birth certificates.

Once a family is in Mexico, obtaining an apostille becomes a challenge. Documents cost \$5-\$20 in the various Secretary of State offices in the US, but when requested by mail, the state may require a money order or credit card, inaccessible to many migrant families. Given the unreliability of the Mexican postal system, the requirement that parents mail the original copy of the document (birth certificate, school record, etc.) is a concern. The costs of secure courier services and translation are not accessible for most families. In rural communities, families often travel many hours in mountainous or difficult conditions to reach organizations that can assist with the process. State-level migrant assistance agencies provide information about apostille procedures, but most do not have resources to assist with the costs, although some offer free or reduced-cost translation.

Best practice: Facilitating documentation

To respond to the growing need for apostille certification for documents coming to Mexico from the US, DIF Nogales temporarily facilitated a program that involved sending multiple families' documents to Phoenix, Arizona with DIF staff in order to process the apostille stamp.

In July, 2012, The Corner Project (Proyecto El Rincón) in Malinalco, Mexico organized a “fair” for returned migrant families to which they could bring US documents to be translated and sent in group packages to the Secretaries of States the US. The Corner Project brought Mexican government officials together to help families request birth certificates from vital statistics offices and to be sent for apostille. Once the birth certificates were returned, the state government assisted with official translations. The Corner Project identified areas in the US where most of the community's migrants lived and implemented creative solutions to mitigate the obstacles of shipping and translation costs.

While the US Department of State's (DOS) embassy and consulates in Mexico provide services to US citizens, they do not commonly become involved in migrant family separation cases (even when those families have US citizen children) unless the cases involve kidnapping or illicit retention of minors.⁵⁰ The DOS has not provided a centralized solution to the documentation and separation issues for the hundreds of thousands of US citizen children living in Mexico.

Though the right to education is granted to all children in Mexico,⁵¹ in practice, children in many communities have been barred from school registration or health services⁵² due to lack of appropriate certified documentation from the US. Civil society advocates have been

When children are in CPS custody and the parents are seeking reunification in Mexico, CPS should guarantee that documents, including apostille certifications and Mexican consular reports of birth abroad, are prepared prior to the child's departure from the US in order to facilitate social and educational services once in Mexico.

working with families to circumvent these barriers by presenting letters to school officials indicating the child's right to attend school while documentation issues are resolved.

Undocumented or mixed-status families living in the US that may face a return to Mexico with their US citizen children can prevent these problems by processing documents and obtaining Mexican registration of birth abroad for their children through the Mexican consulates in the US.⁵³

Best practice: Prevention is key!

Many organizations in the US and Mexico have made efforts to encourage migrants to plan ahead for the possibility of a deportation that may impact custodial decisions. These organizations have created manuals for parents in detention, worksheets and videos for community-based groups and church congregations to share with migrant families.

Women's Refugee Commission (WRC) — Guide for Detained Immigrant Parents can be found in English on WRC's website at www.womensrefugeecommission.org, and in Spanish on IMUMI's website: www.imumi.org

Lutheran Immigration and Refugee Service — Be Not Afraid/No Temas emergency planning worksheets and power of attorney forms can be found in English and Spanish at www.lirs.org/notemas

Appleseed and the Mexican National Human Rights Commission videos for the prevention of custodial problems can be found at www.appleseednetwork.org/mexicoappleseed

EDUCATION AND SOCIAL INTEGRATION

A growing body of research has begun looking at the educational experiences of children who were born or raised in the US as they integrate into the Mexican educational system. Although the Secretary of Public Education has a transfer document for bi-national students, it does not maintain statistics regarding the number of transnational youth attending school in Mexico,⁵⁴ and in communities where schools are already operating with scarce resources, educators and administrators have balked at requests for additional services for students arriving from the US.

For example, limited resources are available within the public school system for Spanish as a second language support. Children who learned Spanish in the home may be able to express themselves verbally, but often have not developed abilities to read or write in Spanish at their grade-level. Reports indicate that few efforts are being made to explore alternative ways to gauge the learning abilities of children educated in the US and to take into account the cultural experiences that they bring with them to Mexico.

Integration experiences vary depending on the age and level of development of children and youth upon returning to Mexico, their internal resilience, and the stability of their home situation. Children and youth who feel forced to move to Mexico due to a deportation may have already experienced anxiety, fear, depression, and behavioral difficulties as a result of the uncertainty of their parents' immigration status in the US.⁵⁵ In addition, a parent's ability to support a child through their adaptation process depends on his or her own emotional stability.

The experience of moving to a new country can be traumatic — but with the proper support from parents and extended family to recognize and adapt to losses, access needed services, and integrate into a new social setting, children and youth have a better chance at successful adaptation.

In some cases, however, adaptation difficulties can lead families to send a child back to live in the US. Whichever decision families make, they require accurate information regarding parental rights and responsibilities to ensure that their children are protected in either country, can travel safely, and that the parent-child relationship remains intact.



DECIDING TO SEND CHILDREN BACK

Silvia migrated to the US 14 years ago with her husband and two small children. When her youngest children, US Citizens, were 3 and 12, she fled the US and an abusive relationship, returning to Mexico. Her ex-husband communicated with her through other family members, threatening to turn her into US and Mexican authorities for “kidnapping,” and demanding that she send the children back to the US. Unaware of her rights or available resources, her children traveled back to the US with family members, while she began a long series of attempts to re-enter the country in order to be with them. During that time, Silvia was kidnapped, became lost in the desert, and was deported in a highly vulnerable medical state. In total, she was apprehended and deported 6 times — all in the hopes of returning to her children. After the 6th return, she was informed by family members that her husband had brought her children to Tijuana. He forced her to pay him in order to regain custody and she traveled to Tijuana to pick up her two youngest children. After attempting to integrate into their community outside of Mexico City, her son, 16 at the time, decided he wanted to return to California to live with his aunts, who provided little supervision. He eventually caught the attention of CPS, and began a process of emancipation in order to be able to live independently. He is now supported by the State and Silvia has little information about his legal process. Her youngest child, now 11, lives in Mexico. She also traveled back and forth between the two countries for a time, struggling to adapt to her school and social setting. Now, thanks to the help of a scholarship that the child has received to support her studies, she can remain in the same city with her mother, who was not sure how she was going to pay for next year’s school costs.⁵⁶

As demonstrated in both Magdalena’s and Silvia’s stories, despite a family’s desire to be together, sometimes other factors intervene. Families may decide that it is in a child’s best interest to return to the US to continue studying while living with relatives.

When accompanying families through this process, it is important that they are provided with

appropriate information about custodial arrangements. Magdalena was able to prepare for her son’s care, by designating temporary custody to her brother and sister-in-law through a power of attorney letter. Magdalena was able to access a social worker while in detention who explained the custodial process and provided direct assistance. Silvia was afraid to contact the authorities, was unable to claim her rights as a

mother due to her situation of violence, and received erroneous legal advice from an informal network of family and friends. Had Silvia been given the proper information prior to her departure from the US or her attempts at re-entry, her situation may have turned out differently, including possible eligibility for a U visa.

Organizations in both the US and Mexico need to be alert to situations of families that have been unable to integrate upon returning to Mexico, forcing them to make painful decisions resulting in longer periods of family separation. Families need to receive information about opportunities for transnational communication, support groups for parents in similar situations, and creative programs for psychosocial support.

SOCIAL DEVELOPMENT — WHAT ARE PEOPLE RETURNING TO?

“We’ve managed to create a coordinated network of agencies and OSCs that share information to help families. We don’t just say, “We can’t do anything for you,” because it is not very useful for families. It’s a painful situation for families to knock on doors and still not find basic information about what they should do, what possibilities exist for them.” — Guadalupe Chipole, Directora, Área de Atención de Migrantes, Huéspedes y sus Familias, SEDEREC

Between fiscal years 2009–2011, 1,029,928 Mexicans were returned across the border and ICE removed 848,365 as a result of internal detentions.⁵⁷ While it is unclear how many parents attempt and succeed at returning to the US to remain with their families,⁵⁸ the numbers indicate that precedent-setting numbers of Mexicans have returned to their communities

of origin — or new communities — and experience a myriad of challenges including processing the loss of their lives in the US, finding employment and housing, and seeking support for crises that they may be confronting.

Between 2005 and 2010, statistics indicate that fewer migrants have been returning to their communities of origin; this decision is often impacted by the social stigma of deportation, lack of social connections in Mexico, and difficulties finding jobs.⁵⁹ In 2010, 18% of return migrants were concentrated in 25 localities throughout Mexico; this includes Northern border cities, areas in and around Mexico City, and other areas with more employment opportunities. In 2010, an increase in return to Southern and Southeastern states, which have relatively more recent emigration patterns, indicates that people with fewer established ties in the US may be returning to smaller, rural communities with fewer resources, in states such as Oaxaca, Veracruz, Puebla and Chiapas. In 2005, 44.7% of returnees went to communities such as these, and that trend appeared to be continuing.⁶⁰

Mexico’s economy has long been dependent on remittances. In 2012 alone, migrant remittances contributed 305.78 billion pesos to Mexico’s economy, yet only 7.64 billion pesos were budgeted for migrant support services.⁶¹ Despite high numbers of returning migrants, the Mexican House of Representatives cut federal funds for migrant support services in 2013.⁶² In particular, funds budgeted for SRE consular assistance were decreased, even while the needs for these services have risen due to increased detention, deportation and voluntary return.

The fund for former migrant workers in the US has been reduced to zero⁶³ and the Migrant Support Fund has also been decreased. The latter fund is where many state-level funds are derived, which are used for the direct work with returning migrants by state-level migrant assistance offices. Cuts to this budget directly impact already scarce services for migrant families.

Best practice: Supporting re-integration

The Office of Attention to Migrants, Guests, and their Families within SEDEREC has developed programs that provide attention to international migrants living in Mexico City, as well as migrants returning to Mexico. While SEDEREC recognizes that information and legal advice are important for returning migrant families, they also understand that families require economic support in order to reintegrate into their communities. SEDEREC provides limited financial assistance to returning migrants to be used for training or for starting small businesses. SEDEREC has also devoted resources to providing assistance with migration documents in Mexico and apostille certification processes. It is unclear how the federal budget cuts will affect the local programming that SEDEREC has been able to offer to returning migrants.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

With or without immigration reform in the US, the detention and deportation of Mexican immigrants will likely continue. Governmental and non-governmental organizations in Mexico must respond to this reality by identifying ways to mitigate the damage caused to parents and their children. In order to protect transnational families in situations of separation between the US and Mexico, social and legal services need to be developed and strengthened in order to guarantee families due process, access to reunification processes, information regarding parental rights and procedures to protect a child's best interests in both countries.

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 with trained staff 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.⁶⁴
- 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.⁶⁵

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 United States.
- 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 youth⁶⁶ 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 re-unification 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:
 - 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

- ¹ Pew Hispanic Center (2013). "A Nation of Immigrants" Found online at: http://www.pewhispanic.org/files/2013/01/statistical_portrait_final_jan_29.pdf
- ² "Returns" include apprehensions of people who were not admissible to the US as well as people apprehended in transit by Border Patrol.
- ³ 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
- ⁴ Passel, J. y Cohn, D. (2011). *Unauthorized Immigrant Population: National and State Trends, 2010*. Washington, DC: Pew Hispanic Center.
- ⁵ 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.
- ⁶ Danielson, M. (2013). *Documented Failures: The consequences of Immigration Policy on the U.S.-Mexico border*. Nogales, AZ/Sonora: Kino Border Initiative.
- ⁷ Censo Mexicano de Población y Vivienda (2010) INEGI. Found: <http://www.inegi.org.mx/est/contenidos/proyectos/ccpv/cpv2010/Default.aspx>
- ⁸ 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.
- ⁹ All names in this report have been changed to protect privacy.
- ¹⁰ The external advocate was a CASA representative who had a special interest in these particular cases. Normally CASA advocates represent the best interests of the children. In this case, the advocate also worked to identify additional issues in the case, such as the mother's immigration status, that were the primary factors preventing reunification. It is important to note that this situation is not average; most parents do not have an advocate helping them through the process.
- ¹¹ Interview and case file review with Doris Foulkes, LACES, Houston, TX. January 23, 2013.
- ¹² Department of Homeland Security, "FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources." Washington, DC: December 21, 2012. Found at: www.ice.gov/news/releases/1212/121221washingtondc2.htm
- ¹³ 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
- ¹⁴ Passel, J., Cohn, D., & Gonzalez-Barrera, A. "Net Migration from Mexico at Net Zero – and Perhaps Less." *Pew Research Hispanic Trends Project*. April 23, 2012. Found online: <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>
- ¹⁵ Secretaría de Gobernación Consejo Nacional de Población, Instituto Nacional de Migración, Unidad de Política Migratoria, Centro de Estudios Migratorios, Secretaría de Relaciones Exteriores, Secretaría del Trabajo y Previsión Social, El Colegio de la Frontera Norte. (2013). *Encuesta Sobre Migración en la Frontera Norte de México, 2011. Serie Anualizada 2004 a 2011*, México.
- ¹⁶ Meissner, D. et al. (2013). *Immigration Enforcement in the United States*. Washington, DC: Migration Policy Institute.
- ¹⁷ To name a few: National efforts and local advocacy with ICE field offices have worked to change ICE apprehension and detention policies to allow for protections of parental rights during the detention process. A law was passed in CA last year granting incarcerated parents the right to make phone calls to arrange for custody of children. A transnational campaign called We Belong Together has worked to raise political and social awareness of the impact of family separation on women and children.
- ¹⁸ Applied Research Center, "Primary Data: Deportations of Parents of US Citizen Kids," December 17, 2012.
- ¹⁹ Satinsky, S., Hu, A., Heller, J. & Farhang, L. Human Impact Partners, (2013, June). *Family unity, family health: How family-focused immigration reform will mean better health for children and families*. Oakland, CA: Human Impact Partners.
- ²⁰ For example, a newspaper article in Ann Arbor, Michigan reported a case in which the court filed to terminate a mother's parental rights despite her attempts to regain custody following deportation. Available online at: <http://www.annarbor.com/news/court-initiates-termination-of-deported-mothers-parental-rights-as-she-seeks-custody-of-son-in-ann-a/>. Another case in Pennsylvania involved a mother whose rights were terminated because the court felt that contact with her children following her deportation to Mexico was sporadic and did not demonstrate her commitment to communicating regularly with her children. The Superior Court later overturned the termination order. Available online at: <http://www.jlc.org/resources/case-updates/re-involuntary-termination-parental-rights-em>.

- ²¹ Censo Mexicano de Población y Vivienda [2010] INEGI. Found online at: <http://www.inegi.org.mx/est/contenidos/proyectos/ccpv/cpv2010/Default.aspx>
- ²² Phillips, S.D., Cervantes, W., Lincroft, Y., Dettlaff, A.J., & Bruce, L. (Eds.) (2013). *Children in harm's way: Criminal justice, immigration enforcement, and child welfare*. Washington, D.C.: Jointly published by The Sentencing Project and First Focus.
- ²³ Senate Bill 744 is the Border Security, Economic Opportunity, and Immigration Modernization Act. The full text can be found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:s.744>:
- ²⁴ Rabaino, L. (2013). "Infographic: US-Mexico border crossers not giving up." California: Center for Investigative Reporting. Found: <http://cironline.org/reports/infographic-us-mexico-border-crossers-not-giving-4562>
- ²⁵ Danielson, M. (2013). *Documented Failures: The consequences of Immigration Policy on the U.S.-Mexico border*. Nogales, AZ/Sonora: Kino Border Initiative.
- ²⁶ Unicef (2012). "Children in the Context of Migration and the Right to Family Life." Day of General Discussion, Committee on the Rights of the Child.
- ²⁷ Sottoli, S. & Gallo, K. (2013). "Derechos de la Infancia, Unidad Familiar y Migración." *Migración y Familia*, Berumen, S., Frías Valle, N. & Santiago Hernández, J. (eds.) Mexico: SEGOB
- ²⁸ Vallet, M. (2012). *Post-Deportation Health: A Humanitarian Assessment*. Tucson, AZ: No More Deaths.
- ²⁹ In many places throughout Mexico, particularly in indigenous communities, advocates and families report anecdotes of misinformation that includes the US government's rights to "reclaim" US citizen children from parents who bring them to Mexico. These rumors also include fears that if families in the US go to the Mexican Consulate for assistance, they will report them to US immigration authorities.
- ³⁰ Parella, S. y Covalconti, L. *Dinámicas familiares transnacionales y migración femenina. El caso de las migrantes bolivianas a España*. Universidad Autónoma de Barcelona. Available online at: www.webs.uvigo.es/xenero/profesorado/sonia_parella/migracion.pdf
- ³¹ Vargas Silva, A.D. & Méndez Puga, A.M. (2012). "La migración México-Estados Unidos: Inclusión social y escolar de los niños y niñas con experiencia educativa en Estados Unidos y México, el caso de Michoacán." *Caleidoscopio Migratorio: Un diagnóstico de la situación migratoria actual, en el estado de Michoacán, desde distintas perspectivas disciplinarias*, D.T. Martínez Ruiz (Ed.). (pp. 113-148). Morelia, Michoacán: Universidad Michoacana de San Nicolás de Hidalgo.
- ³² These situations are not exhaustive of the ways that families are separated by immigration enforcement policies and practices. For example, CBP routinely utilizes the Alien Transfer Exit Program (ATEP, or "lateral repatriation"). This is a program for which certain members of an apprehended group are selected to be deported through ports of entry distant from where they were apprehended. They are separated from their traveling companions, including spouses and other family members, in order to prevent re-entry.
- ³³ Passing the DREAM Act in the U.S. would provide youth like Josefina's son the chance to become citizens, not simply defer immigration enforcement action.
- ³⁴ Interview with M. T., May 21, 2013, Mexico City, Mexico.
- ³⁵ Passel, J. y Cohn, D. (2011). *Unauthorized Immigrant Population: National and State Trends, 2010*. Washington, DC: Pew Hispanic Center.
- ³⁶ Cervantes, Wendy (2013). *Perdidos en el Sistema: El impacto del control migratorio a los niños atrapados en el sistema de protección de la niñez en los Estados Unidos*. Washington, DC: First Focus.
- ³⁷ ICE Parental Interest Directive (August, 2013). Washington, DC: Department of Homeland Security. Available online: http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf
- ³⁸ Wessler, S. (2011). *Shattered families: The perilous intersection of immigration enforcement and the child welfare system*. New York: Applied Research Center.
- ³⁹ Case file review, DIF, Nogales, Sonora, February 12, 2013.
- ⁴⁰ Butera, E. (2010). *Torn Apart by Immigration Enforcement: Parental rights and immigration detention*. New York: Women's Refugee Commission. / Wessler, S. (2011). *Shattered Families: The perilous intersection of immigration enforcement and the child welfare system*. New York: Applied Research Center.
- ⁴¹ Texas Supreme Court, "In the interest of E.N.C., J.A.C., S.A.L., N.A.G. and C.G.L., Minor Children." September 12, 2012.
- ⁴² Lincroft, Y. (2010). *Language, Culture and Immigration Relief Options*. Washington, DC: First Focus. Available online at: <http://www.firstfocus.net/sites/default/files/r.2010-5.20.lincroft.pdf>
- ⁴³ Gonzalez Armador, R. "Seis de cada 10 mexicanos que trabajan están en la informalidad." *La Jornada*, December 12, 2012.
- ⁴⁴ "Representing parents in abuse, neglect, dependency and termination of parental rights cases." NC Office of Indigent Defense Services, February 2013. Found online at: <http://www.ncids.org/News%20&%20Updates/ParentRepresentation.pdf>
- ⁴⁵ Telephone Interview with Raquel Amezcua, Orange County Social Services Agency, July 9, 2013.
- ⁴⁶ Ley de Asistencia Social, Art. 4, <http://www.diputados.gob.mx/LeyesBiblio/pdf/270.pdf>
- ⁴⁷ Interview with J. A., November 20, 2012, Mexico City, Mexico.
- ⁴⁸ CONOFAM's full Spanish name is la Coordinación Nacional de Oficinas de Atención al Migrante, A.C. More information available at www.conofam.org.mx

- ⁴⁹ Interview with M., November 23, 2012, Mexico City, Mexico.
- ⁵⁰ Hague Convention, Sect. 28, "Convention on the civil aspects of child abduction" October 25, 1980. Available online at: <http://www.hcch.net/upload/conventions/txt28en.pdf>
- ⁵¹ Secretaría de Relaciones Exteriores. Boletín informativo: Derechos Humanos: Agenda Internacional de Mexico. March, 2010. Available online at: <http://embamex.sre.gob.mx/reinounido/images/pdf/DGDH169.pdf>
- ⁵² Access to health services was also guaranteed for all migrants in Mexico via the Migration Law in 2012, but the practical implications and documentation requirements have not yet been resolved.
- ⁵³ This procedure requires that parents present proof of identity and the child's original birth certificate. For more information on SRE requirements, see www.sre.gob.mx.
- ⁵⁴ Vargas Silva, A.D. & Méndez Puga (2012). La migración México-Estados Unidos: Inclusión social y escolar de los niños y niñas con experiencia educativa en Estados Unidos y México, el caso de Michoacán. *Caleidoscopio Migratorio: Un diagnóstico de la situación migratoria actual, en el estado de Michoacán, desde distintas perspectivas disciplinaria*, D.T. Martínez Ruiz (Ed.). (pp. 113-148). Morelia, Michoacán: Universidad Michoacana de San Nicolás de Hidalgo.
- ⁵⁵ Dreby, J. (2012) *How Today's Immigration Enforcement Policies Impact Children, Families and Communities*. Washington, DC: Center for American Progress.
- ⁵⁶ Interview with L.V., July 1, 2013, Mexico City, Mexico.
- ⁵⁷ 2013 Yearbook of Immigration Statistics (2012). Washington, DC: Office of Immigration Statistics, Department of Homeland Security. Available online at: www.dhs.gov/yearbook-immigration-statistics
- ⁵⁸ In a small sample study regarding post-deportation health, the humanitarian organization No More Deaths found that of the 3 out of 4 people interviewed who were hoping to cross again, 70% of respondents indicated that their primary motivating factor involved being with and supporting family in the US.
- ⁵⁹ Masferrer, C. & Roberts, B. (2012). *Going Back Home?: Changing demography and geography of Mexican return migration*. Population Residency Policy Review (Ed. 31: 465-496).
- ⁶⁰ Ibid., pg. 485
- ⁶¹ Cordova, R. A. (2013). El presupuesto público ¿qué tanto ama México a sus migrantes y sus familias? Mexico City: Fundar.
- ⁶² Ibid.
- ⁶³ Ibid., pg. 7
- ⁶⁴ 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.
- ⁶⁵ 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*.
- ⁶⁶ 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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