

THE POLITICS OF IMMIGRANT RIGHTS: BETWEEN POLITICAL GEOGRAPHY AND TRANSNATIONAL INTERVENTIONS

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2018 MICH. ST. L. REV. 117

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The authors wish to thank Karina Sedano for her excellent research assistance. We also wish to express our gratitude to the officials and staff at the Mexican Consulates in El Paso, Texas; Raleigh, North Carolina; and San Francisco, California for sharing their expertise and information. We are indebted to the many community organizations in all three sites whose staff generously gave us their time, as well as to the immigrant advocates and attorneys with whom we consulted. The authors gratefully acknowledge the financial support from the Puffin Foundation, which facilitated the research for this project.

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INTRODUCTION

The promise of the Fifth and Fourteenth Amendments cannot but inspire full confidence in the lofty purpose of the Constitution.¹ That no state can “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” is surely fundamental to the very efficacy of the American system of jurisprudence.² The Supreme Court has declared that these protections apply to all persons, including unlawfully present foreigners.³ Federal statutory

1. U.S. CONST. amends. X, XIV, § 1.

2. U.S. CONST. amend. XIV, § 1.

3. *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (citing *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)). “Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Id.*

provisions further provide rights of access to the courts by undocumented immigrants. The Civil Rights Act of 1866 established that “[a]ll persons born in the United States . . . shall have the same right . . . to make and enforce contracts, to sue, be parties, and give evidence . . . and to full and equal benefit of all laws and proceedings.”⁴ The Civil Rights Act of 1870 prohibited discriminatory state immigration laws.⁵ These fundamental provisions command the full strength of the federal government to impose its authority on all states to uphold their principles.

The practice of immigration devolution, whereby the federal government relinquishes its authority to the states for reasons of political expediency, suggests an abdication of its commitment to these bedrock protections.⁶ Immigration devolution subjects the constitutional guarantees to conflicting and often contradictory interpretations resulting in the deprivation of rights. The diverse political geography of the United States, including divergent regional traditions, distinct cultures, and different histories, consigns immigrant rights to the realm of multiple interpretations, often undermining the opportunity for immigrants to claim rights.⁷

It is precisely because undocumented immigrants lack legal status that they need legal protections. In 1982, the Supreme Court, in *Plyler v. Doe*, described the vulnerability experienced by undocumented immigrants.⁸ Unauthorized immigrants, Justice Brennan cautioned, constitute a population “whose presence is tolerated, whose employment is perhaps even welcomed, but who are virtually defenseless against any abuse, exploitation, or callous neglect to which the state or the state’s natural citizens and business organizations may wish to subject them.”⁹ Access to the courts, however, is not readily available to immigrants, especially immigrants who lack legal status.¹⁰ Language barriers, fear of the

4. Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27 (codified at 42 U.S.C. § 1981) (2012)).

5. Civil Rights Act of 1870, ch. 114, §§ 16-17, 16 Stat. 140.

6. See *infra* Section I.A.

7. See *infra* Subsection I.A.4.

8. *Plyler*, 457 U.S. at 219 n.18.

9. *Id.* (quoting *Plyler v. Doe*, 458 F. Supp. 569, 585 (1978)).

10. Legal scholars have contributed important insights into the circumstances of immigrants who reside in the shadow of the law. See generally Daniel Ford et al., *Protecting the Employment Rights and Remedies of Washington’s Immigrant Workers*, 48 GONZ. L. REV. 539 (2013); Daniel J. Rearick, *Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System*, 39 HARV. C.R.-C.L. L. REV. 543 (2004); Deborah M.

state, denial of government-funded legal services, and judicial bias often pose insurmountable obstacles.¹¹

The law provides a mechanism to challenge the dominant political and cultural narrative that casts immigrants as peril—and hence, by implication, without due process rights.¹² The legal system embodies a cultural practice—a “socially established structure[] of meaning which constitute[s] something that is sufficiently shared”—and thus its availability to immigrants may serve as a means of incorporation into the body politic.¹³ The invocation of legal protections provides the opportunity for immigrants to exercise agency, mitigate the stigma of Otherness,¹⁴ and claim rights as “everyday transactions [that] create opportunities for noncitizens to contest their own subjectification.”¹⁵ Litigation by noncitizens situates undocumented persons “into both public consciousness and a

Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899 (2000). See Gloria Bonilla Santiago, *Latina Battered Women: Barriers to Service Delivery and Cultural Considerations*, in HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES 384 (Albert R. Roberts ed., 2002); Annie Decker, *Suspending Employers' Immigration-Related Duties During Labor Disputes: A Statutory Proposal*, 115 YALE L.J. 2193, 2199-2201 (2006); Mariela Olivares, *A Final Obstacle: Barriers to Divorce for Immigrant Victims of Domestic Violence in the United States*, 34 HAMLINE L. REV. 149, 154-56 (2011).

11. See *supra* note 10; Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a)(11), 110 Stat. 1321; Restrictions on Legal Assistance to Aliens, 45 C.F.R. § 1626 (1996).

12. See generally Deborah Weissman, *The Politics of Narrative: Law and the Representation of Mexican Criminality*, 38 FORDHAM INT'L L.J. 141 (2015) (describing the use of the “Mexican-as-Criminal” narrative to shape harsh laws and policies). The notion of the immigrant as criminal has given rise to a new term, if not field of law: “Crimmigration.” See Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006).

13. David M. Engel & Barbara Yngvesson, *Mapping Difficult Terrain: “Legal Culture,” “Legal Consciousness,” and Other Hazards for the Intrepid Explorer*, 6 LAW & POL'Y 299, 302 (1984) (internal citation omitted).

14. Otherness is understood to signify “the quality of being not alike; being distinct or different from that otherwise experienced or known.” *Otherness*, WORDNET, <http://wordnetweb.princeton.edu/perl/webwn?s=Otherness&sub=Search+WordNet&o2=&o0=1&o8=1&o1=1&o7=&o5=&o9=&o6=&o3=&o4=&h=https://perma.cc/9F5C-WC4V>] (last visited Mar. 5, 2018).

15. Susan Bibler Coutin, *The Rights of Noncitizens in the United States*, 7 ANN. REV. L. SOC. SCI. 289, 295 (2011); see also BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION, AND EMANCIPATION 18 (2d ed. 2002) (observing that claiming rights can be emancipatory for marginalized groups).

more tangible, functional sort of membership status.”¹⁶ Securing rights may accomplish discursive shifts about who belongs: “Rights may influence identity by altering how individuals perceive themselves or by changing how they are perceived.”¹⁷ Moreover, immigrants who claim rights often act to improve legal protections for citizens by affecting systemic concerns and addressing vulnerabilities suffered by the population at large—that is, they may advance justice generally.¹⁸ But outcomes, and specifically the availability of access to courts, vary greatly depending on location of residence. Devolution has created instances of unequal applications of the legal protections to which immigrants are entitled.

This Article explores how political geography and the politics of immigration devolution create varying legal environments in which immigrants assert their rights. It argues that the apparent breach of the federal government’s commitment to constitutional and statutory rights has created the need to consider new forms of legal protections through transnational advocacy in a manner consistent with U.S. constitutional guarantees. To this end, it draws on field research that examines the Directorate-General for Protection and Consular Affairs (*La Dirección General de Protección y Asuntos Consulares*) (Department of Legal Protection, hereinafter DLP) within the Mexican Consulate as an agency possessed of the capacity to mitigate the geographic disparity that currently characterizes the exercise of immigrant rights.¹⁹

16. Daniel Kanstroom, “*Alien*” *Litigation as Polity-Participation: The Positive Power of a “Voteless Class of Litigants,”* 21 WM. & MARY BILL RTS. J. 399, 428 (2012) (“This is more than a rights claim: it embodies rights, polity-participation, and moral discourse.”).

17. DAVID M. ENGEL & FRANK W. MUNGER, *RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES* 242 (2003); Vasanthi Venkatesh, *Mobilizing Under “Illegality”: The Arizona Immigrant Rights Movement’s Engagement with the Law,* 19 HARV. LATINO L. REV. 165, 169 (2016) (describing potential benefits of immigrants’ claims-making upon other civil rights movements).

18. Hiroshi Motomura, *The Rights of Others: Legal Claims and Immigration Outside the Law,* 59 DUKE L.J. 1723, 1752-54 (2010) (analyzing, for example, the Supreme Court’s treatment of unauthorized workers and the implications for U.S. citizens and lawful permanent residents).

19. See Interviews by Deborah M. Weissman, Jacqueline Hagan, Ricardo Martinez Schuldt & Alyssa Peavey with Mexican Consulate and Dep’t of Legal Prot. (Dec. 2015-June 2017) (on file with authors). The authors conducted twenty-five semi-structured, face-to-face interviews in three research sites that comprise the field work related to this Article. Transcripts and notes are on file with the authors. Interviews were conducted from December 2015 through June 2017 with officials

This Article contributes to the scholarship on immigrant rights through three lines of inquiry. First, the Article considers the ways that history, demographics, and socio-legal culture affect the politics of devolution of immigration enforcement. Within the boundaries of the United States, different local legal traditions serve to shape the culture of law in which immigrants seek to exercise rights.²⁰ It is true that “it is never the case that the legal system of any country is uniform, unified, and able to cover the whole country like a smooth coat of paint. Within any given country, legal practices differ a good deal from region to region.”²¹ Legal pluralism may promote innovative developments to law and rights, to be sure.²² But just as often, legal pluralism serves to undermine fundamental rights that elsewhere provide resolution of legal claims. These idiosyncrasies put into doubt equal protection under the law and raise constitutional and normative concerns.²³ Part I considers the various forms and mechanisms of immigration devolution that have developed within a changing political environment. These mechanisms expand opportunities for states and localities to exercise authority over the admission and exclusion of immigrants in ways that affect their day-to-day lives. Part I then examines the salient factors that act to influence a locality’s preference for devolution policies that enable punitive discriminatory state immigration laws compared with those that tend to foster progressive and protective laws that further immigration integration.²⁴

The Article next examines the capacity of the Mexican Consulate to mitigate the effects of devolution and the local barriers immigrants confront when seeking to claim affirmative and

from the Mexican Consulate/DLP, representatives of community organizations, and attorneys. The authors also had access to the database maintained by the Mexican Consulate containing case narratives and other administrative information related to the functions of the DLP.

20. See *infra* Subsection I.A.4.

21. Lawrence M. Friedman, *Borders: On the Emerging Sociology of Transnational Law*, 32 STAN. J. INT’L L. 65, 67 (1996) (describing legal pluralism as a form of federalism).

22. See Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC’Y REV. 869, 870 (1988) (defining legal pluralism as “two or more legal systems coexist[ing] in the same social field”).

23. See *supra* notes 2-5 and accompanying text.

24. For useful discussions of statutory prohibitions against state laws that discriminate against immigrants, see Lucas Guttentag, *The Forgotten Equality Norm in Immigration Preemption: Discrimination, Harassment, and the Civil Rights Act of 1870*, 8 DUKE J. CONST. L. & PUB. POL’Y 1, 3 (2013), and Motomura, *supra* note 18, at 1740.

protective rights to which they are guaranteed. The Mexican Consulate transacts its responsibilities within “the largest sustained [migration] flow between any two countries in the world.”²⁵ It has a lengthy history of engaging in community collaborations to challenge local anti-immigrant legal policies that often stigmatize Mexicans as “a racialized ethnic group” whose presence is deemed unwelcome.²⁶ Through the functions of the DLP housed within the Consulate, immigrants may obtain assistance to enforce their rights.²⁷ The DLP thus has the potential to affect legal norms and shape socio-cultural attitudes about immigrants as members of the body politic.²⁸ Part II goes beyond mainstream immigration scholarship to demonstrate the importance of the DLP as a transnational legal structure that operates in a local context and combines both sending and receiving state protections. Part II provides an overview of the expansion of consular functions in response to immigrants’ heightened needs for legal protection and examines the mechanisms through which the DLP facilitates legal protections for Mexicans.

The Article returns to the impact of the political geography of rights on the effectiveness of the DLP. The politics of devolution either contract or expand the capacity of the DLP to fulfill its purpose. Part III brings into focus three strategic research sites through a series of interviews in each location:²⁹ the Mexican Consulate in North Carolina (representing a new destination area for immigrants in an environment of weak community supports);³⁰ the

25. David FitzGerald, *150 Years of Transborder Politics: Mexico and Mexicans Abroad*, in *A CENTURY OF TRANSNATIONALISM: IMMIGRANTS AND THEIR HOMELAND CONNECTIONS* 106, 106 (Nancy L. Green & Roger Waldinger eds., 2016).

26. Nancy Foner & Patrick Simon, *Introduction* to *FEAR, ANXIETY, AND NATIONAL IDENTITY: IMMIGRATION AND BELONGING IN NORTH AMERICA AND WESTERN EUROPE* 1, 12-13 (2015); see FitzGerald, *supra* note 25, at 116; see also *infra* notes 128, 154 and accompanying text.

27. The DLP is housed within the Institute for Mexicans Abroad, reorganized in 2003 to improve protections for Mexicans living abroad. See Laureen Laglaron, *Protection Through Integration: The Mexican Government’s Efforts to Aid Migrants in the United States*, *MIGRATION POL’Y INST.* 10-11 (Jan. 2010), <http://www.ilo.org/dyn/migpractice/docs/207/MPI.pdf> [https://perma.cc/J6HH-UXMJ].

28. See generally Kanstroom, *supra* note 16.

29. Interviews by Deborah M. Weissman, *supra* note 19; see also *infra* Part III.

30. The Consulate in Raleigh, North Carolina—the only consulate in the Carolinas—provides services to all of North Carolina and South Carolina, and it covers 146 counties. See *Directorio de Circunscripciones de las Representaciones*

Mexican Consulate in El Paso, Texas (representing binational/bilingual residents in a border area with heightened humanitarian concerns);³¹ and the Mexican Consulate in San Francisco, California (representing an established immigrant corridor with long-established community supports).³² Part III examines the policies and practices of devolution in the three jurisdictions and analyzes their impact on the efficacy of each of the three DLPs generally, especially in the realms of labor, family, and human rights. Part III demonstrates that the politics of devolution in each case bear on the strengths and weaknesses of consular services.

In Part IV, the Article concludes by suggesting that the use of devolution as a response to the presence of immigrants may serve as “a bellwether of deeper social changes.”³³ It observes that the likelihood of modification of policy of immigration enforcement in ways to benefit immigrant rights is dubious in the near future. Given these circumstances, Part IV sets forth those salient characteristics identified by migration scholars as contributing to a robust and coherent national and transnational blueprint to protect immigrant rights and demonstrates that the DLP exemplifies such best practices.

I. EXACERBATING OBSTACLES OR ENHANCING OPPORTUNITIES: DEVOLUTION AND LOCALITY

For immigrants, the matter of claiming rights is complicated by a pervasive anti-immigrant political environment fomented through national laws and policies. Federal statutes have emphasized stricter immigration enforcement and expanded cause for detention and removal. New laws increase the difficulty to obtain identity

Consulares de México en Estados Unidos de América [Directory of Jurisdictions of Mexican Consulates in the United States], DIRECCIÓN GENERAL DE SERVICIOS CONSULARES (2011), http://www.aguascalientes.gob.mx/temas/migrantes/docs/circunsc_eua_jun2011.pdf [<https://perma.cc/3FPK-WHXK>]. For purposes of this study, the authors focused on the state of North Carolina with 100 counties.

31. The Consulate in El Paso, Texas is one of six Consulates General in Texas and provides services to parts of west Texas and southern New Mexico. It covers eleven counties. *See id.*

32. The Consulate in San Francisco, California, one of five Consulates General in California, provides services to parts of northern California and the state of Hawaii. It covers eighteen counties. *See id.*

33. Frank W. Munger, *Social Citizen as “Guest Worker”: A Comment on Identities of Immigrants and the Working Poor*, 49 N.Y.L. SCH. L. REV. 665, 666 (2004).

documents,³⁴ receive health and other necessary social services,³⁵ and qualify for legal assistance:³⁶ in sum, all factors that exacerbate immigrant vulnerability. The Trump administration's recent executive orders designed to increase the arrest, detention, and deportation of unauthorized immigrants have immobilized many immigrants in the face of egregious rights violations and often preclude access to the protections of state and local laws to which they are entitled.³⁷ The federal immigration system's increasingly punitive practices and policies have now been adopted among the states and localities resulting in greater opportunities for the exploitation of immigrants.³⁸

A. Devolution and Its Forms

Both the states and the federal government exercised regulatory authority of the transborder movement of people through the end of the nineteenth century.³⁹ The authority to regulate the admission, exclusion, and removal of noncitizens, however, has been vested exclusively with the federal government.⁴⁰ Federal laws and legal policies pertaining to immigrants constitute a uniform body of law to be applied consistently.⁴¹ Certainly state and local governments have always exercised authority over immigrants in their jurisdiction through local laws to which all residents—both citizens and noncitizens—are subject. But the federal government is assumed to discharge exclusively the role of “gatekeeper” and preempt local

34. See Real ID Act of 2005, 49 U.S.C. § 30301 (2012) (establishing minimum identification standards for federal recognition).

35. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1612(a) (2012).

36. See *id.*

37. See Exec. Order No. 13,767, 82 Fed. Reg. 8,793, 8,795 (Jan. 25, 2017), [hereinafter EO Border Security]; Exec. Order No. 13,768, 82 Fed. Reg. 8,799, 8,799 (Jan. 25, 2017) [hereinafter EO Interior]; see also Jaya Ramji-Nogales, “*The Right to Have Rights*”: *Undocumented Migrants and State Protection*, 63 U. KAN. L. REV. 1045, 1045-46 (2015).

38. See Venkatesh, *supra* note 17, at 173.

39. See Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833, 1834 (1993).

40. *Id.* at 1837 n.20 (“[S]tate immigration legislation is preempted by pervasive federal regulation, a factor obviously absent prior to 1875.”).

41. Cristina M. Rodríguez, *Uniformity and Integrity in Immigration Law: Lessons from the Decisions of Justice (and Judge) Sotomayor*, 123 YALE L.J.F. 499, 518-19 (2014) (citing Judge Richard Posner's call for a uniform body of federal law pertaining to asylum claims).

authorities over matters related to the implementation of immigration laws.⁴²

This long-standing dichotomy demarcating federal and state authority no longer governs immigration law. Within a changing political environment, states and localities have assumed greater authority over the admission and exclusion of immigrants. The following sets forth three mechanisms by which legal authority over the rights and claims of immigrants has ebbed from the federal government to states and localities.

1. Federal Laws Authorizing Local Immigration Enforcement

The federal government has relinquished its claim to exclusive jurisdictional authority through statutory and regulatory programs “deputizing” states and localities to act in immigration enforcement. The first of these initiatives is the 287(g) program enacted in 1996 through an amendment to the Immigration and Nationality Act (INA), which permitted the U.S. Immigration and Customs Enforcement (ICE) to enter into agreements with local law enforcement agencies.⁴³ Pursuant to the statute, local law enforcement officers may be authorized to act as immigration officials in the function of their daily activities and implement certain immigration laws, thereby discharging authority previously held exclusively by the federal government.⁴⁴

The 287(g) program has received significant attention from the Trump administration, which issued two executive orders directed at border and interior immigration concerns.⁴⁵ Both of these Orders implicate states and localities in new and aggressive immigration enforcement.⁴⁶ To that end, the Executive Order on “Border

42. *See id.* at 512 (describing preemption in which Congress enacts legislation and leaves state officials to enforcement that is consistent with “the federal administration’s construction of the law”).

43. Immigration and Nationality Act, 8 U.S.C. § 1357(g) (2012).

44. *See id.*

45. *See* EO Border Security, *supra* note 37, at 8,795; EO Interior, *supra* note 37, at 8,800.

46. *See generally* EO Border Security, *supra* note 37; EO Interior, *supra* note 37. Each of these Orders include provisions designed to remove immigrants previously not within the target of enforcement initiatives, that is to say, any immigrant without status or otherwise subject to deportation. *See* EO Border Security, *supra* note 37, at 8,793, 8,795; EO Interior, *supra* note 37, at 8,799-801. These Orders also significantly build up the deportation infrastructure, including adding additional Customs and Border patrol agents, ICE Immigration Enforcement

Security” seeks to enact “Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs.”⁴⁷ It champions the 287(g) program with the goal of “authoriz[ing] State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States.”⁴⁸ Similarly, the Executive Order on increased enforcement initiatives within the interior of the United States includes as its purpose “empower[ing] State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law” and requires the Secretary of Homeland Security to “immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g).”⁴⁹

The 287(g) program is voluntary and cannot be imposed upon states or municipal governments that do not choose to enter into an agreement with ICE.⁵⁰ After a reduction in the number of 287(g) localities during the Obama administration, there has been a recent increase in the number of signed agreements.⁵¹ Three-quarters of the 287(g) states and municipalities are located in the South.⁵² Other states and localities have declined to enter into 287(g) agreements and have discouraged such arrangements altogether.⁵³ These jurisdictions are often referred to as “sanctuary jurisdictions.”⁵⁴

officers, and detention centers. *See generally* EO Border Security, *supra* note 37; EO Interior, *supra* note 37.

47. EO Border Security, *supra* note 37, at 8,794.

48. *Id.* at 8,795.

49. EO Interior, *supra* note 37, at 8,800.

50. *See Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. DEP’T HOMELAND SECURITY, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/factsheets/287g> [<https://perma.cc/4M2D-YNPM>] (last visited Apr. 13, 2018).

51. *See id.*

52. *See id.*

53. *See* Elliott Young, *Sanctuary in the Trump Era*, NACLA (Feb. 3, 2017), <http://nacla.org/news/2017/02/07/sanctuary-trump-era> [<https://perma.cc/EVD8-LUAV>]; *see also* Jasmine C. Lee et al., *What Are Sanctuary Cities?*, N.Y. TIMES, <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html> [<https://perma.cc/7NWW-D9P9>] (updated Feb. 6, 2017).

54. Young, *supra* note 53. There is no specific or agreed-upon definition of a “sanctuary city.” *Id.*

In addition to 287(g), the Department of Homeland Security (DHS) in 2008 launched the “Secure Communities” program, requiring state and local authorities to assist DHS in identifying persons with an immigration history for the purposes of removal of noncitizens with serious criminal convictions.⁵⁵ In fact, however, Secure Communities targeted everyone who had contact with the immigration system, including immigrants without any criminal history as well as low-level offenders, and it increased the rate of deportation through local authorities.⁵⁶ A centerpiece of the Secure Communities program is the federal government’s immigration detainer enforcement strategy whereby ICE submits requests to state and local law enforcement agencies to detain immigrants past their state-mandated release date so that ICE can determine whether they are removable.⁵⁷

Secure Communities was initially launched as a pilot program and confined to over a dozen jurisdictions.⁵⁸ Understood originally to be a voluntary program, a number of states opted out,⁵⁹ prompting ICE to pronounce that the program was mandatory.⁶⁰ Opposition on the part of those localities objecting to the federalization of immigration enforcement increased, and in 2014, Secure Communities was replaced by the Priority Enforcement Program (PEP), which required localities to continue to assist with the identification of immigrants in circumstances that were designed to be more limited than under Secure Communities.⁶¹ The Trump

55. See generally *Secure Communities*, U.S. DEP’T HOMELAND SECURITY, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, http://www.ice.gov/secure_communities [<https://perma.cc/XA3M-S6HQ>] (last visited Mar. 5, 2018).

56. Juliet P. Stumpf, *D(E)volving Discretion: Lessons from the Life and Times of Secure Communities*, 64 AM. U. L. REV. 1259, 1270-71 (2015).

57. Ming H. Chen, *Trust in Immigration Enforcement: State Noncooperation and Sanctuary Cities After Secure Communities*, 91 CHI.-KENT L. REV. 13, 13 (2016).

58. *Id.* at 23.

59. Nat’l Day Laborer Org. Network v. U.S. Immigration & Customs Enf’t Agency, 811 F. Supp. 2d 713, 730 (S.D.N.Y. 2011), *amended on reconsideration* (Aug. 8, 2011).

60. Lindsey J. Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*, 54 WM. & MARY L. REV. 2055, 2063 (2013).

61. See generally *Priority Enforcement Program*, U.S. DEP’T HOMELAND SECURITY, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/pep> [<https://perma.cc/3YEN-KUUD>]; see also Chen, *supra* note 57, at 13, 13 n.1. Significant exceptions within the program’s design, however, allowed for continued extensive local control over immigration enforcement. *Priority Enforcement*

administration's Executive Order on interior enforcement terminated PEP and reinstated Secure Communities.⁶² Notwithstanding the mandates of the Secure Communities program, some states and localities have restricted the circumstances under which they would agree to "hold" someone under an ICE detainer request while other localities comply with detainer requests.⁶³

In another effort to compel the devolution of immigration enforcement, § 9 of the current administration's Executive Order on interior enforcement calls for the imposition of sanctions on so-called sanctuary jurisdictions through the loss of federal funds.⁶⁴ The provision is currently being litigated by localities committed to immigrant integration and that view immigration enforcement as contrary to the needs and in conflict with values of their communities.⁶⁵ Other states have banned sanctuary policies through laws that preempt municipalities from refusing to comply with federal immigration enforcement requests.⁶⁶

2. *State "Papers, Please" Statutes*

As the federal government relinquished its exclusive claim to enforce immigration laws, some state and local governments have independently expanded their power to act against undocumented immigrants. States have enacted a series of subnational laws to expand the authority of local law enforcement over matters

Program: Why 'PEP' Doesn't Fix S-Comm's Failings, NAT'L IMMIGR. L. CTR. 2 (June 2015), <https://www.nilc.org/issues/immigration-enforcement/pepnotafix/> [<https://perma.cc/WDY5-G3T8>].

62. EO Interior, *supra* note 37, at 8,801.

63. Chen, *supra* note 57, at 25-26.

64. EO Interior, *supra* note 37, at 8,801.

65. *See, e.g.,* Cty. of Santa Clara v. Trump, 250 F. Supp. 3d 497, 497 (N.D. Cal. 2017). At this writing, the federal district court has issued a permanent injunction enjoining the Department of Justice from threatening to or withholding federal funds from the plaintiff cities. *See* Cty. of Santa Clara v. Trump, No. 17-CV-00574-WHO, 2017 WL 5569835, at *1 (N.D. Cal. Nov. 20, 2017). Other cities, including Los Angeles, Chicago, and Philadelphia, have also been successful in obtaining injunctions against Section 9 of the Executive Order. For an overview of all litigation, see *Civil Rights Litigation Clearinghouse, Civil Rights Challenges to Trump Immigration Enforcement Orders*, UNIV. MICH. SCH. L., <https://www.clearinghouse.net/results.php?searchSpecialCollection=46> [<https://perma.cc/ZQ54-E5FA>] (last visited Mar. 5, 2018).

66. For a review of state preemption issues, see *City Rights in an Era of Preemption: A State-by-State Analysis*, NAT'L LEAGUE CITIES 1 (2017), <http://www.nlc.org/preemption> [<https://perma.cc/6HGK-8DXJ>].

pertaining to admission and exclusion of immigrants, specifically authorizing law enforcement to inquire about an individual's immigration status when stopped or after arrest.⁶⁷ Often referred to as "Papers, Please" statutes, these laws serve to expand immigration surveillance at the state level.

In *Arizona v. U.S.*, the Supreme Court limited the authority of states to preempt federal enforcement schemes but allowed local law enforcement to inquire about an individual's immigration status when stopped for other violations of law if the officer has reason to believe the individual is not lawfully present.⁶⁸ Since Arizona's "Papers, Please" provisions, at least twenty-four states introduced "copycat" bills, some of which remain on the books, albeit in limited form, following legal challenges.⁶⁹ A number of states thus maintain such immigration-enforcement provisions with the likelihood of wider participation under the current administration in Washington.⁷⁰ Indeed, at least one state has recently enacted a "Papers, Please" statutory provision designed to "ramp up" immigration enforcement, including on college campuses.⁷¹

67. See *United States v. Arizona*, 132 S. Ct. 2492, 2497-98 (2012) (citing ARIZ. REV. STAT. ANN. § 11-1051 (West 2012)); see also Editorial Board, *Policing Immigrant Communities*, 128 HARV. L. REV. 1771, 1791 (2015); Haeyoun Park, *Which States Make Life Easier or Harder for Illegal Immigrants*, N.Y. TIMES (Mar. 29, 2015), <http://www.nytimes.com/interactive/2015/03/30/us/laws-affecting-unauthorized-immigrants.html> [<https://perma.cc/K92L-RWRA>].

68. *Arizona*, 132 S. Ct. at 2501-03, 2507-10; Adam Liptak, *Blocking Parts of Arizona Law, Justices Allow Its Centerpiece*, N.Y. TIMES (June 25, 2012), http://www.nytimes.com/2012/06/26/us/supreme-court-rejects-part-of-arizona-immigration-law.html?_r=0 [<https://perma.cc/TPS5-HES4>]; Anita Sinha, *Arbitrary Detention? The Immigration Detention Bed Quota*, 12 DUKE J. CONST. L. & PUB. POL'Y 77, 79 (2017).

69. Sophia J. Wallace, *Papers Please: State-Level Anti-Immigrant Legislation in the Wake of Arizona's SB 1070*, 129 POL. SCI. Q. 261, 266 (2014).

70. Park, *supra* note 67; Jeremy Redmon, *Georgia to Start Enforcing Key Part of Its Immigration Law*, ATLANTA J.-CONST. (Dec. 11, 2012), <http://www.ajc.com/news/state--regional-govt--politics/georgia-start-enforcing-key-part-its-immigration-law/XapwBkthOuUckV99yj8fEL/> [<https://perma.cc/5FD8-3UUX>]; Connor Sheets, *Alabama's 2011 Anti-Immigrant Law H.B. 56 Still on Books, Gets New Life Under Trump*, ALABAMA.COM, http://www.al.com/news/birmingham/index.ssf/2017/03/hb_56_alabamas_2011_anti-immig.html [<https://perma.cc/4S4N-9CRE>] (last updated Mar. 27, 2017).

71. *Advisory: Texas Advocates, Elected Officials Host Emergency Media Call in Response to Signing of Texas Anti-Immigrant Bill*, AM.'S VOICE (May 8, 2017), <http://americasvoice.org/blog/advisory-texas-advocates-elected-officials-host-emergency-media-call-response-signing-texas-anti-immigrant-bill/> [<https://perma.cc/3773-MJWR>].

3. Alienage Laws

States have authority to enact “alienage laws” to determine whether an immigrant can remain in a particular locality. Alienage laws often affect the health and well-being of immigrants by regulating eligibility for various forms of benefits, including public assistance and health care subsidies and access to educational opportunities through in-state tuition eligibility.⁷² Localities determine whether and which employers will be required to ascertain the immigration status of employees or otherwise face fines and penalties for hiring undocumented workers. States determine eligibility for a driver’s license and mandate forms of acceptable identification documentation, with far-reaching consequences on day-to-day transactions.⁷³ States determine whether to enact English-only ordinances or whether to provide linguistic access in public affairs, to restrict the issuance of business and professional licenses and admit unauthorized immigrants to the practice of law.⁷⁴ State criminal laws also affect an immigrant’s chances of remaining in the United States, as certain convictions may constitute grounds for removal under federal law.⁷⁵ In sum, alienage laws have usurped in principle and in practice the authority previously within the purview of the federal government—with the complicity of the federal government.

72. Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2055 (2008).

73. Meredith Glenn Cabell, *Mexican Immigrant Integration in the U.S. Southeast: Institutional Approaches to Immigrant Integration in Owensboro, Kentucky* 27 (Ctr. for Comparative Immigration Studies, Working Paper No. 153, 2007), <https://ccis.ucsd.edu/files/wp153.pdf> [<https://perma.cc/W5EA-YWZM>]. In 2015, North Carolina passed a law preventing the use of the Mexican consulate-issued identification (*matricula*) to be used as an accepted form of identification. *McCrory Signs Controversial Immigration Bill 2015*, J. NOW (Oct. 28, 2015), http://www.journalnow.com/news/local/mccrory-signs-controversial-immigration-bill/article_f12665a3-060b-5613-bc54-98248afa0d6d.html [<https://perma.cc/3Q82-VRUT>].

74. Robert Suro, *California Dreaming: The New Dynamism in Immigration Federalism and Opportunities for Inclusion on a Variegated Landscape*, 3 J. MIGRATION & HUM. SECURITY 1, 15-16 (2015).

75. Christina Rodriguez, *Enforcement, Integration, and the Future of Immigration Federalism*, 5 J. MIGRATION & HUM. SECURITY 509, 513 (2017).

4. Political Geography Matters

Scholars examining immigration concerns at the national level have identified a number of factors that affect immigration policy, including history, ideology, economics, labor conditions, and national security concerns.⁷⁶ The expansion of state and local authority, however, has raised new issues and suggests the need to examine how legal pluralism affects immigrants' rights to assert claims.⁷⁷ Notwithstanding the Civil Rights Act of 1870 prohibiting states from enacting laws that discriminate against non-citizens,⁷⁸ the success of immigrants to make claims depends upon the socio-legal culture in which they reside.⁷⁹

Local actors presently possess authority to choose who is subjected to immigration enforcement or who may be incorporated into the body politic. In some areas, localities have opposed immigration enforcement and have instead promoted initiatives to assist with the integration of newcomers, irrespective of their status.⁸⁰ In other localities, traditions of racism and nativism have tended toward exclusionary responses to the presence of immigrants.⁸¹ Researchers examining immigration laws and policies have determined that “states and localities have taken the lead with scores of new laws targeting immigrants” since 2005, some of which are welcoming, but many of which are discriminatory and hostile.⁸²

76. DAVID SCOTT FITZGERALD & DAVID COOK-MARTIN, CULLING THE MASSES: THE DEMOCRATIC ORIGINS OF RACIST IMMIGRATION POLICY IN THE AMERICAS 2, 8, 12-13 (2014).

77. Legal pluralism suggests that different legal systems coexist within the same “geopolitical space (the modern state)” and for the purpose of understanding conditions that affect immigrant rights, within states, if not counties. *See* Merry, *supra* note 22, at 870 (describing legal pluralism as “a situation in which two or more legal systems coexist in the same social field”); *see also* Rodriguez, *supra* note 75, at 511 (describing immigration relationships among the federal, state, and local jurisdictions as functioning autonomously).

78. Civil Rights Act of 1870, ch. 114, § 16-17, 16 Stat. 140.

79. Rodriguez, *supra* note 75, at 513.

80. Motomura, *supra* note 72, at 2084-85; *see also supra* notes 48-51 and accompanying text.

81. Deborah M. Weissman, *The Federalization of Racism and Nativist Hostility: Local Immigration Enforcement in North Carolina*, in *MIGRATION IN AN ERA OF RESTRICTION AND RECESSION: SENDING AND RECEIVING NATIONS IN A CHANGING GLOBAL ENVIRONMENT* 99, 99 (David L. Leal & Nestor P. Rodríguez eds., 2016); Cabell, *supra* note 73, at 4; *supra* notes 58-61 and accompanying text.

82. Joanna Almeida et al., *The Association Between Anti-Immigrant Policies and Perceived Discrimination Among Latinos in the US: A Multilevel Analysis*, 2 SSM - POPULATION HEALTH 897, 900 (2016),

Depending upon the political geography, immigrants may benefit from immigrant-friendly policies while others describe a sense of besiegement.⁸³ Indeed, as the devolution of immigration enforcement expands, “geographic unevenness” results in “uneven” treatment of newcomers.⁸⁴

An assessment of the circumstances that act to influence a locality’s disposition for one approach over another is complex and beyond the scope of this Article.⁸⁵ But it is clear that anti-immigrant policies affect newcomers differently in both degree and kind in different regions across the country.⁸⁶ The sites of immigrant destinations extend from traditional “gateway” locations (California, the Southwest, New Jersey, and New York), to “access states” (Texas and Florida), to “opportunity states” (North Carolina, Georgia, Tennessee, and Arkansas).⁸⁷ As these demographic shifts have been accompanied by the devolution of immigration enforcement, scholars have raised concerns about the impact of local customs and traditions and the ways that local culture acts to shape

<http://dx.doi.org/10.1016/j.ssmph.2016.11.003> [https://perma.cc/MZJ3-ZY99] (noting at least 1,536 of such laws from 2005 through 2011).

83. Motomura, *supra* note 18, at 1783; Julia Preston, *Trump: The New Deportation Threat*, N.Y. REV. BOOKS (May 25, 2017), <http://www.nybooks.com/articles/2017/05/25/trump-the-new-deportation-threat/> [https://perma.cc/D53G-MR5V]; Pablo Mitnik et al., *Cities and Immigration: Local Policies for Immigrant-Friendly Cities*, CTR. ON WIS. STRATEGY 9 (2008), http://www.cows.org/_data/documents/1164.pdf [https://perma.cc/MH3T-G9XC].

84. Mark Ellis, *Unsettling Immigrant Geographies: U.S. Immigration and the Politics of Scale*, 97 *TUJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE* 49, 56 (2006) (Neth.); Mathew Coleman, *Immigration Geopolitics Beyond the Mexico–US Border*, 39 *ANTIPODE* 54, 66 (2007) (describing an “uneven urban geography of immigration law enforcement”).

85. See generally Cabell, *supra* note 73; Mary C. Waters & Tomás R. Jiménez, *Assessing Immigrant Assimilation: New Empirical and Theoretical Challenges*, 31 *ANN. REV. SOC.* 105 (2005).

86. Gary Gerstle, *The Contradictory Nature of American Nationality: A Historical Perspective*, in *FEAR, ANXIETY, AND NATIONAL IDENTITY*, *supra* note 26, at 33, 40 (describing historical regional anxieties toward immigrants); *In the Air We Breathe*, NPR (June 5, 2017), <http://www.npr.org/templates/transcript/transcript.php?storyId=531587708> [https://perma.cc/S82P-2KV7] (explaining that in communities with more racial biases, more African-Americans are killed by police than their presence in the population warrants).

87. Carl L. Bankston, *New People in the New South, An Overview of Southern Immigration*, 13 *S. CULTURES* 24, 29-30 (2007); Lisa Pruitt, *Latina/os, Locality, and the Law in the Rural South*, 12 *HARV. LATINX L. REV.* 135, 137, 139 (2009).

local legal attitudes and influence local law enforcement practices.⁸⁸ Localities that experience a rapid identity “shock” with the sudden influx of foreigners often react with fear and suspicion toward immigrants.⁸⁹ Communities that are characterized by traditions of racial animus and cultural isolation are more likely to reject immigrants.⁹⁰ On the other hand, established immigrant communities are more likely to assert their ethnic identity and values in ways that are protective of rights and counteract discrimination.⁹¹ Progressive and protective laws are a function of the extent to which established immigrant gateways have previously established structures to support the daily needs of immigrants that reflect local traditions, often regardless of partisan politics.⁹² As Xóchitl Bada and Shannon Gleeson have observed, “Communities in which migrants have a strong base of civic engagement already are more likely to mobilize and rally support towards policies that support immigrant incorporation.”⁹³

The history of local laws shape and reshape the nature of communities and the rights of immigrants according to the values of the place.⁹⁴ Within localities that are heirs to traditions of tolerance

88. Coutin, *supra* note 15, at 299; Monica W. Varsanyi, *Rescaling the “Alien,” Rescaling Personhood: Neoliberalism, Immigration, and the State*, 98 ANNALS ASS’N AM. GEOGRAPHERS 877, 879-80 (2008) (noting that the federal government has left it to the states and localities to police immigrants according to a variety of competing local interests); Jamie Winders, *Changing Politics of Race and Region: Latino Migration to the US South*, 29 PROGRESS HUM. GEOGRAPHY 683, 684 (2005).

89. See generally FEAR, ANXIETY, AND NATIONAL IDENTITY, *supra* note 26.

90. Donald Kerwin, *Moving Beyond Comprehensive Immigration Reform and Trump: Principles, Interests, and Policies to Guide Long-Term Reform of the US Immigration System*, 5 J. MIGRATION & HUM. SECURITY 541, 546 (2017).

91. Alejandro Portes, et al., *Segmented Assimilation on the Ground: The New Second Generation in Early Adulthood*, 28 ETHNIC & RACIAL STUD. 1000, 1001 (2007) (noting that immigrant youth are more likely to be successful when they feel anchored in their communities); Waters & Jiménez, *supra* note 85, at 120 (discussing the benefits of “immigrant replenishment”).

92. Rodríguez, *supra* note 75, at 521, 530 (describing local rejection of anti-immigrant enforcement in “immigrant-heavy cities”); Waters & Jiménez, *supra* note 85, at 118 (identifying such services as “including legal-aid bureaus, health clinics, social organizations, and bilingual services”).

93. Xóchitl Bada & Shannon Gleeson, *A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker Abuse and Mexican Consular Advocacy in the United States*, 40 LAB. STUD. J. 32, 38 (2015) (noting that migrant worker rights often depend on civil society resources).

94. Davina Cooper, *Prefiguring the State*, 49 ANTIPODE 335, 340 (2017) (discussing legal pluralism).

and a history of concern for progressive social relations and social welfare, laws and policies often develop designed to advance and protect the rights of immigrants.⁹⁵ Similarly, localities with developed social movements and civil rights organizations may provide better opportunities for immigrants to assert legal claims.⁹⁶

Hostile policies proliferate notwithstanding a line of Supreme Court cases that have found alienage laws suspect when imbued with discriminatory sentiment.⁹⁷ As one scholar reviewing such cases observed:

When an alien lawfully resides in a state, he does so pursuant to a federal policy that permits him to reside there. It is reasonable to presume that, absent an indication by the federal government to the contrary, the federal policy confers on the alien a right to be free from acts by the state that discriminate against him as an alien, thereby making his residence in the state more difficult.⁹⁸

Devolution has allowed localities, once required to treat “immigrants as persons deserving of constitutional protections . . . to treat persons as immigrants who are to some degree outside of the U.S. Constitution.”⁹⁹ The impact of such treatment affects the ability of immigrants to seek the protection of the law and harms their health and well-being.¹⁰⁰ Immigrants may look to sources “closer to home” for protection, for example in the form of the Mexican Consulate.

95. Irene Bloemraad, *Reimagining the Nation in a World of Migration: Legitimacy, Political Claims-Making, and Membership in Comparative Perspective*, in FEAR, ANXIETY, AND NATIONAL IDENTITY IMMIGRATION, *supra* note 26, at 59, 70 (noting the beneficial effect of diversity discourses on immigrants’ ability to assert rights); *cf.* Cooper, *supra* note 94, at 335-37, 345, 347 (2017) (describing the prefigurative politics of British municipal radicalism that transformed localities into progressive spaces to create equality for “recent incomers”).

96. Bada & Gleeson, *supra* note 93, at 38 (noting that migrant worker rights often depend on civil society resources); Venkatesh, *supra* note 17, at 188 (describing the “diffusion of tactics and strategy across social movements”).

97. Michael J. Perry, *Modern Equal Protection: A Conceptualization and Appraisal*, 79 COLUM. L. REV. 1023, 1063-64 (1979) (reviewing decisions treating alien-based discrimination claims).

98. *Id.* at 1063.

99. Coutin, *supra* note 15, at 299 (internal quotation marks omitted).

100. Almeida et al., *supra* note 82, at 902.

II. THE MEXICAN CONSULAR NETWORK AND THE DEPARTMENT OF LEGAL PROTECTION IN THE UNITED STATES

Daunting obstacles often deter immigrants from attempting to claim rights. Despite the barriers, however, immigrants are often sufficiently motivated to seek relief for rights violations. While the obstacles to claiming rights are well-identified, scant scholarly attention has been given to the conditions that contribute to an immigrant's ability to seek legal remedies.¹⁰¹

Judith Resnik has observed that the pursuit of legal claims and rights happens through a variety of state and local institutions and that norms diffusion is not dependent solely on the courts.¹⁰² Resnik's call "to turn attention toward a wider field of play in which legal claims and rights move" provides incentive to examine institutions that serve to counteract the narrative of the immigrant-as-criminal and transform rights-bearing practices locally and nationally.¹⁰³ There has been insufficient inquiry into the ways in which a sending state facilitates claims-making on behalf of its nationals. To that end, this part focuses on the Mexican Consulate and its Directorate-General for Protection and Consular Affairs (*La Dirección General de Protección y Asuntos Consulares*), also known as the Department of Legal Protection (DLP).¹⁰⁴

Mexican immigrants represent the largest immigrant population in the United States and, within that group, the greatest number of unauthorized immigrants.¹⁰⁵ Mexican immigrants are particularly vulnerable and have long been considered the "prototypical illegal alien."¹⁰⁶ Political fear-mongering against Mexicans has a proper history, one that has reached new heights as a result of the political

101. See generally Kanstroom, *supra* note 16.

102. Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1576 (2006).

103. *Id.*

104. The General Directorate of Protection is housed within the Undersecretary for North American Affairs and the Institute for Mexicans Abroad. See Laglagaron, *supra* note 27, at 10.

105. Cristina M. Rodríguez, *Building Capacity for the Transnational Regulation of Migration*, 110 COLUM. L. REV. SIDEBAR 1, 2 (2010).

106. See Mary Fan, *The Case for Crimmigration Reform*, 92 N.C. L. REV. 75, 106-07 (2013); Jorge Durand et al, *Double Disadvantage: Unauthorized Mexicans in the U.S. Labor Market*, 666 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 81, 89 (2016) (showing a disproportionate discriminatory effect on Mexican immigrants with regard to wages).

rhetoric during Donald Trump's presidential campaign.¹⁰⁷ The DLP often serves as the principal institutional mechanism through which to transcend the obstacles Mexicans confront in an effort to claim rights. It functions as a binational institution to assist with problem-solving and through its collaboration with government and community groups contributes to a more salutary environment to pursue the rights of Mexican immigrants.¹⁰⁸ The DLP's very purpose is to provide assistance to Mexican nationals who seek to assert their legal claims.¹⁰⁹ In fact, however, as this Article demonstrates, the DLPs are also subject to the constraints imposed by different socio-legal cultural environments.

A. The Mexican Consular Network and Legal Protections for Mexican Nationals

Embassies and consulates are representative diplomatic institutions of a foreign government located within the jurisdiction of another government.¹¹⁰ Historically, they have functioned to promote trade and commerce between countries and to allow sending nations to maintain political and economic ties to its nationals who reside abroad.¹¹¹ The status of these entities was formally codified through the 1963 Vienna Convention on Consular Relations, which established the rights of embassies and consulates to protect the interests of the sending state and to assist its citizens as authorized by

107. Weissman, *supra* note 12, at 145; Sandra Guy, *Trump in Chicago: Says He's '100 Percent Correct' About Mexicans, Blasts U.S. as 'Laughingstock' — 'We're All a Bunch of Clowns'*, CHI. SUN-TIMES (June 24, 2016, 10:27 AM), <http://chicago.suntimes.com/news/trump-in-chicago-says-hes-100-percent-correct-about-mexicans-blasts-u-s-as-laughingstock-were-all-a-bunch-of-clowns/> [<https://perma.cc/QWG2-DV5G>] (referring to Mexicans as rapists, criminals, and drug-dealers). Trump's Executive Order on border security references the threat of violent criminals crossing the U.S.–Mexico border. See EO Border Security, *supra* note 37, at 8,793.

108. See Karl-Werner Brand & Fritz Ruesswig, *The Social Embeddedness of Global Environmental Governance*, in MULTILEVEL GOVERNANCE OF GLOBAL ENVIRONMENTAL CHANGE 79, 80-82 (Gerd Winter ed., 2006).

109. See *infra* Section II.B.

110. See Amanda Briney, *Embassy & Consulate—An Overview*, THOUGHT CO. (Mar. 17, 2017), <https://www.thoughtco.com/embassy-and-consulate-overview-1435412> [<https://perma.cc/UH88-CQCG>].

111. See *A Brief History of the Consular Service*, ASS'N DIPLOMATIC STUD. & TRAINING, <http://adst.org/a-brief-history-of-the-consular-service/> [<https://perma.cc/AG24-QNFD>] (last visited Mar. 5, 2018).

international law.¹¹² Consular services have expanded in recent decades due to the growth in numbers of migrants living abroad and an increasing global recognition that countries have a responsibility to citizens outside their borders.¹¹³

The Mexican government has an extensive consular network in the United States.¹¹⁴ The expansion of Mexican consulates has corresponded to the growth and dispersion of the resident Mexican population.¹¹⁵ Once confined to diplomatic headquarters in Washington, D.C. and traditional Mexican settlement corridors of the Southwest United States, Mexican consulates have expanded into new immigrant destinations.¹¹⁶ Mobile consulates provide for the needs of Mexican nationals living in rural areas far from the cities where consulates are located.¹¹⁷

Mexico has not always been actively engaged with its diaspora, especially in the area of rights protection. Formally recognized in the United States as early as 1824,¹¹⁸ Mexican consuls were largely limited to administrative functions such as the provision of travel documents.¹¹⁹ In some cases, consuls provided assistance to migrants who were subjected to labor rights violations or other types of

112. See Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.

113. See Kinnari Bhojani et al., *The Human Rights of Mexican Migrants: A Case Study on the United States, Canada & Spain*, UNIV. N.C. L. SCH. HUM. RTS. POL'Y LAB (2016), <http://www.law.unc.edu/documents/academics/humanrights/mexicanmigrants.pdf> [https://perma.cc/ZMD2-FV2M].

114. See Carin Zissis, *LatAm in Focus: The Intertwined Nature of U.S.-Mexico Ties*, AM. SOC'Y-COUNCIL AMS. (July 18, 2016), www.as-coa.org/articles/latam-focus-intertwined-nature-us-mexico-ties [https://perma.cc/8VAC-U9YC].

115. See *id.*

116. See Randal C. Archibold, *Debate Raging, Mexico Adds to Consulates in U.S.*, N.Y. TIMES (May 23, 2007), <http://www.nytimes.com/2007/05/23/us/23consulate.html> [https://perma.cc/QQ28-5S5J]; see also Jorge A. Vargas, *Dual Nationality for Mexicans? A Comparative Legal Analysis of the Dual Nationality Proposal and Its Eventual Political and Socio-Economic Implications*, 18 CHICANO-LATINO L. REV. 1, 8-9 (1996).

117. See Susan Martin & Rola Abimourched, *Migrant Rights: International Law and National Action*, 47 INT'L MIGRATION 115, 127-28 (2009).

118. See *Historical Perspective on the Consulate of Mexico and Culture Promotion*, ROGER THAYER STONE CTR. FOR LATIN AM. STUD. <https://stonecenter.tulane.edu/articles/detail/1731/Historical-Perspective-on-the-Consulate-of-Mexico-and-Culture-Promotion-> [https://perma.cc/AXT9-4KN9].

119. Alexandra Délano, *From Limited to Active Engagement: Mexico's Emigration Policies from a Foreign Policy Perspective (2000-2006)*, 43 INT'L MIGRATION REV. 764, 772 (2009).

discrimination, but the decision to offer services remained at the discretion of the individual consuls.¹²⁰ Moreover, many services provided by consuls were “done silently” to avoid publicity and scrutiny in the area of the protection of rights.¹²¹ Indeed, in a desire to maintain a stable relationship with its more powerful northern neighbor, Mexico pursued a “policy of no policy,” characterized by avoidance of any formal stance on emigration concerns and a non-interventionist position with regard to U.S. immigration policies.¹²²

The transition from limited to active engagement with its citizens abroad began in the late 1970s and accelerated after 2000, responding to political and economic concerns at the domestic, transnational, and international levels.¹²³ Following the enactment of a series of federal statutes that increased immigration enforcement in the 1990s,¹²⁴ and punitive state alienage laws and other legal developments that Mexico characterized as “xenophobic,” the Mexican government expanded consular personnel to protect its nationals.¹²⁵ The passage of exclusionary laws that increasingly rendered Mexican immigrants—especially those without authorization—vulnerable in their day-to-day lives heightened the need to “protect and safeguard the rights and well being of the Mexican nationals abroad” regardless of status.¹²⁶ Since the election

120. *See id.*

121. *See* Carlos Gonzáles Gutiérrez, *The Mexican Diaspora in California: Limits and Possibilities for the Mexican Government*, in THE CALIFORNIA-MEXICO CONNECTION 221, 227 (Abraham F. Lowenthal & Katrina Burgess eds., 1993).

122. Marc R. Rosenblum, *Moving Beyond the Policy of No Policy: Emigration from Mexico and Central America* 17, 20 (Ctr. for Comp. Immigr. Stud., Working Paper No. 54, 2002) (noting that the Mexican government was concerned about immigration flows negatively affecting Mexicans in the United States).

123. *See* Délano, *supra* note 119, at 776.

124. *See, e.g.*, Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a (2012); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1101 (2012); Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

125. Délano, *supra* note 119, at 774, 777, 793.

126. *Department of Protection for Mexican Nationals Mandate*, CONSULADO GEN. DE MEX. EN N.Y. (2017), <http://consulmex2.sre.gob.mx/nuevayork/index.php/en/departments/protection-dept> [<https://perma.cc/UN8T-P94N>]; *see* Peter J. Spiro, *The (Dwindling) Rights and Obligations of Citizenship*, 21 WM. & MARY BILL RTS. J. 899, 910 (2013); Vargas, *supra* note 116, at 8-9. The Consulate provides educational, economic, and administrative services, and identity (*matricula*) cards. *See* Bhojani et al., *supra* note 113, at 12-13; Nathan Cortez, *Embracing the New Geography of Health Care: A Novel Way to Cover Those Left*

of Donald Trump, the Mexican government has increased financial and other resources to assist with the increased requests for legal assistance from Mexican immigrants.¹²⁷

B. The DLP: General Legal Assistance

The DLP engages all levels of government—federal, state, and local—as well as social service agencies, civil society groups, and faith-based entities to discharge legal assistance to Mexican nationals. Mexicans who live abroad, especially returnees and deportees who have unresolved claims pending in the United States, or need assistance locating family members left behind, also avail themselves of the services of the DLP.¹²⁸

DLP staff primarily relies on a number of systems to assist Mexican nationals with legal concerns. In 2010, consular officials developed a unified administrative database maintained by 145 Mexican consulates around the world. Legal problems are categorized into broad subject matters including human rights, criminal proceedings, labor, and civil/family.¹²⁹ Case narratives in the database include information about the claimant and the social contexts and circumstances under which the claims were made.¹³⁰

Out of Health Reform, 84 S. CAL. L. REV. 859, 916-17 (2011); Bibiana Pesant, *Remittance Reforms by the CFPB: Still Missing the Mark for Latin American Immigrants*, 29 GEO. IMMIGR. L.J. 125, 143 (2014).

127. Elisabeth Malkin, *Mexican Deportees, Once Ignored Back Home, Now Find 'Open Arms'*, N.Y. TIMES (Apr. 15, 2017), <http://www.nytimes.com/2017/04/15/world/americas/mexico-deportees-welcome.html> [<https://perma.cc/NWU6-DPE8>]; Jennifer Medina, *Mexican Consulates Flooded with Fearful Immigrants*, N.Y. TIMES (Feb. 17, 2017), <http://www.nytimes.com/2017/02/17/us/mexican-consulates-flooded-with-fearful-immigrants.html> [<https://perma.cc/6K7J-JLBN>].

128. The Authors were given access to the database, which has never before been reviewed or analyzed and includes both quantitative and qualitative information from over 140 Mexican consulates around the world, for approximately 700,000 Mexicans living abroad or who have returned home and who filed claims with Mexican Consulates between 2010 and 2014.

129. A review of the classifications reveals that much of what Mexico designates as “human rights violations” often falls within the category of “civil rights” violations in the United States. For a discussion of the designation of civil rights versus human rights in the United States, see Alan Jenkins & Larry Cox, *Bringing Human Rights Home*, THE NATION (June 9, 2005), <https://www.thenation.com/article/bringing-human-rights-home/> [<https://perma.cc/GZC8-PC23>].

130. Interviews by Deborah M. Weissman, *supra* note 19. The authors were provided an opportunity to review a random sampling of cases in the database

The Consular Protection Procedures Guide (*Guía de Procedimientos de Protección Consular*), published in 2013, provides additional instructions to assist with legal claims and directs officials to provide support and monitor due process to protect Mexican nationals against “injustices or arbitrariness on the part of foreign authorities” or “acts of discrimination.”¹³¹ DLP staff is authorized to advise Mexicans regarding relations with the authorities, explain rights and obligations, and provide information about legal specialists in matters pertaining to their claims.¹³² A review of the database demonstrates the DLP’s broad engagement with a range of entities in Mexico and the United States.¹³³ Each DLP maintains a list of allied organizations to which it turns to obtain support, legal guidance, and social service referrals as appropriate.¹³⁴ Similarly, community advocacy organizations frequently seek the assistance of DLP staff with regard to rights violations affecting immigrants.¹³⁵

In addition, since 2000, DLPs have recruited local attorneys to represent Mexicans with compelling legal needs.¹³⁶ They administer a program known as Legal Assistance Program for Mexicans through External Legal Counseling (*Programa de Asistencia Jurídica a Mexicanos a través de Asesorías Legales Externas* or *PALE*)¹³⁷ in which the Mexican government provides funds to retain U.S. lawyers

purged of personal identifying information. The database tracks cases over the course of the claims process, which can last from one month to three years.

131. *Guía de Procedimientos de Protección Consular*, SECRETARÍA DE RELACIONES EXTERIORES 7 (2013), https://www.gob.mx/cms/uploads/attachment/file/109345/Gu_a_de_Procedimientos_de_Protecci_n_Consular.pdf [<https://perma.cc/9QQX-BNHK>] (which “offer[s] basic first-hand information on the processes and most common services requested in the departments of protection of the consular network”).

132. *Id.* at 85-87. The DLPs maintain lists of organizations that provide support, legal guidance, and referrals (lists on file with authors).

133. Interviews by Deborah M. Weissman, *supra* note 19.

134. A sample list of organizations provided by the consulates and extracted from database review is on file with Authors. *See* sources cited *supra* notes 128-29 and accompanying text.

135. Interviews with Consular Officials and Staff, in N.C. (Feb. 5, 2016), S.F., Cal. (Dec. 11, 2015), and El Paso, Tex. (Apr. 27, 2016); *see also* Interviews by Deborah M. Weissman, *supra* note 19.

136. Interviews by Deborah M. Weissman, *supra* note 19.

137. *See Programa de Asistencia Jurídica a Mexicanos a Través de Asesorías Legales Externas en los Estados Unidos de América (PALE)*, SECRETARÍA DE RELACIONES EXTERIORES, <https://www.gob.mx/sre/acciones-y-programas/programa-de-asistencia-juridica-a-mexicanos-a-traves-de-asesorias-legales-externas-en-los-estados-unidos-de-america-pale> [<https://perma.cc/67WY-4LHM>] (last visited Mar. 5, 2018).

to provide legal counsel and representation to Mexican nationals.¹³⁸ DLPs screen attorneys to assure appropriate expertise and evaluate them throughout the legal process to ensure professionalism and quality of services.¹³⁹

Mexico has also established the Mexican Capital Legal Assistance Program (MCLAP) to improve the quality of representation to its nationals facing the death penalty in the United States.¹⁴⁰ Through MCLAP and with the full financial support of the Mexican government, Mexican attorneys have been trained in U.S. law.¹⁴¹ Consulate officials closely monitor all capital cases and often provide assistance throughout all stages of the matter.¹⁴²

The DLPs have been subject to criticism for their efforts to protect the rights of Mexican nationals, a practice deemed by some as a “departure from traditional diplomatic practice.”¹⁴³ Nonetheless, DLPs have forged cordial relationships with federal, state, and local agencies and have signed memoranda with these entities to facilitate bureaucratic exchanges and delineate obligations on matters bearing on the ability of Mexican nationals to assert their legal claims.¹⁴⁴

138. Alma Arámbula Reyes & Gabriel Mario Santos Villarreal, *Protección Consular a los Mexicanos en el Exterior*, CENTRO DE DOCUMENTACIÓN, INFORMACIÓN Y ANÁLISIS 20-21 (Sept. 2008), <http://www.diputados.gob.mx/sedia/sia/spe/SPE-ISS-15-08.pdf> [<https://perma.cc/XFD8-NDUG>] (last visited Mar. 5, 2018).

139. Interviews with Consular Officials and Staff, in N.C. (Feb. 5, 2016), and S.F., Cal. (Dec. 11, 2015) (also noting that attorneys who fail to act timely and thoroughly are removed from the list); see also Interviews by Deborah M. Weissman, *supra* note 19.

140. See Michael Fleishman, *Reciprocity Unmasked: The Role of the Mexican Government in Defense of Its Foreign Nationals in United States Death Penalty Cases*, 20 ARIZ. J. INT’L & COMP. L. 359, 360 (2003). The authors did not review MCLAP as we focused on immigrants’ affirmative civil claims in contrast with criminal system experiences.

141. See *id.* at 371.

142. See *id.* at 360, 394.

143. See Heather MacDonald, *Mexico’s Undiplomatic Diplomats*, CITY J. (2005), http://www.city-journal.org/html/15_4_mexico.html [<https://perma.cc/HM3K-MAN4>].

144. See, e.g., Memorandum Between the U.S. Dep’t of Justice & the Ministry of Foreign Affairs of the United Mexican States (Sept. 1, 2016), <https://www.justice.gov/opa/file/889381/download> [<https://perma.cc/78Q8-QZG5>]; Memorandum Between the Consulate Gen. of Mex. in San Diego, Cal. & the City of San Diego Health & Human Servs. Agency (2008), http://cimmcw.org/wp-content/uploads/2013/03/San-Diego-Co_-MOU-Mexican-Consulate.pdf [<https://perma.cc/X7K7-FXQW>]; Memorandum Between the Consulate Gen. of Mex. in El Paso, Tex. & the Consulate of Mex. in Albuquerque, N.M. (Mar. 5, 2009), https://cyfd.org/docs/MOU_MexicanConsulate.pdf [<https://perma.cc/VH24->

They function as a form of “transnational management” and have been described as “de facto public agenc[ies]” that serve to promote constitutional protections for immigrants.¹⁴⁵ The relationships that DLPs have cultivated and their ability to call upon binational agencies to assist with remedying rights violations illustrate the role that the Mexican government may play in protecting immigrant rights. As demonstrated in the next Part, the ability of DLPs to fulfill their commitments and obligations, however, is often a function of political geography. Variations in the devolution of immigration enforcement and differences in local attitudes and practices toward newcomers affect the ability of DLPs to facilitate legal claims of immigrants.

III. POLITICAL GEOGRAPHY: MEXICAN GENERAL CONSULATE JURISDICTIONS IN NORTH CAROLINA, EL PASO, TEXAS, AND SAN FRANCISCO, CALIFORNIA

The ability of the DLP to protect Mexico’s immigrant population depends on the political geographical context of each Mexican consulate. To capture contextual variation, this Part focuses on three strategic research sites that correspond to the jurisdictions of three consulates: the Mexican Consulate in North Carolina (representing a new destination area for immigrants with weaker community supports),¹⁴⁶ the Mexican Consulate in El Paso, Texas (representing binational/bilingual residents in a border area with heightened humanitarian concerns and cross-border claims),¹⁴⁷ and

Y6YZ]; Memorandum of Understanding with Mex. (July 10, 2009), http://dhs.iowa.gov/sites/default/files/17-C3_T12.pdf [<https://perma.cc/C2GA-VESW>]; Memorandum Between the Consulate Gen. of Mex. in Raleigh, N.C. & the Gov’t of the State of N.C. (Mar. 25, 2015), <https://www.sog.unc.edu/courses/course-materials/memorandum-agreement-between-consulate-general-mexico-raleigh-north-carolina-and-government-state> [<https://perma.cc/6QFD-R6PT>]; see also Janet Koven Levit, *Does Medellín Matter?*, 77 *FORDHAM L. REV.* 617, 627-28 (2008) (describing MOUs affecting the rights of minors); Press Release, U.S. Equal Emp’t Opportunity Comm’n, EEOC’s San Francisco District Office Signs Agreement With Mexican Consulate in Seattle (Mar. 13, 2014), <http://www.eeoc.gov/eeoc/newsroom/release/3-13-14a.cfm> [<https://perma.cc/TVD4-QW6V>].

145. See Rodriguez, *supra* note 105, at 1; Anna Gorman, *Mexican Consulate in L.A. Takes a Wide-Ranging Role in Guiding Immigrants to Social Services*, L.A. TIMES (July 23, 2009), <http://articles.latimes.com/2009/jul/23/local/mexconsulate23> [<https://perma.cc/E5HT-PZH6>]; see also Medina, *supra* note 127.

146. See *supra* note 30.

147. See *supra* note 31.

the Mexican Consulate in San Francisco, California (representing an established immigrant corridor with strong community support).¹⁴⁸ These three sites are compared with regard to state-federalism immigration enforcement programs, state statutes directing immigration surveillance, and state alienage laws. The comparison demonstrates that contrasting demographic histories, socio-cultural attitudes toward newcomers, border geographies, and the relative strengths and weaknesses of the immigrant communities affect the services provided by the DLP in facilitating three types of claims: labor, family, and human rights.

A. Law, the Local, and Immigration Developments

1. North Carolina

North Carolina, a state with a predominantly white and relatively large black population and little history of immigration, has had one of the fastest growing foreign-born populations in the country.¹⁴⁹ Between 2000 and 2010, the Latin American population nearly doubled as a percentage of the population—from 4.7% to 8.4%.¹⁵⁰ Immigrants from Latin America make up the majority of the foreign-born residents, of which Mexicans comprise approximately 75%, or 5.1% percent of the total population.¹⁵¹

148. See *supra* note 32.

149. See Rob Christensen, *The Dark History of NC's Immigration Politics*, NEWS & OBSERVER (Feb. 4, 2017, 9:15 PM), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/rob-christensen/article130351784.html> [https://perma.cc/SR35-YREP].

150. See *Profile of General Population and Housing Characteristics: 2010*, U.S. CENSUS BUREAU (2010), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> [https://perma.cc/P735-9MVX]. According to the American Community Survey (ACS) table “ACS Demographic and Housing Estimates,” Hispanics/Latinos composed 8.8% of NC’s population in 2015. See *ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU (2015), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_DP05&prodType=table [https://perma.cc/6YQJ-KLLZ]. Mexicans were 5.3% of NC’s total population in 2015. See *id.*

151. See *Immigrants in North Carolina*, AM. IMMIGR. COUNCIL (2017), <https://www.americanimmigrationcouncil.org/research/new-americans-north-carolina> [https://perma.cc/PQG8-TQQ2]. Mexicans are 60% of Latinos in North Carolina. See *Demographic Profile of Hispanics in North Carolina*, PEW RESEARCH CTR. (2014), <http://www.pewhispanic.org/states/state/nc/> [https://perma.cc/PY7D-SCQN]. The Mexican population is estimated at 251,000 out of a total foreign-born population of 758,000. See *U.S. Immigration Population by State and County*, MIGRATION POL’Y INST. (2016),

Immigrants in North Carolina are disadvantaged by the region's tradition of a common culture mediated through long-term personal relationships tied to place.¹⁵² The rapid expansion of the Latino population in a region that has "historically operated as a space of exceptionalism within a national framework" sets in relief the ways that race and racism act to create additional concerns about local authority over immigrant communities.¹⁵³ North Carolina polls confirm distrust and resentment toward Spanish speakers.¹⁵⁴ Of course, there are some North Carolina communities that have welcomed immigrants; several have endeavored to adapt to accommodate the changing population.¹⁵⁵ However, considerable anti-immigrant rhetoric has focused on Mexicans, with hate groups and local politicians alike characterizing them as criminals.¹⁵⁶

Growing hostility towards Mexican newcomers is reflected in the changing relationship between North Carolina and federal-state immigration programs. North Carolina law enforcement agencies voluntarily embarked on immigration enforcement responsibilities through the 287(g) program in 2006 and actively pursued local

hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true [https://perma.cc/2ASY-ZSNV].

152. See Christensen, *supra* note 149 (reviewing North Carolina's historical-cultural attitudes and policies toward immigrants as vehemently anti-immigrant, harsh, and exclusionary); see also David R. Jansson, *The Haunting of the South: American Geopolitical Identity and the Burden of Southern History*, 12 *GEOPOLITICS* 400, 408 (2007) (describing daily life in the South as dominated by personal and local connections); Douglas S. Massey, *Battlefield: El Paso*, 102 *NAT'L INT.* 44, 47 (2009) (characterizing North Carolina's response to its growing Mexican population as an "alien invasion").

153. Winders, *supra* note 88, at 686; see also Pruitt, *supra* note 87, at 166 (noting that Latina/os are targeted along racial lines particularly due to "static populations" the lack of multiethnic communities); Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 *N.C. L. REV.* 1619, 1655 (2008) (observing that immigration has become a volatile political issue in the state).

154. See James H. Johnson, Jr., Karen D. Johnson-Webb & Walter C. Farrell, Jr., *A Profile of Hispanic Newcomers to North Carolina*, *POPULAR GOV'T* 2, 9 (1999).

155. See Ashleigh Davis et al., *Building Integrated Communities Through Language Rights*, *HUM. RTS. POL'Y LAB UNIV. N.C. SCH. LAW* 81 (2015), <http://www.law.unc.edu/documents/academics/humanrights/buildingcommunities.pdf> [https://perma.cc/PT8Z-SZ96].

156. See Weissman, *supra* note 12, 178-83; see also Charles Duncan, *Elon Professor Says Racism Prompts Her Return to Canada*, *NEWS & OBSERVER* (May 3, 2017, 12:53 PM), <http://www.newsobserver.com/news/local/article148338484.html> [https://perma.cc/5E3A-HYNU] (describing the screaming of racist diatribes, such as, "f***ing Mexicans go home").

immigration enforcement powers through agreements with the federal government.¹⁵⁷ For many years, North Carolina has had the highest number of 287(g) programs in the United States, notwithstanding criticism of the program as practicing discriminatory racial profiling.¹⁵⁸ The Department of Justice sued one of the first North Carolina 287(g) counties for violation of the civil rights of Latinos.¹⁵⁹

North Carolina was also among the first states to volunteer to pilot Secure Communities before DHS mandated the implementation of the program nationally.¹⁶⁰ In addition, North Carolina sought to intervene in a federal law suit with twenty-five other states to challenge President Obama's executive actions to extend lawful presence and work authorization to parents of U.S. citizens or lawful permanent residents (DAPA) and to expand the Deferred Action for Childhood Arrivals (DACA) program.¹⁶¹

North Carolina has further expanded the state's reach into matters of admission and exclusion of immigrants through the enactment of a law requiring county and local jail officials to verify

157. See Weissman, *supra* note 81, at 108.

158. See generally MAI THI NGUYEN & HANNAH GILL, THE LATINO MIGRATION PROJECT, THE 287(G) PROGRAM: THE COSTS AND CONSEQUENCES OF LOCAL IMMIGRATION ENFORCEMENT IN NORTH CAROLINA COMMUNITIES (2010), http://isa.unc.edu/files/2012/06/287g_report_final.pdf [<https://perma.cc/GC8S-PVWB>]; see also Deborah M. Weissman et al., *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*, HUM. RTS. POL'Y CLINIC U.N.C. CHAPEL HILL 10 (2009), <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf> [<https://perma.cc/VG6F-GCZ2>]. As of August 1, 2017, North Carolina had the second most number of 287(g) agreements, and southern states accounted for forty-three out of sixty signed agreements. See *Delegation of Immigration Authority Section 287(g)*, *supra* note 50.

159. See *Justice Department Files Civil Rights Lawsuit Against the Alamance County, N.C., Sheriff's Office*, DEP'T OF JUST. OFF. PUB. AFF. (Dec. 20, 2012), <http://www.justice.gov/opa/pr/2012/December/12-crt-1534.html> [<https://perma.cc/M4QH-GHPG>]. The 287(g) program with Alamance County was terminated in the fall of 2012. See Billy Ball, *DOJ Ends Federal Immigration Program in Alamance County*, INDY WK. (Sept. 26, 2012), <http://www.indyweek.com/indyweek/doj-ends-federal-immigration-program-in-alamancecounty/Content?oid=3157331> [<https://perma.cc/GS24-4C3X>].

160. See Weissman, *supra* note 81, at 108.

161. See Mark Hugo Lopez & Jens Manuel Krogstad, *States Suing Obama Over Immigration Programs Are Home To 46% of Those Who May Qualify*, PEW RES. CTR. (Feb. 11, 2015), <http://www.pewresearch.org/fact-tank/2015/02/11/states-suing-obama-over-immigration-programs-are-home-to-46-of-those-who-may-qualify/> [<https://perma.cc/QQ9T-SU5M>].

the immigration status of persons who are detained on felony or impaired driving charges.¹⁶² The North Carolina legislature appropriated state funds to the North Carolina Sheriffs' Association (NCSA) Illegal Immigration Project for technical assistance and training associated with local immigration enforcement.¹⁶³

North Carolina's alienage laws generally reflect nativist tendencies associated with the historic culture of the region.¹⁶⁴ While some municipalities have upheld civil rights obligations to protect immigrant rights,¹⁶⁵ other local governments have passed resolutions and enacted ordinances to limit city services to those without documentation and direct law enforcement to "consistently check" for lawful immigration status—all legal initiatives designed to expel Mexican immigrants.¹⁶⁶ Since 2006, the state has refused to issue driver's licenses to unauthorized immigrants.¹⁶⁷ While North Carolina was among the last of the states to issue licenses to those who have DACA status, it required that licenses be clearly marked with a "No Lawful Status" designation, interpreted as a punitive means to stigmatize immigrants.¹⁶⁸ Moreover, in 2015, North

162. N.C. GEN. STAT. § 162-62 (2010).

163. See Edmond W. Caldwell, Jr., *The North Carolina Sheriffs' Association's Perspective on the 287(g) Jail Enforcement Model*, POPULAR GOV'T 2, 11 (2009), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/articles/article1_1.pdf [<https://perma.cc/7YYPB-PM6W>].

164. See Christensen, *supra* note 149.

165. See Davis et al., *supra* note 155.

166. NGUYEN & GILL, *supra* note 158, at 7; Lincoln County, N.C., Resolution to Adopt Policies and Provide Staff Direction Relating to Illegal Residents in Lincoln County (June 18, 2007); Gaston County, N.C., Resolution to Adopt Policies and Apply Staff Direction Relating to Illegal Residents in Gaston County, 2006-414 (Nov. 9, 2006); Mai Thi Nguyen, *Anti-Immigration Ordinances in NC: Ramifications for Local Governance and Planning*, 32 CAROLINA PLAN. J. 36, 36 (2007).

167. See Mark Price, *Immigrants Fear NC Proposal to Confiscate Cars of Unlicensed Drivers*, CHARLOTTE OBSERVER (Mar. 16, 2017, 6:59 PM), <http://www.charlotteobserver.com/news/local/article138829958.html> [<https://perma.cc/M5F7-D7AC>] (noting current proposal to impound vehicles driven by undocumented immigrants).

168. Press Release, N.C. Dep't of Transp., NCDMV to Begin Issuing Driver Licenses for Those Qualified Under Deferred Action Program Next Week (Mar. 21, 2013), <https://apps.ncdot.gov/newsreleases/details.aspx?r=7952> [<https://perma.cc/83YF-H9C3>]; Jeff Shaw, *Scarlet Letter Licenses? Give Me One, Too*, N.C. POL'Y WATCH (Mar. 7, 2013), <http://www.ncpolicywatch.com/2013/03/07/scarlet-letter-licenses-give-me-one-too/> [<https://perma.cc/FJB3-SQ2N>]; see also Jess George, *Not Pretty in Pink*, LATIN AM. COAL. (Mar. 1, 2013), <http://www.latinamericancoalition.org/blog/155/not-pretty-in-pink> [<https://perma.cc/7U4N-UMVB>].

Carolina enacted a statute to prevent all levels of government officials from accepting consular *matricula* cards or any type of local or community-issued identifications.¹⁶⁹ The state denies in-state tuition to unauthorized and DACA students.¹⁷⁰ All state employees and private employers with more than twenty-five employees must use the federal “E-verify” system to determine work authorization of immigrant employees.¹⁷¹ In 2017, the state enacted a law to weaken the rights of farmworkers to organize and diminish their protections for fair wages and decent working conditions.¹⁷² The state failed to comply with civil rights obligations requiring the provision of foreign language interpreters in the courts, prompting the U.S. Department of Justice to threaten suit.¹⁷³ In 2015, the legislature enacted a statute preempting localities from adopting “sanctuary ordinances” and invalidating those that existed.¹⁷⁴

2. Texas: *El Paso*

Texas, a state with historic ties with Mexico, has long served as a traditional immigrant gateway.¹⁷⁵ It has the second largest percentage of Mexicans living in the United States.¹⁷⁶ As a historical condition, many of its residents are binational and bilingual or

169. See Weissman, *supra* note 81.

170. N.C. GEN. STAT. § 116-143.1 (2011).

171. N.C. GEN. STAT. § 64-25 (2013).

172. North Carolina Farm Act of 2017, 2017 N.C. Sess. Laws 108; see *Farmers Elected to State Legislature Seek to Stop Farmworker Union’s Progress*, N.Y. MAY 1 COALITION (June 28, 2017), <http://www.may1.info/2017/07/farmers-elected-to-state-legislature-seek-to-stop-farmworker-unions-progress/> [<https://perma.cc/X27X-JXZM>].

173. Frank Ordoñez, *Justice Department Faults North Carolina Courts Over Interpreters*, MCCLATCHY (Mar. 9, 2012, 10:28 AM), <http://www.mcclatchydc.com/news/politics-government/article24725701.html> [<https://perma.cc/RBA7-A4RG>].

174. Protect North Carolina Workers Act, 2015 N.C. Sess. Laws 294 (codified as amended at N.C. GEN. STAT. § 153A-145.5 (2015)). North Carolina anti-sanctuary law is considered one of the harshest in the country. See Amber Tong, *What Exactly Is a Sanctuary City?*, GOVERNING (July 29, 2016), <http://www.governing.com/topics/public-justice-safety/gov-sanctuary-city-congress-georgia-north-carolina.html> [<https://perma.cc/L9UW-GDUW>].

175. NAT’L ACADS. OF SCIS., ENG’G, & MED., *THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY* 209 (Mary C. Waters & Marisa Gerstin-Pineau eds., 2015) (explaining Texas was annexed from Mexico in 1845).

176. *Id.* at 213 (noting that California has the highest percentage of Mexicans living in the United States).

monolingual Spanish speakers.¹⁷⁷ After California, it has the second highest percentage of unauthorized immigrants in the country.¹⁷⁸ The percentage of Mexicans continues to expand; Texas is considered “majority-minority” with more ethno-racial minorities than non-white Hispanics.¹⁷⁹

Much of the early history of Texas with regard to Mexican immigrants has been characterized as a series of boundary disputes corresponding to the unrestricted flow of people across the border and mechanisms of cooperation between Texas and Mexico to assist individuals with binational claims and concerns.¹⁸⁰ But Mexicans in Texas have also suffered Jim Crow-type segregationist laws, exploitation in all forms of labor, and political disenfranchisement.¹⁸¹ Perhaps as a result of pervasive human rights violations, Mexicans in Texas are credited with the rise of the Mexican–American civil rights movement and a persistent history of defending the rights of persons of Mexican descent.¹⁸²

Until recently, the Texas record on immigration was mixed. Its response to undocumented immigration had been measured as “moderate when compared to other states.”¹⁸³ Of late, however, politicians have used recent demographic shifts to argue that immigrants are burdening the state with rising costs of education and

177. M. Ray Perryman, *Bilingualism in Texas*, PERRYMAN GROUP (Oct. 24, 2016), <https://www.perrymangroup.com/2016/10/24/bilingualism-in-texas/> [<https://perma.cc/2CBG-Q2ZF>].

178. Jie Zong & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL’Y INSTIT. (Mar. 8, 2017), www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states [<https://perma.cc/N7HZ-YN8P>] (reporting that Texas was behind California with 13% of the unauthorized population residing there). It is among four other states with the highest number of newly naturalized citizens. *Id.*

179. NAT’L ACADS. OF SCIS., ENG’G, & MED., *supra* note 175, at 213.

180. Alice L. Baumgartner, *The Line of Positive Safety: Borders and Boundaries in the Rio Grande Valley, 1848–1880*, 101 J. AM. HIST. 1106, 1107, 1109 (2015) (describing the border as a “mark . . . without meaning”).

181. Benjamin H. Johnson, *The Cosmic Race in Texas: Racial Fusion, White Supremacy, and Civil Rights Politics*, 98 J. AM. HIST. 404, 406-07 (2011) (noting that Mexicans suffered racial and class oppression in the United States).

182. *Id.* (describing the antecedents of the Mexican–American civil rights movement).

183. Tony Payan, *The Immigration Debate in Texas*, in UNDECIDED NATION: POLITICAL GRIDLOCK AND THE IMMIGRATION CRISIS 15, 121 (Tony Payan & Erika de la Garza eds., 2014).

services.¹⁸⁴ Anti-immigrant sentiments now find expression in political rhetoric and policy. Texas recently elected what has been described as “its most conservative Legislature ever.”¹⁸⁵ In 2014, the Governor of Texas ordered the National Guard to the border at a cost of \$12 million a day on the basis of inaccurate statements about Mexicans and rising crime rates and is recently one of the few states promoting President Trump’s call for more National Guard troops to be stationed at the border.¹⁸⁶

The traditional gateway and border community of El Paso is approximately 82% Latino and has the seventh largest proportion of the city’s foreign-born population.¹⁸⁷ As a border city, it has been transformed by the geopolitics of security and the narrative of the Mexican-as-criminal seeking to infiltrate the United States.¹⁸⁸ Notwithstanding the priority given to border security and the apparatuses of militarization that characterize the urban landscape, community leaders, including politicians and law enforcement, seek to dispel the notion of El Paso as a dangerous place.¹⁸⁹ In 2008, the

184. See generally Matt O’Brien & Spencer Raley, *The Fiscal Burden of Illegal Immigration on United States Taxpayers*, FAIR (Sept. 27, 2017), <http://www.fairus.org/publications/the-fiscal-burden-of-illegal-immigration-on-united-states-taxpayers> [https://perma.cc/8QTD-YK2K].

185. Julia Preston, *States Are Divided by the Lines They Draw on Immigration*, N.Y. TIMES (Mar. 29, 2015), <https://www.nytimes.com/2015/03/30/us/politics/states-are-divided-by-the-lines-they-draw-on-immigration.html> [https://perma.cc/2SR3-DH3A].

186. Walter Ewing, *Texas Governor Invokes Nonsensical Statistics on Immigrant Crime in His State*, IMMIGR. IMPACT (Aug. 5, 2014), <http://immigrationimpact.com/2014/08/05/texas-governor-invokes-nonsensical-statistics-on-immigrant-crime-in-his-state/> [https://perma.cc/5Z6Q-FLNJ]. See Molly Hennessey-Fiske, *Texas Governor Promotes Trump National Guard Plan, but What Can Troops Do?* L.A. TIMES (Apr. 12, 2018), <http://www.latimes.com/nation/la-na-border-national-guard-2018-story.html> [https://perma.cc/TWS9-2CFL].

187. *QuickFacts, El Paso County, Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/elpasocountytexas/RHI605210> [https://perma.cc/C9JF-E5JZ] (last visited Mar. 5, 2018); Diana Washington Valdez, *El Paso Has 7th Largest Immigrant Percentage*, EL PASO TIMES (Dec. 2, 2015, 3:54 PM), <http://www.elpasotimes.com/story/news/local/el-paso/2015/12/02/el-paso-has-7th-largest-immigrant-percentage/76624148/> [https://perma.cc/SAW4-WSBP].

188. Weissman, *supra* note 12, at 149-52.

189. Josiah McC. Heyman, *A Voice of the US Southwestern Border: The 2012 “We the Border: Envisioning a Narrative for Our Future” Conference*, 1 J. MIGRATION & HUM. SECURITY 60, 67 (2013) (declaring El Paso safe); see Aileen B. Flores, *Community Leaders Condemn Sessions’ Border Remarks*, EL PASO TIMES (Apr. 20, 2017, 9:42 PM), <http://www.elpasotimes.com/story/news/immigration/>

El Paso County Attorney testified before Congress about the disastrous effects that devolution of immigration enforcement would have upon El Paso.¹⁹⁰ Civic leaders have denounced plans to “build a wall” and have articulated concerns that such anti-immigrant initiatives are likely to harm immigrants and the city’s economic infrastructure.¹⁹¹

Texas also has embraced federal-state immigration programs. Texas currently has signed more 287(g) agreements than any other state.¹⁹² Texas was one of two states to voluntarily implement Secure Communities before the program was mandated nationally.¹⁹³ It was also the lead state in the federal suit against the Obama administration’s efforts to establish DAPA and expand DACA.¹⁹⁴ State politicians have threatened to bring suit to terminate DACA.¹⁹⁵

In 2017, Texas enacted a state “Papers, Please” statute (SB4) related to admission and exclusion as part of a sweeping anti-immigrant legislation that authorizes local police to question individuals about immigration status if they are stopped.¹⁹⁶ Prior to this law, a number of local governments had enacted sanctuary city

2017/04/20/community-leaders-condemn-sessions-border-remarks/100723374/
[<https://perma.cc/LBB2-ARJ6>] (objecting to remarks by Attorney General Jeff Sessions depicting El Paso as a war zone).

190. *Testimony Before Joint Hearing of the S. Comm. on Trans. and Homeland Sec. and S. Comm. on Int’l Relations and Trade*, 81st Leg., Reg. Sess. 2 (Tex. 2008) (statement of José R. Rodríguez, El Paso Cty. Attorney), <http://www.epcounty.com/ca/documents/TxSenateImmigrationEnforcementbylocalpoliceofficers7-9-2008.pdf> [<https://perma.cc/USV7-VGEX>].

191. Kevin Diaz, *Trump Immigration Plan Riles the Border*, HOUS. CHRON. (Aug. 18, 2015, 8:22 PM), <http://www.houstonchronicle.com/politics/election/national/article/Trump-immigration-plan-riles-on-the-border-6451792.php> [<https://perma.cc/M3NR-UFEM>].

192. Stella Chavez, *Police Agreements to Work with Federal Agents Highlight Immigration Debate*, NPR (Aug. 1, 2017, 5:16 AM), <http://www.npr.org/2017/08/01/540755116/police-agreements-to-work-with-federal-agents-highlight-immigration-debate> [<https://perma.cc/QAS8-R9DP>]; *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 50.

193. Susan Carroll, *Harris County Testing Immigrant ID Program; Sheriff’s Office the First Local Law Enforcement Group to Try Automated Fingerprint System*, HOUS. CHRON., October 28, 2008, at B3.

194. *Texas v. United States*, 86 F. Supp. 3d 591, 604 (S.D. Tex. 2015).

195. Ted Hesson, *Texas AG Leads Push to End DACA*, POLITICO (June 29, 2017, 7:27 PM), <http://www.politico.com/story/2017/06/29/texas-attorney-general-end-daca-dreamers-240121> [<https://perma.cc/TPY4-YUUS>].

196. Patrick Svitek, *Texas Gov. Greg Abbott Signs “Sanctuary Cities” Bill into Law*, TEX. TRIB. (May 7, 2017), <https://www.texastribune.org/2017/05/07/abbott-signs-sanctuary-cities-bill/> [<https://perma.cc/5YBV-FB9V>].

resolutions to prevent local law enforcement from assisting with immigration enforcement activities.¹⁹⁷ SB4, however, requires all localities to cooperate with federal immigration enforcement under threat of sanctions.¹⁹⁸ The statute has been described as “the most anti-immigrant bill in the country.”¹⁹⁹

Texas alienage laws reflect shifting political realities. The National Center on State Legislation reported that Texas was the most active state in 2015 in efforts to enact state alienage laws.²⁰⁰ Texas requires all state agencies to use the federal E-verify system.²⁰¹ The state has refused to expand access to public benefits or social services for unauthorized immigrants. As a reflection of rising anti-immigrant sentiment among politicians, legislators have for the past two years sought to repeal in-state tuition for undocumented students.²⁰² Texas does not grant driver’s licenses to unauthorized immigrants.²⁰³

197. *Id.*

198. *Id.*

199. *Texas Advocates, Elected Officials Host Emergency Media Call in Response To Signing of Texas Anti-Immigrant Bill*, AM.’S VOICE (May 8, 2017), <http://americasvoice.org/blog/advisory-texas-advocates-elected-officials-host-emergency-media-call-response-signing-texas-anti-immigrant-bill/> [<https://perma.cc/UB9S-VJJN>]. Several municipalities and a civil rights organization challenged SB4, which was largely enjoined by a federal district court on August 30, 2017. However, on September 25, 2017, the Fifth Circuit stayed that part of the injunction related to the authority of law enforcement, including campus police, to prohibit or materially limit such agencies from assisting federal authorities with immigration enforcement, concluding that the Defendants were likely to prevail with regard to such provisions. *See City of El Cenizo et al. v. Texas*, No. 17-50762, 2017 WL 4250186, at *1 (5th Cir. Sept. 25, 2017). However, on March 13, 2018, a three-judge panel reversed almost all of the August ruling, allowing all but one provision of the act to go forward. *See City of El Cenizo et al. v. Texas*, No. 17-50762, 2018 WL 1282035 (5th Cir. Mar. 13, 2018).

200. NAT’L CONF. OF STATE LEGISLATURES, 2016 REPORT ON STATE IMMIGRATION LAWS (JANUARY-JUNE) 1 (Sept. 1, 2016), <http://www.ncsl.org/research/immigration/report-on-2016-state-immigration-laws-january-june.aspx> [<https://perma.cc/U3YT-DFR9>].

201. TEX. GOV’T CODE § 673.002 (2015); *see also* Julián Aguilar, *While Legislature Passed “Sanctuary” Bill, E-Verify Enforcement Fell Short*, TEX. TRIB. (June 15, 2017, 12:00 AM), <https://www.texastribune.org/2017/06/15/e-verify-enforcement-and-expansion-comes-short/> [<https://perma.cc/U3YT-DFR9>].

202. Texas was one of the first states to establish in-state tuition programs for undocumented students. *See* Preston, *supra* note 185; *see also* Julián Aguilar, *Lawmakers Likely to Wage In-State Tuition Fight Again This Year*, TEX. TRIB. (Jan. 17, 2017, 12:00 AM), <https://www.texastribune.org/2017/01/19/lawmakers-likely-see-state-tuition-policy-fight-ag/> [<https://perma.cc/B3NU-SJ9N>]; Reid Wilson, *Texas to Debate Ending In-State Tuition for Undocumented Immigrants* (Nov. 18,

Neither the county nor the city of El Paso has formally enacted a sanctuary ordinance, but both are bound by a 2006 court settlement to refrain from enforcing civil immigration laws.²⁰⁴ El Paso County filed suit to enjoin SB4 citing concerns about the unconstitutional and discriminatory provisions and objecting to the requirement that local police participate in immigration enforcement matters.²⁰⁵ City leaders have expressed support for a wage theft ordinance to protect workers and other low-wage workers.²⁰⁶ Immigrant advocates, however, failed to convince the city to issue municipal IDs as a means to remove the stigma associated with undocumented persons and to facilitate their day-to-day lives.²⁰⁷

3. California: San Francisco

California, a gateway state like Texas, has historic ties to the place and its people. Mexicans comprise the largest population of immigrants in the state, and California is one of the two states with

2016, 10:33 AM), <http://thehill.com/blogs/blog-briefing-room/news/306726-texas-to-debate-ending-in-state-tuition-for-undocumented> [https://perma.cc/Y9BD-FPVM].

203. Park, *supra* note 67.

204. See Julián Aguilar, *El Paso County Files Lawsuit to Halt Texas “Sanctuary” Law*, TEX. TRIB. (May 22, 2017, 6:00 PM), <https://www.texastribune.org/2017/05/22/el-paso-county-files-lawsuit-seeking-halt-states-immigration-law> [https://perma.cc/5D6Y-EX6J].

205. See generally Complaint, El Paso, et al. v. Texas, et al., 5:17-cv-00459 (W.D. Tex. May 22, 2017). *But see* City of El Cenizo et al. v. Texas, No. 17-50762, 2017 WL 4250186, at *1 (5th Cir. Sept. 25, 2017) (staying the injunction issued by the District Court with regard to law enforcement authority and assisting federal immigration enforcement).

206. Daniel Marin, *Group Asks for Crackdown on El Paso Wage Theft*, LAB. JUST. COMMITTEE (Nov. 30, 2011, 10:41 AM), <https://laborjusticecommittee.wordpress.com/2011/12/02/el-paso-city-council-supports-a-resolution-against-wage-theft/> [https://perma.cc/ZWT6-2GPV].

207. Julian Aguilar, *El Paso Doesn’t Want ID as “Sanctuary City”*, TEXAS TRIB. (Apr. 7, 2016, 6:00 AM), <https://www.texastribune.org/2016/04/07/sanctuary-city-fears-could-thwart-municipal-id-pro/> [https://perma.cc/2TBM-NQEA].

the largest Mexican populations.²⁰⁸ Mexicans make up more than two-thirds of the state's unauthorized immigrant population.²⁰⁹

A substantial body of scholarship has chronicled the lengthy history of the state's racialized immigration politics with regard to Mexicans and Chinese laborers.²¹⁰ In 1994, California voters passed Proposition 187 to prohibit undocumented children from attending public schools, deny non-emergency health care to all undocumented persons, and require local law enforcement to surveil and enforce immigration laws. The law, however, failed to stand up to legal challenges.²¹¹ Since that time, California has developed into one of the most accommodating and immigrant-friendly states and through a variety of means has sought to achieve immigrant integration.²¹² Politicians reject the narratives that depict Mexicans as criminals and repudiate such rhetoric as "irresponsible" and "leading to bad public policy."²¹³ California joined the states of Washington and several other states seeking to enjoin the Trump administration's "Travel Ban."²¹⁴

208. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 175, at 35-36; *see also* Gustavo Lopez & Jynnah Radford, *Statistical Portrait of the Foreign Born Population in the United States*, PEW RES. CTR. (2015), <http://www.pewhispanic.org/2014/04/29/statistical-portrait-of-the-foreign-born-population-in-the-united-states-2012/#foreign-born-by-state-and-region-of-birth-2012-a> [<https://perma.cc/5KLC-96PG>].

209. *Deciding Who Drives*, PEW CHARITABLE TRS. RES. & ANALYSIS (Aug. 18, 2015), <http://www.pewtrusts.org/en/research-and-analysis/reports/2015/08/deciding-who-drives> [<https://perma.cc/K9TH-J6WG>].

210. Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629, 635 (1995) (noting "nativist outcries" as part of California's early history directed at the Chinese and Mexicans); Rachel F. Moran, *Bilingual Education, Immigration, and the Culture of Disinvestment*, 2 J. GENDER, RACE & JUST. 163, 186 (1999) (describing efforts since the state's first constitutional convention in 1849 to "control non-White and foreign populations").

211. *See, e.g.*, League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755, 764 (C.D. Cal. 1995); League of United Latin Am. Citizens v. Wilson, 997 F. Supp. 1244, 1261 (C.D. Cal. 1997).

212. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 175, at 85 (noting that California has done the most of any state to assist with immigrant integration); Preston, *supra* note 185; Park, *supra* note 67; Suro, *supra* note 74, at 3, 18.

213. Preston, *supra* note 185.

214. Patrick McGreevy, *California Joins Lawsuit Challenging Trump's Latest Travel Ban*, L.A. TIMES (Mar. 13, 2017, 5:00 AM), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-will-join-lawsuit-1489378505-htmstory.html> [<https://perma.cc/5RH7-D4FX>]; Washington v. Trump, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017).

Often described as the most “liberal” city in the United States and a vanguard of social and political change, San Francisco has a well-established record for tolerance and innovation.²¹⁵ Like the rest of the state, San Francisco has undergone significant transformation in attitudes and policies toward immigrants. Approximately 35% of its population is foreign born; 43% speak a language other than English at home.²¹⁶

California has kept federal-state immigration programs at bay. There are no California counties that participate in 287(g).²¹⁷ State legislators have sought to divest from the program through the enactment of the TRUST Act, which limits local law enforcement from detaining deportable individuals on behalf of immigration authorities.²¹⁸ California has declined to join the federal suit in opposition to DAPA and expanded DACA.²¹⁹

California has not enacted any “Papers, Please” statutes.²²⁰ On the contrary, it has passed numerous state statutes to protect the rights of immigrants regardless of status and is considered a “sanctuary state.”²²¹ According to the National Immigration Law Center, every county in the state adopted a policy limiting compliance with ICE requests to hold an immigrant in detention on the basis of an ICE “hold.”²²²

215. ELS DE GRAAUW, MAKING IMMIGRANT RIGHTS REAL 57 (2016) (noting that San Francisco is one of the nation’s most liberal cities with regard to a range of issues); Richard E. DeLeon, *The Urban Antiregime: Progressive Politics in San Francisco*, 27 URB. AFF. Q. 555, 556 (1992) (explaining the “capital of the progressive movement”).

216. *San Francisco, CA – Profile Data*, CENSUS REP., <https://censusreporter.org/profiles/16000US0667000-san-francisco-ca/> [<https://perma.cc/5UL3-H5K5>] (last visited Mar. 5, 2018).

217. See *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 50.

218. CAL. GOV’T CODE § 7282.5 (West 2015) (excepting individuals charged or convicted for a serious crime).

219. Lopez & Krogstad, *supra* note 161.

220. *Immigrant-Inclusive State and Local Policies Move Ahead in 2014-15*, NAT’L IMMIGR. L. CTR., <https://www.nilc.org/wp-content/uploads/2016/02/pro-immigrant-policies-move-ahead-2015-12.pdf> [<https://perma.cc/5UL3-H5K5>] (noting California’s decision to disentangle local law enforcement from federal immigration enforcement efforts).

221. Gabriela Villarreal, *The California Blueprint: Two Decades of Pro-Immigrant Transformation*, CAL. IMMIGR. POL’Y CTR. (“[W]e’ve watched the signatures roll in on pro-immigrant bill after bill.”); Lee, *supra* note 53.

222. See *infra* note 225.

A number of important legislative initiatives in the realm of alienage laws set California apart from the rest of the country.²²³ Notwithstanding federal statutes requiring employer verification for employee work authorization, California restricts the use of “E-verify” by prohibiting localities from passing local laws mandating private employers to use the system.²²⁴ California authorized farm workers, including immigrants without work authorization, to receive overtime pay and join labor unions.²²⁵ It has enacted statutes that sanction employers who engage in unfair immigration-related practices, encourage immigrants to exercise their rights, and penalize those who would use threats to expose an individual’s perceived immigration status to gain something of value.²²⁶ State social services programs and public benefits are made accessible to undocumented immigrants.²²⁷ California has also enacted a law designed to eliminate family reunification barriers for immigrant families involved in the child protection system.²²⁸ It enacted its own DREAM Act allowing undocumented students to pay in-state tuition and allows unauthorized immigrants to practice law if professionally qualified. Immigrants are eligible for driver’s licenses irrespective of status.²²⁹ Moreover, the issuing agency is prohibited from disclosing information concerning citizenship or immigrant status except in limited circumstances.²³⁰ State law requires district attorneys to consider mitigating immigration consequences and allows

223. See Villarreal, *supra* note 221 (listing laws such as access to health and social services, funds for attorneys for immigrant children, worker protections, educational benefits, civil rights protections, and protective family laws).

224. NAT’L ACADS. OF SCIS., ENG’G, & MED., *supra* note 175, at 85.

225. See Sarah Rathod, *California Lawmakers Vote to Expand Overtime Pay for Farmworkers*, MOTHER JONES (Aug. 30, 2016, 10:49 PM), <http://www.motherjones.com/politics/2016/08/california-farmworkers-overtime-agriculture/> [<https://perma.cc/8FU6-3W4N>]; *California State Immigration Laws*, FINDLAW, http://files.findlaw.com/pdf/immigration/immigration.findlaw.com_immigration-laws-and-resources_california-state-immigration-laws.pdf [<https://perma.cc/8FU6-3W4N>] (last visited Mar. 5, 2018).

226. CAL. LAB. CODE §§ 98.6, 98.7 (West 2016).

227. See Villarreal, *supra* note 221.

228. Yali Lincroft, *‘The Reuniting Immigrant Families Act’: A Case Study on California’s Senate Bill 1064* (May 2013), <http://childwelfareparc.org/wp-content/uploads/2014/07/12-reuniting-immigrant-families-act-brief-final-updated.pdf> [<https://perma.cc/88J3-HDLT>].

229. CAL. VEH. CODE § 12801 (West 2016).

230. See *id.*

immigrants legally to expunge certain drug convictions for federal purposes, including immigration.²³¹

In addition to the pro-immigrant laws at the state level, in recent years, the city and county have enacted their own wide arrays of protectionist laws and ordinances on behalf of immigrants.²³² Both city and county have enacted “sanctuary” ordinances to limit the authority of employees to assist with immigration enforcement activity.²³³ San Francisco has established a commission on immigrant rights to consider laws and policies to protect the human rights and well-being of immigrants who work or live in the city and issues resolutions in support of federal and state laws and policies that are pro-immigrant.²³⁴ San Francisco also issues identification cards for any individual who can demonstrate his or her identity and residence in the city.²³⁵ The city sued the Trump administration to prevent the threatened loss of funds due to its decision to limit immigration enforcement activity.²³⁶

231. See Kathy Brady & Michael K. Mehr, *New California Drug Provision Helps Immigrants: Plea Withdrawal After Deferred Entry of Judgment (DEJ)*, IMMIGR. LEGAL RES. CTR. 3 (2015), <https://www.ilrc.org/new-california-drug-provision-helps-immigrants-plea-withdrawal-after-deferred-entry-judgment-dej> [<https://perma.cc/37J7-HTP9>]; *The Promise of Sanctuary Cities and the Need for Criminal Justice Reforms in an Era of Mass Deportation*, FAIR PUNISHMENT PROJECT 26 (2017), <http://fairpunishment.org/wp-content/uploads/2017/04/FPP-Sanctuary-Cities-Report-Final.pdf> [<https://perma.cc/37J7-HTP9>].

232. See NAT’L ACADS. OF SCIS., ENG’G, & MED., *supra* note 175, at 236.

233. See Michael German & Emily Hockett, *San Francisco Sets an Example of How to Resist Surveillance in Trump Era*, JUST SECURITY (Mar. 27, 2017), <https://www.justsecurity.org/39270/san-francisco-sets-resist-surveillance-trump-era/> [<https://perma.cc/K3CY-2QAV>]; Lena Graber & Nikki Marquez, *Searching for Sanctuary: An Analysis of America’s Counties & Their Voluntary Assistance with Deportations*, IMMIGRANT LEGAL RES. CTR. 12 (2016), https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf [<https://perma.cc/EU9E-63DQ>] (describing San Francisco laws as successfully disconnecting from engagement with ICE); Lee, *supra* note 53.

234. See *Immigrant Rights Commission*, OFF. CIVIC ENGAGEMENT & IMMIGRANT AFF. (DEC. 12, 2017), <http://sfgov.org/oceia/immigrant-rights-commission> [<https://perma.cc/QV79-E7K3>].

235. See *SF City ID Card – How to Get a Card*, OFF. COUNTY CLERK, <http://sfgov.org/countyclerk/sf-city-id-card-how-get-card> [<https://perma.cc/WV6C-LVL5>] (last visited Mar. 5, 2018).

236. See Richard Gonzales, *Federal Court in San Francisco Blocks Trump’s Threat Against Sanctuary Cities*, NPR (Apr. 25, 2017, 5:55 PM), <http://www.npr.org/sections/thetwo-way/2017/04/25/525619605/federal-court-in-san-francisco-blocks-trump-s-threat-against-sanctuary-cities> [<https://perma.cc/YA8P-6T9M>] (noting that a federal judge ruled that the Trump administration cannot withhold federal funds from sanctuary cities).

B. The Local and Its Impact on Claiming Rights

The divergences within these three jurisdictions serve to underscore the importance of history and socio-legal culture to the ways in which immigration policies are enacted. Local interests mediate legal protections and institutional capacities beyond the involvement in federal immigration enforcement programs or state alienage laws. The absence or presence of historic immigrant enclaves, demographic trends, and economic necessities serve to subject immigrant rights to the discretion accorded to states and localities and often diminish the ability of immigrants to claim rights to which they are entitled. These factors necessarily affect the ways in which institutions, including DLPs, respond to immigrant needs. This Section provides a concise overview of the history of each consular site and examines the efficacy of each of the DLPs to facilitate rights in the three subject matters that are the focus of this Article.

1. Consular Overviews

a. North Carolina

The consulate in North Carolina is one of the most recently established consulates in the United States.²³⁷ Founded in 2000, the consulate is located in the state capital of Raleigh but distant from the downtown area and away from shopping centers or other sites that might otherwise facilitate visits to the DLP. The lack of adequate public transportation makes access difficult for those without a vehicle or who cannot drive, an acute problem for undocumented immigrants who cannot obtain driver's licenses.²³⁸ The consulate deploys a mobile unit to areas outside of the Research Triangle area of North Carolina.²³⁹ In fact, anti-immigrant rhetoric,

237. See Camila Molina, *Guatemala Opens a Consulate in Raleigh*, NEWS & OBSERVER (June 19, 2017), <http://www.newsobserver.com/news/local/counties/wake-county/article156993269.html> [<https://perma.cc/5WJ8-ELJY>]; see also *Mexico Opens Consular Services Operation in North Carolina*, GLOBAL ATLANTA (Nov. 25, 2000), <https://www.globalatlanta.com/mexico-opens-consular-services-operation-in-north-carolina/> [<https://perma.cc/85BY-YJGB>].

238. See *supra* note 167 and accompanying text.

239. The "Research Triangle" area of North Carolina includes Durham, Raleigh, and Chapel Hill. See *It's Called the Triangle, but It Has Many Sides*, VISIT N.C., <https://www.visitnc.com/raleigh-durham-the-triangle> [<https://perma.cc/BPT7-X82D>] (last visited Mar. 5, 2018).

threats, racial profiling, and checkpoints organized by local police discourage immigrants from attending DLP events.²⁴⁰ Moreover, in some rural locations, residents expressed hostility to DLP meetings organized in public buildings, complaining that undocumented immigrants were being served at the expense of taxpayers.²⁴¹ Indeed, an anti-immigrant demonstration was organized to protest a mobile consulate event held at a school.²⁴² Protesters claimed that DLP services would enable Mexicans to break the law or to obtain special privileges.²⁴³ Said one protester, “It’s not fair, it’s just not We have to do what we have to do as Americans. They’re getting free everything, and we have to suffer for it.”²⁴⁴ These nativist sentiments limit the ability of the DLP to provide information and referrals to immigrants with legal concerns.²⁴⁵

DLP staff identify fear as the obstacle to claiming rights.²⁴⁶ The DLP maintains a Legal Assistance Program for Mexicans through the External Legal Counseling (*Programa de Asistencia Jurídica a Mexicanos a través de Asesorías Legales Externas* or PALE) program, but the dearth of attorneys willing to work with the immigrant community is further complicated by the insufficient numbers of lawyers who speak Spanish and ongoing challenges with interpreters in court.²⁴⁷ DLP staff identified only two organizations upon whom they rely for general legal assistance, and most Mexicans who seek assistance are not referred by organizations, but rather come directly to the consulate, suggesting the absence of

240. Interview with consular staff, in N.C. 29 (Feb. 5, 2016) (explaining that Mexican nationals were too fearful to attend a mobile consular event at a local YMCA).

241. *Id.* at 20.

242. See Jennifer Swartz, *Protesters Picket Latino Fair*, DAILY REFLECTOR (Aug. 7, 2011), <http://www.reflector.com/News/2011/08/07/Protesters-picket-Latino-fair.html> [<https://perma.cc/7DUB-N7Y4>].

243. See *id.*

244. *Id.*

245. Interview with consular official, in N.C. 15 (Feb. 5, 2016).

246. Interview with attorney, in N.C. 4 (Apr. 4, 2016); Interview with attorney, in N.C. 1 (Mar. 18, 2016); Interview with attorney, in N.C. (a) 11 (Apr. 4, 2016).

247. Interview with attorney, in N.C. 6 (Apr. 4, 2016); Interview with consular staff, in N.C. 11 (Feb. 5, 2016). See *supra* note 138 and accompanying text; see also *Farmers Elected to State Legislature Seek to Stop Farmworker Union’s Progress*, *supra* note 172.

sufficient networking.²⁴⁸ The North Carolina courts are not immune from bias against Mexicans that pervades the state.²⁴⁹

DLP staff acknowledge that their work is more crisis oriented with less attention paid to preventative efforts.²⁵⁰ DLP staff attend community events but acknowledge the need for more outreach to community groups.²⁵¹ They identified the lack of receptivity and trust of some community organizations as factors contributing to the weaknesses affecting consular services.²⁵² Other advocates noted that some organizations “face political challenges” when advocating for immigrants and “do not want to become politically unpopular, outspoken or be perceived as radical and so that they actually become more socially and politically conservative in order to try to be in the center.”²⁵³ Still others have suggested that community groups that work with immigrants have shied away from promoting legal rights.²⁵⁴

The North Carolina DLP has been described as the most important and most effective resource for immigrant rights in the state.²⁵⁵ DLP staff note that they are often the only resource available to Mexican nationals wishing to assert their rights.²⁵⁶ Organizations and attorneys use their building for programs and consultations.²⁵⁷ They are, however, overburdened, in large part due to lack of sufficient community resources, lack of adequately developed advocacy networks, and regional hostility, which contribute to barriers to claiming rights.²⁵⁸

248. Interview with consular official, in N.C. 2, 12 (Feb. 5, 2016).

249. Interview with attorney, in N.C. 6 (Apr. 4, 2016).

250. Interview with consular official, in N.C. 15 (Feb. 5, 2016).

251. Interview with consular official, in N.C. 9 (Feb. 5, 2016); Interview with consular official, N.C. 16, 17 (Feb. 5, 2016).

252. Interview with consular official, in N.C. 6 (Feb. 5, 2016). Interview with attorney, in N.C. 4, 7 (Apr. 4, 2016) (observing that DLP services remain unknown to many recent arrivals and those who would benefit from them, suggesting that the DLP should be at more events and more engaged with social justice work).

253. Interview with attorney, in N.C. 11, 12 (Apr. 4, 2016).

254. Interview with attorney, in N.C. 25 (Mar. 18, 2016) (complaining that many community groups do not have or work with lawyers); Interview with consular official, in N.C. 2 (Feb. 5, 2016).

255. Interview with attorney, in N.C. 23, 25 (Mar. 18, 2016).

256. Interview with consular staff, in N.C. 2 (Feb. 5, 2016).

257. Interview with attorney, in N.C. 9 (Mar. 18, 2016).

258. Interview with consular staff, in N.C. 29 (Feb. 5, 2016); Interview with consular official, in N.C. 16 (Feb. 5, 2016).

Shifting demographics, the state's regressive legal climate, a tradition of a homogeneous population, and widespread racial profiling further curtail the efficacy of efforts.²⁵⁹ Programs like 287(g) and Secure Communities as well as checkpoints limit immigrant movements and create a generalized fear of appearing in public.²⁶⁰ A succession of state anti-immigrant laws that demonize Mexicans reject the use of *matricula* identity documents, and local ordinances that invite discrimination against non-English speakers have had “a ripple effect” in the daily lives of immigrants and inhibit those with legal issues from claiming rights.²⁶¹

b. El Paso

The El Paso consulate (known then as “El Paso del Norte”) was founded in 1848.²⁶² Located downtown, it is one of the best-known and busiest consulates with the “most traffic in the world.”²⁶³ It functions within a bilingual/bicultural environment in which the majority of residents are Mexicans, both factors that contribute to the widespread familiarity with and use of the DLP.²⁶⁴ Its location on the border has both beneficial effects and pernicious limitations on its

259. Ian A. Mance, *Racial Profiling in North Carolina: Racial Disparities in Traffic Stops, 2000 to 2011*, TRIAL BRIEFS 23 (June 2012), https://www.unc.edu/~fbaum/papers/Trial_Briefs_Ian_Mance_2012.pdf [<https://perma.cc/7DUB-N7Y4>] (reviewing a study that showed dramatic racial profiling against Hispanics in North Carolina); Weissman, *supra* note 10, at 1935-36.

260. NGUYEN & GILL, *supra* note 158, at 35 (describing, for example, fear of visiting businesses or seeking medical assistance).

261. Interview with attorney, in N.C. 1 (Apr. 4, 2016). *NC's New Immigrant ID Law: Harming Innocent Kids?*, N.C. POL'Y WATCH (Dec. 3, 2015), <http://www.ncpolicywatch.com/2015/12/03/ncs-new-immigrant-id-law-harming-innocent-kids/> [<https://perma.cc/BC75-HTBU>].

262. The consulate was first established in 1848 when El Paso was known as “Paso del Norte” and a part of Mexico. U.S. Embassies & Consulates in Mexico, *U.S. Consulate History*, U.S. EMBASSIES & CONSULATES IN MEX., <https://mx.usembassy.gov/embassy-consulates/ciudad-juarez/u-s-consulate-history> [<https://perma.cc/Y4A7-Z9UJ>] (last visited Mar. 5, 2018). Interview with consular official, in El Paso, Tex. 2 (Apr. 17, 2016).

263. Interview with attorney, in El Paso, Tex. 9 (Aug. 12, 2016); Interview with attorney, in El Paso, Tex. 4 (Aug. 10, 2016); Interview with consular official, in El Paso, Tex. 2 (Apr. 17, 2016).

264. Interview with attorney, in El Paso, Tex. 4 (Aug. 10, 2016) (noting that the binational character of El Paso lends to progressive attitudes about serving immigrants). Interview with consular official, in El Paso, Tex. 6, 7 (Apr. 17, 2016) (describing the whole city as Mexican, bilingual, and bicultural).

ability to discharge its functions. The social and economic exchanges conducted at the border contribute to a unique and often favorable climate for immigrants.²⁶⁵ The narrative of the border as a site perilous to national security, however, has transformed much of the city and surrounding areas into a militarized zone with Customs and Border Patrol (CBP) checkpoints throughout that often discourages immigrant travel to the downtown DLP or to mobile consulate sites.²⁶⁶ Sources who work closely with the DLP observe that immigrants describe a recent heightened sense of fear in a setting of deepening hostility affecting their willingness to claim rights.²⁶⁷

The El Paso DLP appears to possess adequate legal resources and ready access to attorneys and community advocates who speak Spanish.²⁶⁸ Indeed, consular staff and advocates alike acknowledge that non-English speakers face no language barriers or antagonism.²⁶⁹ The DLP cooperates with federal, state, and local legislators who refer clients to the consulate and assist with their efforts.²⁷⁰ DLP officials also work closely with county district attorneys and city attorneys and enjoy a good working relationship with local judges.²⁷¹

The DLP boasts of an extensive network of organizations with whom they collaborate.²⁷² Community organization advocates maintain strong citywide coalitions, close-knit alliances, and referral mechanisms that have produced successful collaborations among immigrant rights entities and the DLP.²⁷³ Supporters of immigrant

265. Interview with attorney, in El Paso, Tex. 5 (Aug. 10, 2016).

266. See *supra* note 189 and accompanying text; Interview with community organization advocate, in El Paso, Tex. 8, 10 (Apr. 28, 2016) (noting that Customs and Border Patrol are everywhere); Interview with attorney, in El Paso, Tex. 11 (Aug. 10, 2016); Interview with community organization advocate, in El Paso, Tex. 10 (Apr. 28, 2016).

267. Interview with attorney, in El Paso, Tex. (Aug. 10, 2016); Interview with attorney in El Paso, Tex. (Aug. 12, 2016).

268. Interview with attorney, in El Paso, Tex. (Aug. 12, 2016) (observing that the city is so fully bilingual that English is hardly necessary).

269. Interview with community organization advocate, in El Paso, Tex. (Apr. 28, 2016).

270. Interview with community organization advocate, in El Paso, Tex. (Apr. 28, 2016); Interview with consular official, in El Paso, Tex. 21 (Apr. 17, 2016); Interview with attorney in El Paso, Tex. (Aug. 10, 2016).

271. Interview with consular official, in El Paso, Tex. (Apr. 17, 2016); Interview with community organization, in El Paso, Tex. 4 (Apr. 28, 2016).

272. Interview with consular official, in El Paso, Tex. (Apr. 17, 2016) (noting that the DLP works with over 120 groups).

273. Interview with community organization, in El Paso, Tex. 4 (Apr. 28, 2016); Interview with community organization advocate, in El Paso, Tex. 1 (Apr.

rights, including labor-rights groups to domestic violence advocates, describe a unique solidarity and partnership that includes DLP officials to facilitate assistance to immigrants claiming rights.²⁷⁴

The salutary environment notwithstanding, Mexican immigrants still confront formidable challenges to claiming rights. Aside from demographic factors and cultural ties that tend to protect immigrant rights, the unique political geography of the border poses obstacles to accessing rights. The ubiquitous presence of CBP agents instills fear and inhibits some Mexicans from traveling to the consulate or meeting with advocacy organizations.²⁷⁵ At the federal level, anti-immigrant rhetoric is often used as fodder for political demagoguery that depicts El Paso as a war zone, thus justifying a militarized response.²⁷⁶ Texas' recent enactment of SB4, moreover, has been described as a "devastating" event for the state's immigrants.²⁷⁷ Civic leaders in El Paso have opposed the law, fearful that it will create ill will and mistrust between immigrant communities and law enforcement, threatening to "create a class of silent victims," affecting the ability of the DLP to assist immigrants.²⁷⁸

28, 2016); Interview with community organization advocate, in El Paso, Tex. 2 (Apr. 28, 2016).

274. Groups make use of the consulate space to provide programs and legal education. Interview with community organization advocate, in El Paso, Tex. 3 (Apr. 28, 2016); Interview with community organization advocate, in El Paso, Tex. 1 (Apr. 28, 2016).

275. Interview with community organization advocate, in El Paso, Tex. 1 (Apr. 28, 2016); Interview with community organization advocate, in El Paso, Tex. 2 (Apr. 28, 2016).

276. See, e.g., Aileen B. Flores, *Consul Says Mexico Promotes Compliance with Laws*, EL PASO TIMES (Apr. 22, 2017, 12:29 PM), <http://www.elpasotimes.com/story/news/immigration/2017/04/22/mexican-consul-says-us-attorney-general-wrong-border/100764886/> [<https://perma.cc/Y2CG-FZ2K>] (reporting on remarks by Attorney General Sessions in El Paso describing the Mexico border as "'ground zero' . . . where the United States will establish a 'beachhead' against drug cartels, transnational gangs and smugglers").

277. See *supra* note 204 and accompanying text; Michele Waslin, *Texas Lawmakers Admit They Have No Sanctuary Policies, but Pass Bill to Stop Them Anyway*, IMMIGR. IMPACT (May 4, 2017), <http://immigrationimpact.com/2017/05/04/texas-sanctuary-cities> [<https://perma.cc/WK2J-YC3U>].

278. Daniel Borunda, *SB 4 Raises Fears Among Undocumented Immigrants*, EL PASO TIMES (May 4, 2017, 3:44 PM), <http://www.elpasotimes.com/story/news/immigration/2017/05/04/sb-4-raises-fears-among-undocumented-immigrants/101261118/> [<https://perma.cc/YB6Q-7GWV>].

c. San Francisco

The San Francisco Mexican Consulate was founded in 1848 and is considered one of the most important diplomatic outposts in the United States.²⁷⁹ Located in downtown San Francisco in close proximity to public transportation, the DLP serves a well-established, multigenerational Mexican community.²⁸⁰ DLP staff use the mobile consulate to reach parts of its jurisdiction outside of the city.²⁸¹ Consular officials describe their circumstances as “uniquely favorable” due to a settled and integrated immigrant community, a wealth of resources, and a pro-immigrant legal climate at the state, county, and city levels.²⁸² They report that the area’s historic “economic, intellectual, cultural, family ties and networks” serve to protect immigrants against many forms of rights violations.²⁸³

DLP officials are well integrated with immigrant advocacy networks and coordinate outreach efforts and referral arrangements with groups throughout the San Francisco and surrounding counties.²⁸⁴ They collaborate with government agencies and legislative bodies, many of whose members are of Mexican or Latino heritage.²⁸⁵

The DLP maintains a PALE program with easy access to attorney volunteers, including a sufficient number of Spanish-speaking attorneys, and advocates to work with their constituents.²⁸⁶ Consul employees cooperate with the District Attorney’s office

279. See *Historia*, CONSULADO GENERAL DE MÉXICO EN SAN FRANCISCO, <https://consulmex2.sre.gob.mx/sanfrancisco/index.php/acerca-del-consulado/historia> [<https://perma.cc/EY24-5WN5>] (last visited Mar. 5, 2018); Interview with consular staff, in S.F., Cal. (Mar. 16, 2016).

280. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016).

281. Interview with consular official, in S.F., Cal. (Dec. 11, 2015).

282. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016) (stating that the San Francisco DLP has more resources than any other consulate; “nothing compares”).

283. Interview with consular official, in S.F., Cal. (Dec. 11, 2015).

284. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016); Interview with consular official in S.F., Cal. (Dec. 11, 2015).

285. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016); Interview with consular official in S.F., Cal. (Dec. 11, 2015) (noting that there are many Latinos in San Francisco who hold political and civic leadership positions and possess economic power).

286. Interview with consular official, in S.F., Cal. (Dec. 11, 2015); Interview with attorney in S.F., Cal. (June 8, 2016); Interview with attorney, in S.F., Cal. (May 25, 2017).

whose staff advise immigrants of their rights related to their status.²⁸⁷ DLP officials have successfully collaborated with the courts that rely upon them for reports and other documents.²⁸⁸ They provide assistance in an environment where monolingual Spanish-speakers have no difficulty accessing social services, government agencies, or the courts.²⁸⁹ Organizations and attorneys use space at the consulate for groups to present on a range of legal issues, and attorneys often meet clients there as it is a trusted location.²⁹⁰ DLP staff has gained particular expertise in a number of areas bearing on immigrant rights and have been invited to train immigrant advocates.²⁹¹

DLP staff report that the greatest problems facing Mexican immigrants in San Francisco are similar to those faced by citizens: affordable housing, neighborhood gentrification, homelessness and related crime, and faltering public schools.²⁹² However, gentrification has had an especially disruptive effect on immigrant communities, often resulting in the loss of cultural centers and the shattering of historic community ties.²⁹³ Immigrants continue to arrive in the city despite these challenges due to the relative stability of immigrant communities and the area's manifestations of acceptance and welcome.²⁹⁴

Consulate services are well established in the community, and DLP staff are responsive to lawyers' requests for documentation and other assistance.²⁹⁵ The DLP has successfully built trusting relationships and meaningful collaborations and is described as providing "far better services than other consulates."²⁹⁶

287. Interview with consular official, in S.F., Cal. (Dec. 11, 2015); Interview with attorney, in S.F., Cal. (May 25, 2017).

288. Interview with consular official, in S.F., Cal. (Dec. 11, 2015). Attorneys who work with immigrants describe local judges as "fair" with immigrants seeking legal relief. Interview with attorney, in S.F., Cal. (May 25, 2017).

289. Interview with attorney, in S.F., Cal. (June 8, 2016); Interview with attorney, in S.F., Cal. (May 25, 2017).

290. Interview with consular staff, in S.F., Cal. (May 25, 2017); Interview with attorney, in S.F., Cal. (June 8, 2016); Interview with consular official, in S.F., Cal. (Dec. 11, 2015).

291. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016).

292. *Id.*; Interview with attorney, in S.F., Cal. (May 25, 2017).

293. Interview with consular staff, in S.F., Cal. (Mar. 16, 2016).

294. Interview with attorney, in S.F., Cal. (Jan. 26, 2016). Interview with attorney, in S.F., Cal. (May 25, 2017).

295. Interview with attorney, in S.F., Cal. (May 25, 2017).

296. *Id.* Interview with consular staff, in S.F., Cal. (Mar. 16, 2016); Interview with consular official, in S.F., Cal. (Dec. 11, 2015). Interview with attorney, in S.F., Cal. (June 8, 2016).

The pro-immigrant legal climate in California facilitates DLP assistance to immigrants with legal claims and endows immigrants with a sense of empowerment.²⁹⁷ Attorneys point to San Francisco as a “sanctuary” for immigrants from punitive federal immigration enforcement, the issuance of driver’s licenses for undocumented immigrants, in-state tuition for college students regardless of status, and humane law-enforcement policies with regard to immigrant crime victims as creating a salutary legal environment for immigrants.²⁹⁸

Notwithstanding the favorable circumstances related to history, demographics, and a friendly political geography, Mexican immigrants experience fear as a result of federal immigration policies, particularly those announced by the Trump administration.²⁹⁹ Advocates report that Mexican immigrants are reluctant to pursue claims in court given media accounts of federal immigration officers scouting courthouses for undocumented persons.³⁰⁰

San Francisco advocates have responded to new threats forcefully. The city has filed suit to enjoin threats of sanctions for the city’s policies of distancing itself from immigration enforcement activities, and the state has signed on to a suit to prevent the travel ban from going into effect.³⁰¹ Lawyers have organized “rapid response networks” that include DLP staff to respond in the event of ICE raids.³⁰² Community groups often request consulate staff and advocates to present educational programs on immigrant rights.³⁰³ Whether San Francisco’s progressive pro-immigrant culture and settled Mexican community can facilitate access to rights remains to be seen.

297. Interview with attorney, in S.F., Cal. (May 25, 2017).

298. Interview with attorney, in S.F., Cal. (June 8, 2016); Interview with attorney, in S.F., Cal. (May 25, 2017).

299. Interview with attorney, in S.F., Cal. (May 25, 2017).

300. *Id.* (describing increased fear given headline news about ICE officers picking up undocumented immigrants who appeared in court to pursue domestic violence protection officers).

301. *See supra* notes 66, 221 and accompanying text.

302. Interview with attorney, in S.F., Cal. (May 25, 2017); Interview with attorney, in S.F., Cal. (June 9, 2016).

303. Interview with attorney, in S.F., Cal. (May 25, 2017).

2. Substantive Areas: Labor, Family, and Human Rights

a. Labor-Related Claims

Studies of labor-related legal claims have dominated much of the scholarship about rights violations suffered by immigrants.³⁰⁴ Immigrant workers suffer disproportionate rates of fatal occupational injuries and routinely are assigned risky jobs; they are frequently denied worker's compensation and deprived of wages, denied overtime pay, refused benefits, and they inevitably face dismissal when demanding their due compensation.³⁰⁵

All three DLPs intervene in these circumstances in a number of ways. They work directly with federal, state, and local departments of labor and occupational safety and health agencies.³⁰⁶ The DLP's ability to broker the support of government agencies is crucial in the face of the challenges immigrants confront when seeking to "go it alone." Formal arrangements between the DLP and government agencies to enforce the Fair Labor Standards Act prohibiting retaliation provide a measure of protection for undocumented

304. Fay Faraday, Book Review, 37 *COMP. LAB. L. & POL'Y J.* 447, 448 (2016) (reviewing *MIGRANTS AT WORK: IMMIGRATION AND VULNERABILITY IN LABOUR LAW* (Cathryn Costello & Mark Freedland eds., 2014)).

305. See *Under Siege: Life for Low-Income Latinos in the South*, S. *POVERTY L. CTR.* 15 (2009), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/UnderSiege.pdf [<https://perma.cc/466A-2W56>] (noting that Mexicans were found to be 80% more likely to die on the job than foreign-born workers); Llezlie Green Coleman, *Procedural Hurdles and Thwarted Efficiency: Immigration Relief in Wage and Hour Collective Actions*, 16 *HARV. LATINO L. REV.* 1, 7 (2013) (discussing immigrants and wage theft); Joseph G. Grzywacz et al., *Occupational Injury and Work Organization Among Immigrant Latino Residential Construction Workers*, 55 *AM. J. IND. MED.* 698, 698 (2012); Jayesh M. Rathod, *Immigrant Labor and the Occupational Safety and Health Regime, Part I: A New Vision for Workplace Regulation*, 33 *N.Y.U. REV. L. & SOC. CHANGE* 479, 487 (2009); Tom O'Connor, Tobi Lippin & Peter Kostin, *North Carolina Workers: Dying for Job, A Report of NC Worker Fatalities in 2011*, NAT'L COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH (Apr. 28, 2012), <http://www.coshnetwork.org/NCWMDReport2012> [<https://perma.cc/YQ9J-P6P4>]; Deborah M. Weissman et al., *Picking Empty Pockets*, U.N.C. IMMIGR./HUM. RTS. POL'Y CLINIC, <http://www.law.unc.edu/documents/clinicalprograms/emptypocketsfinal.pdf> [<https://perma.cc/9F5G-T6DB>] (last visited Mar. 5, 2018).

306. Bada & Gleeson, *supra* note 93, at 34; Bhojani et al., *supra* note 113, at 13, 15; Nicole Taykhman, *Defying Silence: Immigrant Women Workers, Wage Theft, and Anti-Retaliation Policy in the States*, 32 *COLUM. J. GENDER & L.* 96, 116 (2016).

immigrant laborers.³⁰⁷ Departments of labor are often under-resourced and rely on the DLP to provide labor-rights-related education and assist with access to the agencies' reporting procedures.³⁰⁸ In each location, the Mexican Consulate collaborates with the U.S. Department of Labor to organize an annual Labor Rights Week to "inform the Mexican and Latino communities about their fundamental labor rights, as well as the resources available to them in case they face any abuse of their labor rights."³⁰⁹

Bada and Gleeson offer a useful summary of DLP efforts to protect the rights of Mexican workers:

The Mexican consular network has been an important actor . . . in the effort to advance the rights of immigrant workers in U.S. territory. Consular representatives possess resources, legitimacy, and access often not granted to labor organizations in the United States They provide an institutionalized mechanism for domestic labor standards enforcement agencies to reach the often reluctant immigrant workforce but also a platform for labor unions and advocates to engage the Mexican government on labor rights more broadly.³¹⁰

Though each DLP enacts similar strategies to protect Mexican labor rights, both immigrant workers and DLPs face different challenges in each location.

i. *North Carolina*

North Carolina's agricultural industry employs one of the largest farmworker populations in the United States, and the Mexican consulate in North Carolina serves the largest farmworker population of all Mexican consulates.³¹¹ DLP officials identify the working conditions as the most pressing labor problem with which they are involved.³¹² Immigrant farmworkers are subject to poor and

307. 29 U.S.C. § 215(a)(3) (2012).

308. Bada & Gleeson, *supra* note 93, at 33-34; *see* Weissman et al., *supra* note 305, at 51, 57.

309. *Labor Rights Week August 29-September 5, 2016*, SEMANA DE DERECHOS LABORALES, <https://consulmex2.sre.gob.mx/nuevayork/images/departamentos/proteccion/SDL-2016/sdl-2016-ing.pdf> [<https://perma.cc/FT9U-B9KS>] (last visited Mar. 5, 2018).

310. Bada & Gleeson, *supra* note 93, at 39.

311. Interview with consular staff, in N.C., 12 (Feb. 5, 2016).

312. *See* Interview with consular official, in N.C., 2 (Feb. 5, 2016); *see also* Erin Robinson et al., *Wages, Wage Violations, and Pesticide Safety Experienced By Migrant Farmworkers in North Carolina* 7 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291018/pdf/nihms357539.pdf> [<https://perma.cc/MW4H-YALY>] (noting that one in five migrant farmworkers, and

crowded housing, pesticide exposure, illness and injury, limited workers compensation, and wage theft.³¹³ The vulnerable circumstances of farmworkers are exacerbated by state laws that make access to lawyers, including those who cooperate with the DLP, all but impossible. The General Assembly forbids any legal services office receiving state funding to assist farmworkers, thereby eliminating the likelihood of representation or collaboration with consulate staff.³¹⁴ Without driver's licenses or adequate public transportation, and with fear of 287(g) enforcement actions, farmworkers are generally confined to the camps in which they live and work.³¹⁵ DLP staff rely on the mobile consul to visit camps, but the consensus among advocates is that farmworkers are intimidated and thus reluctant to assert claims. Their inability to travel from the camps away from the watchful eye of the employer prevents the DLP from providing adequate protection for this population.³¹⁶

Growers have threatened lawyers and outreach workers with trespass charges and physical violence when they have sought to consult with farmworkers and local law enforcement have afforded these advocates little legal protection from such abuse.³¹⁷ The mistreatment of farmworkers and their legal advocates in North Carolina has been the subject of complaints filed before the Inter-American Commission on Human Rights and the UN Special Rapporteur on Extreme Poverty and Human Rights.³¹⁸ These

45% of all workers without H-2A visas, suffered wage theft); Weissman et al., *supra* note 305, at 1.

313. *Facts About North Carolina Farmworkers*, N.C. FARMWORKERS HEALTH FACTS, <http://www.ncfarmworkers.org/2012/06/facts-about-north-carolina-farmworkers> [<https://perma.cc/7CCS-BAYW>] (last visited Mar. 5, 2017).

314. N.C. GEN. STAT. § 7A-474.3(c)(3) (2015). Federal funds prohibit legal services from representing any undocumented immigrants. 45 C.F.R. § 1626 (2014).

315. See interview with consular staff, in N.C., 1 (Feb. 5, 2016); see also interview with consular official, in N.C., 15 (Feb. 5, 2016).

316. *Id.*

317. Request for a Thematic Hearing (150th Period of Sessions) - Denial of Access to Migrant Labor Camps in the United States and the Resulting Rights Violations of Human Rights Defenders, including Outreach Workers representing Legal Services, Healthcare and Community Service Organizations, Labor Rights Organizations, and Migrant Farmworkers, 5, 7, 10 (citing the case of Rodrigo Falcon Analiz, who was threatened along with Legal Aid staff after he requested legal assistance) (Jan. 20, 2014) (on file with authors).

318. See *id.*; see also letter to Magdalena Sepulveda Carmona, U.N. Special Rapporteur on Extreme Poverty and Human Rights Office of the High Commissioner for Human Rights (Dec. 13, 2012) (on file with authors).

circumstances create significant barriers to DLP staff and their efforts to provide assistance.

Wage theft has been identified as a problem in other realms of work.³¹⁹ Undocumented immigrants lack mobility in the North Carolina labor market due to their inability to obtain a driver's license.³²⁰ Fear of retaliation operates to discourage workers from seeking the assistance of federal or state departments of labor.³²¹ When immigrant wage-theft or worker's-compensation claimants do seek legal assistance with the help of PALE lawyers, the bias against Mexicans is reflected in disproportionately low verdicts.³²² Indeed, as one DLP consulting attorney observed, in a political environment noteworthy for anti-immigrant sentiment, employers are emboldened to refuse to pay when the claimant is an immigrant, even if a verdict is obtained.³²³

ii. *El Paso*

El Paso DLP officials confront similar labor abuses but in a different environment: wage theft being the most egregious abuse, a condition the DLP characterizes as "epidemic."³²⁴ Like North Carolina, the prevalence of wage theft reflects the opportunity for abuse attributed principally to the political geography. Employers often recruit at the border in the hope that the promise of decent work at decent pay encourages undocumented workers to hire on without thought to and guarantees of sufficient protections.³²⁵ DLP staff within local networks of immigrant advocates and labor-rights activists are vigilant against wage-theft abuses and strive to coordinate education and mutual referral services to support Mexican workers wishing to make claims.³²⁶ The act of making a claim, however, is no easy task. Employers often purposefully seek undocumented workers, who are easily intimidated due to fear of the ubiquitous presence of CBP.³²⁷ In a heavily militarized law-

319. Interview with attorney, in N.C., 12 (Apr. 4, 2016).

320. Interview with attorney, in N.C., 3, 5 (Apr. 4, 2016).

321. *Id.* at 5.

322. *Id.* at 7-8.

323. Interview with attorney, in N.C., 12, 136 (Apr. 4, 2016).

324. Interview with community organization, in El Paso, Tex. 1 (Apr. 28, 2016).

325. *Id.* at 3, 4.

326. *Id.* at 7.

327. Interview with community organization advocate, in El Paso, Tex. 24 (Apr. 28, 2016).

enforcement environment, undocumented workers—whose very presence is deemed illegal—rarely seek legal remedy of wage violations and hazardous working conditions.³²⁸

The militarization of the border appears to be unable to prevent the recruitment of undocumented workers but is able to prevent workers from exercising their legal rights.³²⁹ Mexican immigrant labor activists defending workers' rights have been targeted in detention and deportation proceedings, further discouraging undocumented workers from advancing claims.³³⁰ The traditional strength of El Paso's labor rights coalitions and the DLP commitment to lawful remedy of workers' claims have failed to overcome the intimidation associated with the presence of CPB.³³¹ The enactment of SB4 will most assuredly act to increase workers' vulnerability.

iii. *San Francisco*

San Francisco consul officials also recognize wage theft as a local labor violation.³³² However, in contrast to El Paso and North Carolina, instances of wage theft are reported with far greater frequency.³³³ In an environment far more hospitable to immigrants' interests, workers in San Francisco possess greater knowledge about their rights and act with a sense of greater empowerment to claim them.³³⁴ A very different political geography in California serves to provide extensive protection against worker violations by including sanctions against employers who threaten to report a complaining worker to immigration authorities.³³⁵ The expectation that wage theft claims will be successful is in fact incentive to make claims. The

328. *Id.*

329. See William I. Robinson, *What Is Behind the Renegotiation of NAFTA? Trumpism and the New Global Economy* (July 24, 2017), <http://www.truth-out.org/news/item/41365-what-is-behind-the-renegotiation-of-nafta-trumpism-and-the-new-global-economy> [<https://perma.cc/E5TV-RNH4>].

330. See Interview with community organization advocate, in El Paso, Tex. 24 (Apr. 28, 2016).

331. Interview with community organization, in El Paso, Tex. 7 (Apr. 28, 2016).

332. Interview with consular staff, in S.F., Cal. 17 (Mar. 16, 2016); Interview with attorney, in S.F., Cal. 2 (June 8, 2016).

333. Interview with attorney, in S.F., Cal. 4 (June 8, 2016).

334. *Id.*

335. *Id.* at 6 (noting that labor laws are always improving). See *supra* notes 229-31.

progressive climate in San Francisco enables strong labor law protections for Mexican workers.

These circumstances provide the DLP a far more hospitable environment in which to address immigrant complaints. The pro-labor government agencies exist both at local and state levels and provides the DLP with a greater range of satisfactory outcomes.³³⁶ Many labor agency heads come from immigrant advocacy organizations and have pre-existing relationships with DLP staff and labor lawyers.³³⁷ DLP staff have access to a variety of organizations, including unions, to assist Mexican workers.³³⁸ Immigrant fears of greater immigration enforcement and the policies of the Trump administration are greatly mitigated by a larger hospitable environment associated with the politics of the sanctuary movement.³³⁹

b. Family Law Claims

Immigrant households experience many of the same family law problems as citizens: domestic violence, divorce, custody and child support, and child protection proceedings.³⁴⁰ However, these issues often affect immigrants differently.³⁴¹ Although the overall incidence of domestic violence is not higher among immigrants than within the population at large, unauthorized status and the precarious position of immigrant women in the labor market, together with related economic dependency, isolation, and mixed status households, affect

336. Interview with consular official, in S.F., Cal. 3 (Dec. 11, 2015). Interview with consular staff, in S.F., Cal. 16, (Mar. 16, 2016) (describing layers of protection).

337. Interview with attorney, in S.F., Cal. 13 (June 9, 2016); Interview with consular staff, in S.F., Cal. 17 (Mar. 16, 2016).

338. Interview with consular staff, in S.F., Cal. 17, 32 (Mar. 16, 2016).

339. Interview with attorney, in S.F., Cal. 18 (May 25, 2017) (noting since the election of Donald Trump, immigrant families have become more fearful and are increasingly reluctant to leave the house).

340. See Jessica Dixon Weaver, *Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 *FORDHAM L. REV.* 2705, 2713-14 (2014); see generally Nicole Lawrence Ezer, *The Intersection of Immigration Law and Family Law*, 40 *FAM. L.Q.* 339 (2006).

341. See Forrest S. Mosten & Lara Traum, *It Takes a Village: Using Seniors to Help Divorcing Families*, 17 *CARDOZO J. CONFLICT RESOL.* 767, 783-84 (2016); Sean Hannon Williams, *Divorce All the Way Down: Local Voice and Family Law's Democratic Deficit* 28 (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2955198 [<https://perma.cc/J536-E883>] (“Today, many issues central to family law look quite different to different segments of society.”).

their ability to seek relief.³⁴² In custody matters, judges often consider parents who are in the United States without authorization as inherently unsuitable for an award of custody.³⁴³ Child custody issues are further complicated when one parent is deported and thus separated from the family. Mixed-status households are now commonplace; seventeen million people are in families with at least one unauthorized immigrant.³⁴⁴

The scope of the DLP functions has expanded to assist with family law issues, specifically to provide guidance to and secure legal representation for Mexicans in family cases.³⁴⁵ The matter of domestic violence is of high priority and classified as a “subject of particular interest” (*temas de interés particular*).³⁴⁶ To this end, DLPs have developed extensive collaborations with domestic violence service providers and offer economic support to victims.³⁴⁷

342. Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, 16 GENDER & SOC’Y 898, 901 (2002); Anita Raj & Jay Silverman, *Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367, 375 (2002); Olivia Salcido & Madelaine Adelman, “He Has Me Tied With the Blessed and Damned Papers”: *Undocumented-Immigrant Battered Women in Phoenix, Arizona*, 63 HUM. ORG. 162, 169 (2004).

343. Vinita Andrapalliyal, *The CPS Took My Baby Away: Threats to Immigrant Parental Rights and A Proposed Federal Solution*, 7 HARV. L. & POL’Y REV. 173, 178-79 (2013); Anita Ortiz Maddali, *The Immigrant “Other”: Racialized Identity and the Devaluation of Immigrant Family Relations*, 89 IND. L.J. 643, 646 (2014); David B. Thronson, *Custody and Contradictions: Exploring Immigration Law as Federal Family Law in the Context of Child Custody*, 59 HASTINGS L.J. 453, 456 (2008).

344. JOANNA DREBY, EVERYDAY ILLEGAL: WHEN POLICIES UNDERMINE IMMIGRANT FAMILIES 60 (2015); Paul Taylor et al., *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood*, PEW HISP. CTR. 6 (2011), <http://www.pewhispanic.org/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood/> [<https://perma.cc/E3TQ-VG9P>].

345. Interview with consular staff, DLP in N.C. 1, 7 (Feb. 5, 2016); Interview with consular staff, DLP in N.C. (Apr. 14, 2016); Interview with Consular Official, in El Paso, Tex. 1 (Apr. 17, 2016); Interview with Attorney, in El Paso, Tex. 5 (Aug. 12, 2016); Interview with Attorney, in S.F., Cal. 2 (May 25, 2017); Interview with Attorney, S.F., Cal. 12 (Mar. 14, 2016).

346. The DLP Guide (*Guía*) includes a separate chapter devoted to the needs of battered persons. See *Guía de Procedimientos de Protección Consular*, *supra* note 131, at 6, 61-63.

347. The DLP has allocated a specific budgetary category to hire attorneys through the PALE program, pay filing fees for immigration-related remedies for victims of domestic violence, and provide direct financial assistance to victims whose economic circumstances are related to abuses suffered. Interviews, database review.

DLPs play a key role in custody issues. Their diplomatic status and location in the United States confer on them a unique transnational role in mediating disputes. Parents on both sides of the border avail themselves of the services provided by the DLP legal staff.³⁴⁸ The DLP facilitates home studies to determine custodial suitability and incorporates the assistance of the Mexican government child welfare system in the process.³⁴⁹ DLPs have formal agreements with state and county child protection agencies and deploy international treaty obligations to ensure that a parent's immigration status does not compromise case outcomes.³⁵⁰ In dependency issues, the DLP assists detained parents who otherwise lack the means to participate in dependency hearings.³⁵¹ In instances of child support cases that result from the forced separation of families across international borders, successful claims require complicated formal agreements, communication, and bureaucratic and banking transactions among local, state, and federal government entities and the courts in Mexico and the United States.³⁵² DLP staff

348. Ann Laquer Estin, *Protecting Child Welfare in Abduction and Asylum Proceedings*, 41 N.C. J. INT'L L. 793, 795 (2016). See Nina Rabin, *Disappearing Parents: Immigration Enforcement and the Child Welfare System*, 44 CONN. L. REV. 99, 117 (2011) (noting the volume of cases involving the welfare of children to which the Mexican Consulate lends assistance).

349. Maddali, *supra* note 343, at 685; Interview with consular staff, DLP in N.C. 16 (Feb. 5, 2016); Interview with attorney, in El Paso, Tex. 4 (Aug. 10, 2016) (although noting insufficient staff to keep up with demand). See, e.g., Memorandum of Understanding Between the Monterey Cty. Dep't of Soc. and Emp't Servs., Family and Children Servs. and the Consulate Gen. of Méx. in San José, Cal. (2007), <http://www.f2f.ca.gov/res/pdf/MontereyMOUMexicanconsulate.pdf> [<https://perma.cc/2BJB-NKEA>].

350. *A Different Approach: Illinois Taskforce on Immigrant Children and Families*, 33 CHILD. L. PRAC. 57 (2014); Howard Davidson, *Improving How Our Child Welfare System Addresses Children, Youth, and Families Affected by the U.S. Immigration Process*, 33 CHILD. LEGAL RTS. J. 9, 15-16 (2013); Sarah Grey McCroskey, *Expanding the Vienna Convention on Consular Relations: Protecting Children by Protecting Their Parents*, 46 VAND. J. TRANSNAT'L L. REV. 1423, 1434-35 (2013). For a list of some of the written agreements between the Mexican Consulate and child and family agencies, see Koven Levit, *supra* note 144, at 627-28 (2008). See *Sample Forms from Public Child Welfare Agencies, Including MOUs with the Mexican Consulate*, FAM. TO FAM. CAL., <http://www.f2f.ca.gov/sampleMOUs.htm> [<https://perma.cc/LS8Q-HM4U>].

351. See Rabin, *supra* note 348, at 121-22 (noting the difficulties of immigrant parents held in detention when dependency hearings are pending).

352. *Working Child Support Cases with Mexico*, IMPERIAL CO. CAL., https://www.counties.org/sites/main/files/file-attachments/imperial_county_-_child_support.pdf [<https://perma.cc/QXZ7-3EUK>]. DLPs in the United States work

assume responsibility to monitor and facilitate the transmission of payments as ordered and have administered a program that enables absent fathers to send child support payments via debit card, a process that also requires binational financial transactions and cooperation with a claimant in Mexico.³⁵³

i. *North Carolina*

Child custody and child support cases rank as the most common family law claims encountered by the North Carolina DLP.³⁵⁴ These cases have increased markedly because of heightened immigration enforcement. DLP staff report that between 70% and 80% of custody cases arise from the detention or deportation of one or both parents.³⁵⁵ Navigating complicated child custody law poses formidable challenges under any circumstances, to be sure, but immigrant families face additional challenges. The current anti-immigrant environment results in uncertainty and fear in pursuing legal remedies and tends to discourage the pursuit of rights on behalf of dependent children.³⁵⁶ Nativist tendencies and expansion of immigration enforcement limit the ability of the DLP to maximize efforts on behalf of Mexican family law claimants, while at the same time increasing the need for such assistance.³⁵⁷ One North Carolina family law attorney who regularly consults with DLP clients noted that “anti-immigrant rhetoric affects everyone.”³⁵⁸ Spanish-speaking attorneys are difficult to locate, and even fewer are willing to represent Mexican immigrants with custody claims.³⁵⁹

Similarly, social services and child protection agencies, with which families interact when custody or child maltreatment issues

with the Department for Protection of Mexicans living Abroad (DGPME) in Mexico to facilitate binational claims. Author database reviews.

353. Interview with consular official, in S.F., Cal. (Oct. 20, 2016).

354. Interview with consular staff, DLP in N.C. 1, 7 (Feb. 5, 2016); Interview with consular staff, DLP in N.C. (Apr. 14, 2016). Family Law Tables (on file with authors).

355. Interview with consular staff, DLP in N.C. 1 (Apr. 14, 2016).

356. Interview with consular staff, DLP in N.C. 1, 12 (Feb. 5, 2016).

357. Interview with attorney, DLP in N.C. 14 (Mar. 18, 2016).

358. *Id.*

359. Interview with attorney, DLP in N.C. 8, 22 (Mar. 18, 2016); Interview with consular staff, DLP in N.C. 12 (Feb. 5, 2016). Legal aid attorneys may represent immigrants, regardless of status, in domestic violence claims and may procure a domestic violence protection order with a provision for custody. Such orders are temporary with a one-year limit. N.C. GEN. STAT. § 50B-1 (2015); Interview with attorney, DLP in N.C. 4 (Mar. 18, 2016).

are present, often lack Spanish-speaking staff, complicating matters and causing delays in case processing.³⁶⁰ Anti-immigrant sentiment pervades agencies and courts alike; family court judges exhibit bias against parents who they deem to be without authorized status.³⁶¹ Child protection agencies more readily repatriate Mexican children to Mexico because of their belief that they do not have the same obligations to protect a Mexican child as an American.³⁶²

DLP officials have reported recent improvements for claimants. One DLP staff person observed that with increased numbers of ongoing exposure to Mexican custody claims, social workers have acquired a deeper appreciation for binational processes, resulting in better outcomes.³⁶³ Nonetheless, it is difficult for the DLP to keep up with the growing numbers of custody matters related to forced separations and lack of resources, particularly Spanish-speaking attorneys.³⁶⁴

ii. *El Paso*

In contrast to the North Carolina DLP, immigrant advocates and consular officials reported that one of the most significant family law issues in El Paso is domestic violence.³⁶⁵ Abusers readily threaten to expose victims to the ubiquitous CBP.³⁶⁶ To make matters worse, in a recent domestic violence case, federal immigration enforcement officers appeared at a courthouse in El Paso to detain an immigrant victim who was seeking a protection order.³⁶⁷

360. Interview with consular staff, DLP in N.C. 3 (Apr. 14, 2016). Delays in translations of home study reports and other information critical to the outcome of a custody matter are attributed to the lack of agency translators. *Id.* at 3-4 (noting that often times, consulate staff prepare the translations as a courtesy to avoid delays). Interview with attorney, DLP in N.C. 5 (Mar. 18, 2016) (noting that Mexican clients are often judged harshly for not acting sooner despite the fact that they were seeking, albeit unsuccessfully, guidance in a language they understand).

361. Interview with attorney, DLP in N.C. 17 (Mar. 18, 2016).

362. Interview with consular staff, DLP in N.C. 4 (Apr. 14, 2016).

363. *Id.* at 5.

364. Interview with attorney, DLP in N.C. 19-20 (Mar. 18, 2016).

365. Interview with consular official, in El Paso, Tex. 1, 5 (Apr. 17, 2016).

366. Interview with community organization advocate, in El Paso, Tex. (Apr. 28, 2016).

367. Marty Schladen, *ICE Detains Alleged Domestic Violence Victim*, EL PASO TIMES (Feb. 16, 2017, 3:16 PM), <http://www.elpasotimes.com/story/news/2017/02/15/ice-detains-domestic-violence-victim-court/97965624/> [<https://perma.cc/ZZN8-A6VH>].

Still, the circumstances of political geography in El Paso provide a relatively hospitable environment to address issues related to domestic violence. El Paso immigrants are not viewed as alien invaders without rights. Indeed, advocates report that local law enforcement is inclined to assist domestic violence victims without prejudice and without regard to their immigration status, thereby providing assurances that most claims can safely be made.³⁶⁸ County Attorneys, judges, and other courthouse officials have publicly protested the presence of federal immigration officers at the state courthouse.³⁶⁹ Similarly, the presence of Mexican–American politicians representing El Paso has provided support for expanding public services to undocumented victims.³⁷⁰ The DLP has played an important role within this supportive system by providing funds to attorneys when clients are unable to assume responsibility for fees and taking steps to assure that victims receive the protections of the law.³⁷¹ The availability of family law attorneys who speak Spanish and are willing to collaborate with the consulate further enhances the efficacy of DLP services.³⁷²

iii. *San Francisco*

The San Francisco Consulate is obliged to address a wide range of family law concerns.³⁷³ As in North Carolina, matters of custody and child support are among the most complicated disputes to resolve. The legal issues implicate trans-national families, bi-cultural traditions, and bi-national juridical systems—all rendered more complicated by the personal and emotional circumstances of each case.³⁷⁴

The San Francisco Consulate is uniquely positioned to enjoy the extended support infrastructure provided by the state of

368. Interview with Community Organization Advocate, in El Paso, Tex. 3 (Apr. 28, 2016).

369. See, e.g., Schladen, *supra* note 367.

370. Interview with Community Organization Advocate, in El Paso, Tex. 20 (Apr. 28, 2016).

371. Interview with Consular Official, in El Paso, Tex. 1 (Apr. 17, 2016); Interview with Attorney, in El Paso, Tex. 5 (Aug. 12, 2016).

372. Interview with Attorney, in El Paso, Tex. 10 (Aug. 10, 2016).

373. Interview with Consular Staff, in S.F., Cal 15 (Mar. 16, 2016).

374. *Id.*

California.³⁷⁵ The DLP staff collaborate closely with state and local child protection agencies and are beneficiaries of a judiciary familiar with and sympathetic toward equitable solutions of custody and child support disputes.³⁷⁶ Perhaps most important, the California Reuniting Families Act of 2012 obliges courts to conform to a statewide policy designed to eliminate barriers to family separation resulting from the detention or deportation of an immigrant parent or child.³⁷⁷ The Act further requires child-protection workers to determine if undocumented children qualify for immigration relief.³⁷⁸ Additional safeguards serve to prevent judicial bias against undocumented families by mandating confidentiality in court records with regard to immigration status.³⁷⁹

Under these circumstances, the success of the DLP in San Francisco stands in sharp relief. The staff is accessible, competent, and committed to Mexican immigrants with family law problems.³⁸⁰ The political geography of San Francisco provides an immigrant-friendly environment that acts to facilitate the work of the DLP, including the availability of diverse community organizations, Spanish-speaking advocates, and state laws designed to protect the interests of immigrants.

c. Human Rights/Civil Rights Related Claims³⁸¹

Mexicans have long suffered human rights abuses in the United States.³⁸² They have been lynched for being “too Mexican.”³⁸³ They

375. Interview with Attorney, in S.F., Cal. 6 (May 25, 2017). Some anti-domestic violence groups focus on the needs of Latina immigrants as their core mission. *Id.* Interview with Consular Staff, in S.F., Cal. 10 (Mar. 16, 2016).

376. Interview with Consular Officials, in S.F., Cal. (Dec. 11, 2015); Interview with Consular Official, in S.F., Cal. 6 (Oct. 20, 2016) (describing processes for obtaining child support orders and distributing payments).

377. See Lincroft, *supra* note 228, at 2.

378. *Id.*

379. *Id.* at 3.

380. Interview with Attorney, in S.F., Cal. 2 (May 25, 2017); Interview with Attorney, S.F., Cal. 12 (Mar. 14, 2016).

381. This Article uses human rights and civil rights interchangeably. See *supra* note 129 and accompanying text.

382. Linda Bertling Meade, Note, *Human Rights and the Current Immigration Debate: Legislative Proposals' Effects on the Mexican Immigrant Population*, 3 S.C. J. INT'L L. & BUS. 107, 140 (2007) (noting that Mexican immigrants in particular have been subjected to discrimination and human rights violations).

have been harassed for speaking their native language or otherwise expressing their culture.³⁸⁴ The Southern Poverty Law Center founded in 1971 to defend civil rights and challenge racist practices committed largely against African-Americans recently turned its attention to the circumstances faced daily by Latino immigrants who are subjected to practices similar to those endured by African-Americans, especially during the Jim Crow period.³⁸⁵ Latina immigrants suffer disproportionate rates of sex discrimination and sexual harassment at work.³⁸⁶

In recent years, as immigration enforcement has intensified, Mexicans have long been disproportionately subjected to racial profiling and “aggressive migration control tactics.”³⁸⁷ Mexicans entering the United States have been murdered, beaten, assaulted, raped, threatened, robbed, and wrongfully detained at the hands of U.S. border patrol agents.³⁸⁸ While in detention, they have often been deprived of their rights pursuant to the Vienna Convention on Consular Relations to seek assistance from a consulate official.³⁸⁹

383. BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 115 (2004); Yolanda Vazquez, *Perpetuating the Marginalization of Latinos: A Collateral Consequence of the Incorporation of Immigration Law into the Criminal Justice System*, 54 HOW. L.J. 639, 649-50 (2011) (describing a history that included lynching).

384. See Vazquez, *supra* note 383, at 649-50.

385. *Under Siege*, *supra* note 305, at 32, 36, 37 (describing, for example, racism; taunts, such as “Go Back to Mexico”; and threats of violence).

386. See *id.* at 28 (describing the situation of a pregnant Mexican worker).

387. Weissman, *supra* note 12, at 172. The “appearance of Mexican ancestry” is deemed a relevant factor in determining whether reasonable suspicion exists for investigating a violation of immigration law. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975); see also Kevin R. Johnson, *The Forgotten “Repatriation” of Persons of Mexican Ancestry and Lessons for the “War on Terror”*, 26 PACE L. REV. 1, 11-12 (2005); *Under Siege*, *supra* note 305, at 47.

388. Jorge A. Vargas, *Consular Protection to Illegal Migratory Workers and Mexican Undocumented Minors: Two Sensitive Issues Addressed by the Thirteenth Annual Meeting of the United States-Mexico Binational Commission*, 6 J. TRANSNAT’L L. & POL’Y 143, 159-60 (1996) (reviewing findings presented at the meetings); Weissman, *supra* note 12, at 172; see also Elvia R. Arriola, *Latcrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245, 257 (1997) (noting human rights abuses of Mexicans affected by enforcement activity).

389. Vienna Convention on Consular Relations, art. 36, Apr. 24, 1963, 596 U.N.T.S. 261.

Mexicans are disproportionately sentenced to the death in U.S.-domestic criminal capital cases.³⁹⁰

The Mexican Consulate has an equally long history of seeking to protect its citizens from discrimination and related harms.³⁹¹ Mexican diplomats have been vigilant and forceful in their efforts to protest and protect against mistreatment of their nationals.³⁹² Mexico opposes the death penalty, and consulate staff vigorously—and often successfully—assists in legal battles in death penalty cases.³⁹³ They are diligent in defending the rights and obligations pertaining to the consular notification provisions of the Vienna Convention³⁹⁴

DLP staff collaborate with civil and human rights groups in matters relating to allegations of police brutality.³⁹⁵ Officials often participate in community meetings and host sessions at the offices of the consulate to provide information to immigrants about their civil rights and remedies.³⁹⁶ As with labor and family-related cases, the ability of the DLP to facilitate claims related to human rights is influenced by history, demographics, and socio-legal culture.

i. North Carolina

With the second highest number of counties signing onto 287(g), the North Carolina DLP has identified the denial of the right to contact consular officials as a major human rights issue.³⁹⁷

390. Maritza Perez, *Los Lazos Viven: California's Death Row and Systematic Latino Lynching*, 37 WHITTIER L. REV. 377, 378, 400 (2016).

391. In 1931, Mexican parents, together with the Mexican consulate, successfully sued California's Lemon Grove School District for implementing racial segregation practices. See Meaghan Field, *Voting Equality and Educational Equality: Is the Former Possible Without the Latter and Are Bilingual Ballots a Sensible Response to Education Discrimination?*, 17 WASH. & LEE J.C.R. & SOC. JUST. 385, 388-89 (2011).

392. Spiro, *supra* note 126, at 910.

393. See Fleishman, *supra* note 140, at 360, 394 (describing MCLAP); *id.* at 359, 368-74 (noting that the Mexican Consulate has spent unprecedented effort and resources on behalf of Mexican nationals facing death sentences); Nicole M. Howell, Comment, *A Proposal for U.S. Implementation of the Vienna Convention's Consular Notification Requirement*, 60 UCLA L. REV. 1324, 1342 (2013); *supra* note 146 and accompanying text.

394. Fleishman, *supra* note 140, at 359.

395. See *Programa de Asistencia Jurídica a Mexicanos a Través de Asesorías Legales Externas en los Estados Unidos de América (PALE)*, *supra* note 137.

396. *Id.*

397. Interview with consular staff, in N.C. 10 (Feb. 5, 2016); Interview with consular staff, in N.C. 11 (Apr. 14, 2016) (observing that the requirements under the

Mexican immigrants in North Carolina are routinely subjected to police misconduct and unlawful search and seizures.³⁹⁸ Racial profiling is pervasive, justified by law enforcement who claim that Mexicans are known substance abusers.³⁹⁹ One North Carolina sheriff explicitly ordered his deputies to “go get them Mexicans” and to “lock up any damn Mexicans that you can” during vehicle checkpoints.⁴⁰⁰ These attitudes all but preclude the possibility of a respectful relationship between the consulate and local law enforcement.⁴⁰¹

Moreover, few attorneys are available to litigate human rights abuses on behalf of Mexican immigrants.⁴⁰² The scope of abuse is far beyond the resources of the consulate. The DLP resources are limited to the most egregious cases. Assistance tends to focus on such egregious cases as the shooting death of a Mexican youth while handcuffed in the back of a police vehicle as well as capital cases.⁴⁰³

ii. *El Paso*

The border environment presents a highly charged setting for human rights violations suffered by immigrants. Within the category of legal claims brought to the attention of the El Paso DLP, the percentage of cases identified as “abuse by authorities” is

Vienna Convention on Consular Relations are complied with arbitrarily and inconsistently). *See generally* Vienna Convention on Consular Relations, art. 36, Apr. 24, 1963, 596 U.N.T.S. 261.

398. Interview with attorney, in N.C. 3 (Apr. 4, 2016).

399. *See State v. Villeda*, 599 S.E.2d 62, 64-65 (N.C. Ct. App. 2004). A state trooper admitted to patrolling a specific area “for the purpose of looking for Hispanic males” and asserted that “[e]veryone knows that a Hispanic male buying liquor on a Friday or a Saturday night is probably already drunk.” *Id.* at 64. *See also* interview with attorney, in N.C. 12 (Apr. 4, 2016) (noting that Latinos are often victims of discrimination at work).

400. Brief of Plaintiff in Support of Its Motion for Summary Judgment at 4-6, *United States v. Johnson*, 122 F. Supp. 3d 272 (M.D.N.C. Mar. 3, 2014), (No. 12-cv-1349), https://www.acluofnorthcarolina.org/sites/default/files/Alamance_MSJ_3-3-14.pdf [<https://perma.cc/9RNF-WR6L>].

401. Interview with consular staff, in N.C. 2, 31 (Feb. 5, 2016).

402. Interview with attorney, in N.C. 13 (Apr. 4, 2016).

403. Interview with consular staff, in N.C. 9, 10 (Apr. 14, 2016) (noting that DLP staff cautiously avoided any overt “political” statements or position); Interview with attorney, in N.C. 3 (Apr. 4, 2016). *See supra* note 144 and accompanying text (discussing DLP support and training for attorneys in death penalty cases).

disproportionately higher than other in consular jurisdictions.⁴⁰⁴ Mexicans are routinely detained at the border in isolated and inhumane conditions without access to consulate services.⁴⁰⁵ Without Fourth Amendment protections, immigrants are often indiscriminately searched, subjected to excessive restraints, and denied medical care.⁴⁰⁶ At the port of entry, attorneys have been refused access to clients who are being held and denied their rights to contact the Mexican consulate.⁴⁰⁷ Immigrants in detention centers are treated poorly and denied adequate nutrition, medical services, and access to religious workers.⁴⁰⁸ They have had their property seized without due process or compensation.⁴⁰⁹

A militarized border does not lend itself to respect for civil liberties and human rights.⁴¹⁰ Nor does it readily admit social justice intervention and legal intervention of any kind. While local police are reported to be less aggressive toward immigrants, and less likely to engage in racial profiling, CBP checkpoints interfere with the ability of immigrants, whether authorized or not, to move about in their daily lives.⁴¹¹ Consulate officials have focused their attention on ameliorating conditions in detention.⁴¹² There are few attorneys who undertake representation in these matters; thus, the DLP receives numerous requests for assistance.⁴¹³

404. Guillermo Cantor & Walter A. Ewing, *Still No Action Taken, Complaints Against Border Patrol Agents Still Go Unanswered*, AM. IMMIGR. COUNCIL (Aug. 2, 2017), <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered> [https://perma.cc/C7XU-7A7M]; Interview with consular official, in El Paso, Tex. 10 (Apr. 17, 2016) (noting that they are questioned about drug trafficking and treated as drug traffickers on the basis of nothing more than their nationality).

405. Interview with attorney, El Paso 2 (Aug. 12, 2016); Interview with attorney, in El Paso, Tex. 2 (Aug. 12, 2016).

406. *Id.* at 4 (describing CPB handcuffing a woman to a chair and holding a woman in renal failure and in obvious need of dialysis treatment due to her swelling).

407. *Id.*

408. *Id.* at 2-4.

409. Interview with consular official, in El Paso, Tex. 12 (Apr. 17, 2016).

410. Interview with community organization advocate, in El Paso, Tex. 10 (Apr. 28, 2016) (describing militarization as a “crime”).

411. *Id.*; Interview with attorney, in El Paso, Tex. 6 (Aug. 10, 2016).

412. Interview with attorney, in El Paso, Tex. 3 (Aug. 12, 2016).

413. *Id.* at 10 (noting improved conditions in one of the detention centers located in El Paso).

iii. *San Francisco*

Comparatively few human rights cases are reported to the San Francisco consulate.⁴¹⁴ According to the DLP, the most pressing problem in San Francisco is human trafficking (both sex and labor).⁴¹⁵ With one of the highest rates of trafficking in the state, San Francisco created a special task force that includes the Mexican consulate as a member to address the issue.⁴¹⁶ DLP staff have gained recognition as experts in the field, and the DLP consul serves as a certified trainer at community events.⁴¹⁷

Other instances of reported human rights violations are attributed to federal immigration enforcement practices. Consulate staff often raise concerns about human rights abuses at immigration detention centers.⁴¹⁸ The hospitable, immigrant-friendly environment created by state and local policies and practices does little to ameliorate the abuses associated with federal deportation practices. However, in San Francisco, immigrants may have greater opportunity for redress. The San Francisco Human Rights Commission is charged with the implementation of the city's Sanctuary Ordinance.⁴¹⁹ Consulate staff serve as members of the Commission, thus providing an opportunity for the DLP to participate in the deliberation of human rights claims.⁴²⁰

414. Interview with consular staff, in S.F., Cal. 15 (Mar. 16, 2016).

415. *Id.* at 12.

416. SAN FRANCISCO DEPARTMENT ON THE STATUS OF WOMEN, MAYOR'S TASK FORCE ON ANTI-HUMAN TRAFFICKING: HUMAN TRAFFICKING IN SAN FRANCISCO REPORT (2016), http://sfgov.org/dosw/sites/default/files/2016%20Human%20Trafficking%20in%20San%20Francisco%20Report_0.pdf [<https://perma.cc/U7LF-53M9>]. Mexican identity of victimhood does not relate to where the trafficking took place. *Id.* at 7; see also *2016 Anti-Human Trafficking Awareness Campaign*, S.F. COLLABORATIVE AGAINST HUM. TRAFFICKING, <http://sfcaht.org/2016.html> [<https://perma.cc/E4EP-HXDE>] (last visited Mar. 5, 2018); Interview with consular staff, in S.F., Cal. 26 (Mar. 16, 2016).

417. S.F. Collab Against Human Trafficking, (training event on Jan. 26, 2016); Interview with consular staff, in S.F., Cal. 25, (Mar. 16, 2016); Interview with attorney, in S.F., Cal. 1 (May 25, 2017).

418. Interview with consular official, in S.F., Cal. 5 (Dec. 11, 2015) (observing that conditions are often inhumane; Mexicans who have violated no criminal laws are nonetheless housed with criminals).

419. *Id.*

420. *HRC Partners with Mexican Consulate to Fight Discrimination*, S.F. HUM. RTS. COMMISSION (May 2010), <http://www.sf-hrc.org/ftp/Newsletter/May2010/May2010.htm#article7> [<https://perma.cc/P46G-UJP8>].

IV. LESSONS LEARNED: ADVANCING JUSTICE THROUGH THE DLP

Anti-immigrant sentiment in the United States has a long history. In this hyper-partisan moment in time, however, the divisiveness has been exacerbated.⁴²¹ Beyond racial and ethnic hostility, antagonism toward immigrants in twenty-first century America reflects the dislocation wrought by globalization, where people are caught “between inside and outside” and personal well-being and collective security are “threatened” by a ubiquitous Other.⁴²²

Political geography and the politics of devolution have acted to subvert a constitutional mandate to provide legal protections pertaining to rights of personhood to all persons regardless of status. Indeed, the use of devolution as a means of immigration enforcement serves as “a bellwether of deeper social changes.”⁴²³ Outside of immigration matters, political geography acts to expand or constrict rights pertaining to minimum wages, LGBTQ protections, housing discrimination, reproductive rights, and environmental matters, raising fundamental issues related to equal protection under the law.⁴²⁴ Constitutional rights are subject to local cultural assumptions and demographic patterns and shifts rather than treated as matters inherent to human rights and human dignity.

It is unlikely that immigration reform will soon clarify lines of legal authority. The federal government does not appear disposed to reclaim its historic authority over the implementation of immigration laws. Immigrants and their advocates have reason to be concerned with what federal reforms might accomplish and whether immigrants, no matter where located, would benefit or suffer greater harms. Under these circumstances, immigration scholars and

421. Steven Porter, *What Do The SPLC's Post-Election Hate-Incident Reports Mean?*, CHRISTIAN SCI. MONITOR (Dec. 1, 2016), <https://www.csmonitor.com/USA/Society/2016/1201/What-do-the-SPLC-s-post-election-hate-incident-reports-mean> [<https://perma.cc/7UXL-GY7J>] (reviewing a dramatic increase in “real-world” hate-related incidents against immigrants and others since the 2016 U.S. Presidential election).

422. See Jeremy Harding, *Where Are We Now? Responses to the Referendum*, 38 LONDON REV. BOOKS 8 (July 14, 2016), <https://www.lrb.co.uk/v38/n14/on-brexite/where-are-we-now> [<https://perma.cc/5BV3-STKV>] (reviewing responses to Brexit).

423. Munger, *supra* note 33, at 666.

424. Emily Badger, *Blue Cities Want to Make Their Own Rules. Red States Won't Let Them.*, N.Y. TIMES, July 6, 2017, at A1 (reviewing the increase in state pre-emption laws).

advocates are correct to ask, “how can justice be advanced,” rather than considering “what would be a perfectly just institution” at the federal or local level to protect immigrant rights.⁴²⁵ The DLP, a foreign entity with no authority to enact laws or adjudicate claims, and limited by the local culture and the politics of devolution, might not be considered “a perfectly just institution.”⁴²⁶ However, it does establish a set of standards and provide a model for transcending the idiosyncrasies of place through its protocols and practices and thus contributes to advancing justice. As an agency that acts in function of existing legal processes, the contributions of the DLP carry significant weight.⁴²⁷

Migration scholars have called for a “robust national integration policy infrastructure” to establish a baseline of benefits “as part of a cohesive vision” to support immigrants.⁴²⁸ The essential features of such arrangements include partnerships among different levels of federal and state governments, civil society groups, and community non-profits.⁴²⁹ Such networks would have common goals: “to welcome immigrants and foster positive public discourse.”⁴³⁰ Immigrants, regardless of status, would enjoy “opportunities for inclusion and a sense of belonging even in the absence of federal legislation and integration policies.”⁴³¹

The Mexican Consulate/DLP provides such an infrastructure. Although it too functions in the context of the ambiguities and contradictions of political geography, it nonetheless offers a framework in which to provide unifying and uniform protections for its constituents in the pursuit of justice. As this Article has demonstrated, the DLP’s efforts, wherever they are located, can be mapped at federal, state, and local levels and include a range of civil society actors. Through reciprocal relationships with government

425. Harry Johnstone, Book Review, *TIMES LITERARY SUPP.* (May 31, 2017), <https://harryjohnstone.com/2017/06/01/six-authors-in-search-of-justice/> [<https://perma.cc/VL9K-7AMT>] (reviewing MICHAL NEWMAN, *SIX AUTHORS IN SEARCH OF JUSTICE* (2016)).

426. *Id.* Engel & Yngvesson, *supra* note 13, at 304 (noting that there is more than “the final authoritative pronouncements of prestigious legal tribunals” that contributes to social change).

427. *See id.*

428. Els de Graauw & Irene Bloemraad, *Working Together: Building Successful Policy and Program Partnerships for Immigrant Integration*, 5 *J. MIGRATION & HUM. SECURITY* 105, 105, 107 (2017).

429. *See id.* at 106.

430. *Id.* at 114.

431. *Id.*

agencies and non-state actors, DLPs have achieved mutual accountability and commitments and obtained a level of effectiveness and authority.⁴³² The DLPs employ strategies described as best practices by migration scholars: They “draw[] on the energy, ideas, and work of community-based nonprofit organizations.”⁴³³ They “tap into the existing knowledge, practice, and culture within immigrant communities in their cities and states.”⁴³⁴

It is possible to contemplate the DLP as the basis of a new form of transnational social and legal protections, transacted through the legal and administrative structures of both the sending and receiving state.⁴³⁵ The DLP employs the mechanisms of bilateralism described by Christina Rodríguez as crucial to addressing issues affecting immigrants and migration:

(1) diplomatic and information-sharing networks that involve consultation and conferencing among cabinet officials and agency heads in both the United States and Mexico; (2) actual cooperative ventures between administrative officials on both sides of the border; and (3) civil society networks (many of which do not involve state actors) developed to serve the needs of Mexican migrants inside the United States.⁴³⁶

The DLP exemplifies these characteristics. Staff engage with government agencies on both sides of the border and collaborate with advocacy groups and civil society agents to bring to bear transnational support on behalf of immigrant rights.

As this Article demonstrates, the ability of immigrants to claim rights is dependent on “the thumbprint of the culture [] showing up in the minds of the people living in that community.”⁴³⁷ Anti-immigrant bias “is like the smog that hangs over a community. It

432. For a helpful discussion of “authoritative advice” derived from entities without binding authority see generally Andrei Marmor, *Abstract to Soft Law, Authoritative Advice, and NonBinding Agreements* (May 14, 2017), <https://ssrn.com/abstract=2968128> [<https://perma.cc/TMM9-H7UT>].

433. de Graauw & Bloemraad, *supra* note 428, at 105.

434. *Id.* at 114.

435. See Peggy Levitt et al., *Transnational Social Protection: Setting the Agenda*, 45 OXFORD DEV. STUD. 2, 3 (2017) (describing new forms of transnational social protections); Rodríguez, *supra* note 105, at 1 (noting that “migration is inherently international, and its management requires engagement with other governments and with social facts beyond U.S. control”).

436. Rodríguez, *supra* note 105, at 3-4. To be sure, the Mexican government has an interest in maintaining engagement with its diaspora upon whom they rely for remittances, for support for hometown development projects, and whom they cultivate loyalty for political purposes. See FitzGerald, *supra* note 25, at 114.

437. *In the Air We Breathe*, *supra* note 86.

becomes the air people breathe.”⁴³⁸ Patrick Taran, Senior Migration Specialist at the International Labor Organization in Geneva, has observed that “violations of migrants’ human rights are so generalized, widespread and commonplace that they are a defining feature of international migration today.”⁴³⁹ The DLP enables Mexican-immigrant communities to achieve rights protections, makes salient the violations suffered by immigrants, endorses norms of inclusion, and encourages a sense of belonging and dignity. The importance of DLPs as a structure with potentially transformative value cannot be overstated.

438. *Id.*

439. Patrick A. Taran, *Human Rights of Migrants: Challenges of the New Decade*, in *THE HUMAN RIGHTS OF MIGRANTS* 7, 9 (Reginald Appleyard ed., 2001).