



Center for Population Dynamics

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Tempe, Arizona, 85287-3701, USA www.asu.edu/cepod

CePoD Working Paper # 09-111

Gendered Paths to Legal Citizenship: The Case of Latin-American Immigrants in Phoenix, AZ

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2009

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ABSTRACT

In this paper we seek to contribute to a greater understanding of legal citizenship by exploring the gendered experiences of Latin American-origin immigrants in the greater Phoenix metropolitan area. We explore this gendered process by relying on in-depth interviews conducted from 1998 through 2007 with women and men from Guatemala, El Salvador, Honduras and Mexico. The data reveal that although immigration policies and procedures are presumably gender neutral, gender ideologies permeate the legal regime to differentially affect the legalization, residency and citizenship processes of immigrant women and men.

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INTRODUCTION

“We hold these truths to be self-evident, that all men and women are created equal.”

Declaration of Sentiments, Seneca Falls, New York
Convention July 1848 modification of the Declaration of
Independence

“I don’t understand. I mean, I came here with my bachelor’s in business and I had to start at minus zero. I have worked just as hard as my husband, but I can’t get my legal permanent residence because we decided that I should stay at home with my son until he turned 5 instead of leaving him in childcare . . . I am waiting for my husband to put in my papers, but he has not yet done this. He says we should wait until he has his citizenship and then it will be faster and what can I do? . . .”

Cristina, 43 years old Mexican

In the last two decades feminist scholarship has greatly contributed to redefining the masculine subjectivity of the gender-neutral “citizen,” revealing the emphasis of the modern nation-state in the patriarchal nuclear family, and questioning the Enlightenment’s delivery of liberty to all members of the modern nation-state (Benhabib 2002; Bloemraad, Korteweg and Yurdakul 2008; Leonard and Tronto 2007; Prokhovnik 1998; Yuval-Davis 1997; 1999). In essence, feminist scholarship reveals a legacy of differentiation of full citizenship in the United States by gender whereby women historically have held a dependency status in relation to men. As with citizenship, immigration laws and legalization processes shape the experiences of immigrants in gendered ways. Through a prism of gender, in this paper we examine the experiences of Latin American-origin immigrants in Phoenix, Arizona. We build on insights from different bodies of literature, including citizenship, feminist legal theory, and immigration more generally to elucidate embedded gender inequalities in immigration law. While we do not seek to test propositions derived from these bodies of work, they help us illuminate the central role of gender in the legalization process in ways that are not overt but that shape in multiple ways this process. In so doing we contribute an on-the-ground case to discussions about

citizenship.¹ We do not intend to review immigration laws in a comprehensive manner to identify where gender hierarchies are embedded in the laws; instead we seek to explain how and in which ways gender matters by focusing on specific cases that illustrate how gender hierarchies and ideologies are embedded in immigration law despite its presumed neutrality.

Our empirical cases reveal that gender hierarchies are embedded in immigration laws, which in turn shape the legalization processes that form the backbone of legal citizenship. We explore the gendered aspects of the legalization process by focusing on four basic immigration categories: undocumented, family reunification, employment-based, and asylee/refugee.

We find that the legalization process intersects with social markers such as class, race/ethnicity and, our main focus in this paper, gender. Both women and men can at some point be classified as dependents during the legalization process. However, given societal gender norms, the legalization process reinforces gender roles of submission and dominance among women while it enhances a breadwinner role among men. Given patriarchal regimes defined by masculine traits upheld both in the United States (see Kimmel 2005) and in the immigrants' home countries (see Broughton 2008), male and female gender differentiation and hierarchies are ultimately buttressed by legal status categories in the United States. As such, although immigration policies and procedures are by law gender neutral, gender differentiation continues to inform the contours of legalization, residency and citizenship. This occurs in ways that mask explicit exclusionary practices based on gender; it happens through associations of gender constructs with characteristics and behaviors that end up positioning women as dependent, which can lead to vulnerability. Gender inequalities are encoded in the formal process and manifested at all stages of the legalization and citizenship process.

After a brief review of the different bodies of literatures that inform our work, we place this study in a historical context of gendered citizenship structures and practices. We then delineate the basics of the legalization process based on our empirical cases that illustrate complexities and challenge a unilinear, dichotomous, gender-neutral legalization process. Since our work can be relevant to contemporary debates about immigration reform, we end by proposing a few recommendations along those lines.

IMMIGRATION, CITIZENSHIP AND FEMINIST VIEWS ON LEGAL SYSTEMS

The voluminous literature on immigration has examined a wide range of questions, including the central organizing role of gender as it relates to network patterns, work, transnational families and communities (Curran and Rivero Fuentes 2003; Ehrenreich and Hochschild 2002; Espiritu 1999; Feliciano 2008; Gabaccia 1994; Grasmuck and Pessar 1991; Hondagneu-Sotelo 1994, 2001, 2003; Kanaiaupuni 2000; Kelson and Delaet 1999; Mahler and Pessar 2006; Ong 1999, 2003). Whereas this rich literature has shed light on how gender shapes immigrant life, the role of the state, particularly as examined from a gendered angle, has been relegated to a secondary plane. Recently, however, scholars have begun to explore how gender intersects with other factors to shape the practices and discourse of citizenship (Pessar and Mahler 2003). Nonetheless, as Singer and Gilbertson (2003) point out, few studies focus on how gender actually structures the processes of naturalization, “the different migration and settlement experiences of men and women highlight the importance of considering how gendered structures and practices constitute citizenship and the process of citizenship acquisition” (p. 360). They also note the dearth of scholarship that focuses on gender-specific problems that affect non-citizen women and note, along with Nayaran (1997), that this is particularly true for immigrants.

Castles and Davidson (2000) note that the role of gender remains evident in immigration rules, which are still based on a legacy of the subordination of women to a wife and mother figure and men to the role of breadwinner. As Okin (1989) observes, marriage makes U.S. women in general more vulnerable due to income inequalities and the idea that women are supposed to marry and stay married. For example, in 2003, the U.S. Congress agreed to invest a total of \$1.8 billion over six years in marriage promotion programs that encouraged women to marry or remain married (Josephson 2005; Parke 2004). Erez and Copps Hartley (2003) note that this situation becomes precarious for immigrant women, particularly those in abusive relationships. And although in the United States the process of legalization provides immigrants with formal legal membership, it does not erase the regulating effects of a system based on a nuclear heteropatriarchal family structure that determines exclusion of women *and* men not only on the basis of race and class, but also on grounds of morality, potential for becoming a public charge and, specifically for women, the perceived financial dependency based on gender.

History indicates, however, that even when citizenship is made available to previously excluded groups such as women, African Americans, and Latinos, the implementation of formal citizenship rights remains problematic given the unequal distribution of resources, the maintenance of a second-class citizenship, and the marking of certain U.S. citizens as “others” (Bosniak 2006; Glenn 2000; Luibhéid and Cantú 2005; Ritter 2002; Segura and Zavella 2008; Tienda 2002; Lister 1997). However, even when gender continues to play a role in the implementation of immigration laws, we acknowledge that laws provide privileges as well as disadvantages for women and men and that citizenship laws have improved over time. As well, we do not argue that a gendered process necessarily impedes immigrant women from attaining citizenship; in 2004, 54 percent of all naturalized citizens in the United States were women

(Pearce 2006). Instead, we aim to problematize gender-blind theorizing on citizenship by highlighting the fundamentally gendered process of legalization that shapes women and men's experiences differently (Bloemraad, Korteweg and Yurdakul 2008; Boyd and Grieco 2003; Lister 1997; Korteweg 2006; Yuval-Davis 1997, 1999). And although our focus is on gender differences, our empirical data also reveal that immigrants also differ by historical and systemic denials of rights and privileges based on other social positions such as class, race/ethnicity and other factors that produce domination and subordination in the legalization process.

HISTORICALLY GENDERED CITIZENSHIP STRUCTURES AND PRACTICES

To be sure, it is not new that gender inequalities become embedded in legal systems, particularly those governing immigration and citizenship. Nor are immigration policies that channel immigrant women into traditionally low-paying, unpopular jobs that are seen as an extension of women's housework, and that serve to link women's residence and work permits to that of their husband's status exclusive to the United States (c.f. Wihtol de Wenden and Corona DeLey 1986; Caspar and Giles 1986). However, today gender differentiation in the legalization process is implicit, veiled, based on characteristics and attributes *associated* with gender constructions (e.g., based on ideals of morality, potential to become a public charge, financial dependence on others, particularly on men who in turn are viewed as heads of households and breadwinners).² Thus, currently, women still face difficulties in self-petitioning for legal status. For example, the Violence against Women Act of 1994 (VAWA), reauthorized in 2000 and in 2005, and signed into law in 2006, is intended to allow women in situations of domestic violence to self-petition or independently seek legal immigration status in the United States. Yet, in order to qualify for VAWA women must fulfill a series of requirements and present evidence to a judge who determines the validity of the evidence.³ In instances in which the women do not

qualify for VAWA but are victims of other crimes, they can apply for other visas such as U (victims of substantial physical or mental abuse resulting from “qualifying criminal activity”) or T (victims of a “severe form of trafficking in persons”). However, petitioners under these visas, as with VAWA, must also fit a series of requirements and be willing to prosecute the abuser.

Although VAWA represents a respite for battered immigrants, only a narrow group of immigrants are eligible. Many areas of VAWA are left to interpretation and victims who are not willing or are unable to conform to dominant ideologies of race, ethnicity or heteropatriarchy are excluded (Bhuyan 2008). Even when battered immigrant women utilize VAWA, there are no guarantees. The possibilities remain that the applicant will be denied legal status based on her inability to secure sufficient funds, prove moral character, or provide evidence that will suffice in court. According to Vermont Service Center’s immigration officers, from 1990 to March 2005, approximately 38,000 VAWA applications were filed, 30,700 were approved, and 7,200 were denied (Villalón 2007). Thus, although VAWA and other modifications to immigration policies have improved the process of legalization for women, requirements are still based on gendered conceptions of behavior and on ideals about gender roles in a way that disadvantage petitioners.

As Gardner (2005) points out, historically women who have attempted to qualify themselves as self-sufficient find themselves suspect to questioning by immigration officials, of their ability to secure sufficient funds to support themselves and their dependents and of their “moral conduct.” As such, race and gender “linger within the shadow of the law, shading how respectability, domesticity, economic viability, and moral character are visualized at the border” (Gardner 2005: 254) and beyond. Thus, while there are gender-based laws that grant immigrants legal entry to the United States on account of gender violence, the practical application and understanding of such laws reflect practices that still disadvantage and privilege based on gender

ideologies and hierarchies. A brief historical background to the contemporary situation we examine signals an important avenue of continuity and change.

According to Nayaran (1997), citizenship has historically served to determine who is included, who counts, and who is excluded. As feminist analyses point out, those who have tended to be left out are women, frequently underprivileged women of color. But in a democratic society, the underlying assumption is that the state includes as members all those living within its territory; the law is purportedly gender neutral. However, legal citizenship always has consisted of categories that exclude as well as include (see Castles and Davidson 2000). Today, traditional notions of legal citizenship as inclusive of all of who occupy a territory faces new challenges and reaffirmations with globalization and the growing international mobility of people.

Ideas of who may belong to a nation have been contested and have shifted in countries around the world. Changes to U.S. immigration laws, such as the elimination of exclusion based on race and gender from the law were intended to no longer matter legally, yet laws still reflect the exclusionary practices of the society in which they are created and implemented. As others have noted (Castles and Davidson 2000; Hondagneu-Sotelo 1994; Menjívar 2003), gender is not just a tool for classification, but also a relationship between women and men based on socially- and culturally-constructed and defined identities that influence the process of immigration. Thus, Gardner (2005) finds that until 1907 the law “remained mute” on the status of U.S.-born women who married alien men, but by that year, Congress determined that any American woman who married an alien man would herself become an alien. This changed with The Cable Act of 1922. However, this Act only applied to white U.S.-born American women married to noncitizens. The Cable Act restored their citizenship (only if they had not lived outside the U.S. for more than 2 years) and provided U.S.-born American women with more independence, but at the same time it

made it harder for immigrant women who were marrying a U.S. citizen to automatically become citizens themselves. Immigrant women were required to have independent status or be permissible citizens (fit one of the legal categories for admission at the time). According to Gardner, immigration laws facilitated the entry of some women while excluding others, creating a difficult to navigate “labyrinth of immigration and naturalization law” (122). Gender, along with race, remained an admissible factor for discrimination in immigration law until the Immigration and Nationality Act of June 27, 1952. This act “a) made all races eligible for naturalization, thus eliminating race as a bar to immigration; b) eliminated discrimination between sexes with respect to immigration; and c) revised the national origins quota system of the Immigration Act of 1924 by changing the national origins quota formula (see <http://www.uscis.gov/files/nativedocuments/Legislation%20from%201941-1960.pdf>).

Historically, U.S. immigration law has incorporated gendered ideals of women and men by which women have essentially been constructed as dependent, passive, powerless, and deferential and men as independent, the head of household and the breadwinners. Thus, whereas it may be argued that the enactment of gender-neutral laws eradicated gender biases, recent scholarship (Castles and Davidson 2000; Gardner 2005; Luibhéid 2002) maintains that the legacy of coverture, or the notion that women are the property of men, continues to inform the policies that shape legalization processes which promote reunification of families through patriarchal ideals of the male as the head of the household. An example of the establishment of gendered patterns through immigration policies is the Bracero Program. From 1942 to 1964, close to 5 million Mexican *men* called “Braceros” were contracted to perform “men’s work” in U.S. agricultural and the railroad industries (Stacy 2003). As the Bracero Program drew to an end and the Mexican national economic crisis persisted, Braceros began to request legal

permanent residence. By 1965 the amendments to the Immigration and Nationality act (INA) encouraged the reunification of families and promoted the legalization of not only the men, but also their families. The Bracero program along with the family reunification preference system enacted as part of INA of 1965, led to the unintended consequence of a gendered pattern in Mexican immigration to the United States that to this day remains the primary means by which Mexican women legally immigrate to the United States.

Another example of the gendering of immigration laws can be found in the massive U.S.-bound Central American migration to the United States through asylum and refugee applications propelled by civil wars and their aftermath beginning in the early 1980s. The 1980 Refugee Act defines a refugee as:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and unable or unwilling to avail himself or herself of the protection of that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, social group, or political opinion (U.S. Office of Refugee Resettlement 2008).

However, even though both Central American women and men have had very low levels of successful asylum applications, many women were precluded from obtaining it because though they also suffered persecution, the bases for granting this status recognized in the law, such as direct political persecution, fell more in line with men's than with women's experiences (Greatbach 1989). Women suffered many indirect, difficult to document, forms of political violence, some of which resulted from their relationship men who in turn were being persecuted.

At the 2003 meeting of the UN Division for the Advancement of Women (DAW), it was recognized that some of the major obstacles for women seeking asylum are access to asylum information, recognition of the level of persecution they have suffered or fear they may suffer and acknowledgement of the forms of persecution specific to women. “In selecting refugees for resettlement, many women and girls are often quite literally invisible to those who do the selecting because they do not inhabit public spaces, do not appear on registration lists as individuals rather than members of a family group, and are inhibited from interacting with strangers” (Newland 2004:2). As the United Nations admits and scholars of gender and refugee law indicate (Crawley 2001; Anker 2002), it is not only the lack of the use of the terms “sex” and “gender” in the U.N. Convention of 1951 (on which the 1980 U.S. Refugee Act is based) that creates the exclusion of gender specific needs, but once again, the “perspective and interpretation” of a framework based on male experiences that reproduce gendered hierarchies. As Haines points out:

The failure of decision-makers to recognize and respond appropriately to the experiences of women stems not from the fact that the 1951 Convention does not refer specifically to persecution on the basis of sex or gender, but rather because it has often been approached from a partial perspective and interpreted through a framework of male experiences (2003:327).

As such, women have found it difficult to fit the requirements to prove persecution as specified by the law as they rely on their relationship to men (many times a spouse) for the documentation in their legal status cases.

In our work we find that gender differences remain central in organizing the immigration experience as women predominantly remain dependent on men during their legalization process

and men's position as head and breadwinner figures prominently. Women seldom make use of the category of employment-based legalization (that would allow them to go through the process without visa dependency). Thus, purportedly gender-neutral laws are hardly so, as immigration laws have not existed, nor do they exist today, in a vacuum of the social milieu (and hierarchies of power) within which they are enacted and administered. As such, the law embodies the gender hierarchies of the society at large.

DATA AND METHODS

We rely on 51 in-depth interviews with women and men from Mexico, El Salvador, Guatemala and Honduras conducted in Phoenix between 1998 and 2007.⁴ We used a purposive approach to identify potential study participants, and relied on the expertise of key informants in churches, sports and social clubs, community organizations that aid migrants, and neighborhood shops and restaurants to reach them. We also contacted a few informants through word of mouth. None of the study participants experiencing domestic violence were contacted through a shelter, although some of the agencies used by the participants (e.g. Department of Economic Security and immigration centers) provide assistance or refer their clients to domestic violence services. Residence in Arizona for at least several months and age over 18 years at the time of the interview were the main common characteristics among this diverse group of immigrants.

Arizona's geographical location as part of the US/Mexico Border has seen an increase in its foreign-born population.⁵ Since 1990, Arizona has become one of the new major destinations for immigrants, along with Nevada, North Carolina, Georgia, and Colorado.⁶ The foreign-born population in Arizona increased from 278,205 to 656,183 in the years between 1990 and 2000, a 135.9 percent increment, and between 2000 and 2007, it went from 656,183 to 991,584, a change of 51.1 percent (Migration Policy Institute 2009). Of Arizona's foreign born, 70.5 percent

reported Hispanic or Latino origins, compared to 22.1 percent among the native-born.⁷ And two thirds of the foreign born, or 65.6 percent, were born in Mexico, a proportion that has been declining slightly in the past two decades.

We conducted the interviews in the location of the informants' choice, usually their homes, which gave us the opportunity to gain valuable insights into their lives. However, when requested, we conducted the interviews at other sites, such as restaurants or libraries. When appropriate, we provided individuals with information about local services, social welfare and food banks, educational and employment resources, and domestic violence agencies. We assigned each participant a pseudonym and when necessary also altered the narratives slightly in order to maintain the participants' confidentiality and safety. All interviews were conducted in Spanish and then transcribed; we only translated into English the quotes used in this paper. About half of the study participants were interviewed more than once.⁸ Obviously, the methods we employed cannot produce statistically generalizable results, but they generated immensely rich information, are the best course in trying to access hard-to-reach populations, and the multiple points of entry we used helped us to avoid reaching a socially homogenous group.

Of the total participants, 17 were women from Central America (8 from El Salvador, 8 from Guatemala and 1 from Honduras) and 20 from Mexico.⁹ In addition, 14 men participated in the study, 6 from El Salvador, 2 from Guatemala, 1 from Honduras, and 5 from Mexico. Consistent with migration patterns to Arizona, the majority of the Mexican immigrant men and women originated in the Northern Mexican region; however, there were several who originated in the Southern states of Chiapas and Oaxaca. The women's age ranged from 20 to 66 and the men's between 21 and 62. Of interest to us are the participants' years of residence in the United States; the length of U.S. residence for women ranged from several months to 26 years, and for

the men, from several months to 36 years. The women worked caring for children or the elderly, in the fast food industry and dry cleaners, and cleaning homes during the day and offices at night. One Mexican woman worked in journalism. The men worked in construction, factories, and other maintenance type of work. There were two Salvadoran and two Guatemalan couples who were business owners; both had moved from California. As the empirical cases will show, while some of the women and men had higher educational levels in their home countries, these did not translate into higher status/paying jobs in the United States, a situation closely linked to the legal status of the individuals.

At the time of the initial interview, among the women, 5 Mexican, 3 Salvadoran and 1 Guatemalan had obtained their legal permanent residence (LPR). Although several mentioned that they would apply for their naturalized citizenship when they became eligible or were in the process already, only one Mexican woman had become a naturalized citizen. Another 12 Mexican, 3 Guatemalan, and 1 Salvadoran women were undocumented and had no legal basis to apply for legal permanent residence, and 2 Mexican, 4 Salvadoran, 4 Guatemalan and 1 Honduran women remained in some sort of legal limbo (in between statuses). Of the 14 men, 2 Mexicans, 1 Salvadoran and 1 Guatemalan had obtained their LPR. Like the women, while some men were in the process or wished to obtain their naturalization, only one Mexican man had become a naturalized citizen. Two Mexican, one Guatemalan, one Honduran, and 3 Salvadoran men were undocumented and had no legal basis to apply for legal permanent residence, and 2 Salvadoran men remained in legal limbo. Our data are indicative of the legalization process itself; relatively few individuals “make it” to citizenship and the process differs for women and men. And despite notable differences among our study participants, these immigrants shared legal liminality (Menjívar 2006), a gendered/ethnicized national identity as

Salvadoran, Guatemalan or Mexican immigrants, and marginal economic positions. Yet although their narratives expose the complex connections between legal status, class, ethnicity and gender, in this paper our emphasis remains on gender.

UNDERTAKING CITIZENSHIP

This section reveals the complexity of the legalization process by exploring the experiences of immigrant women and men vis-à-vis the categories of entry dictated by immigration law. Women and men enter or regularize their statuses in the United States through the following basic immigration categories: family reunification, employment-based, temporary statuses, and asylee/refugee (we combine these last two because this is relevant for Central Americans). While women participate in all the categories, family reunification remains the main avenue for female legal immigration and, most importantly, a category that underscores how and why gender continues to inform the legalization process. Consistent with our empirical data, we focus on these basic categories plus the undocumented for reasons we identify later. Ultimately, while these categories appear discrete and straightforward, shifts between them occur in a non-linear fashion, leading to lengthy legalization processes as individuals move from one category to another and not always on a path to legalization (Menjívar 2006). This examination highlights the liminal states that individuals navigate, it exposes the erroneous assumption that this process is clearly demarcated by categories, and it highlights the central role of gender in the process.

Contrary to public perceptions, “the path to citizenship” is not unilinear; it is a bumpy one for most immigrants. Statuses confer various levels of rights and some contain a great deal of uncertainty for the individuals attempting to remain in the United States. Naturalized citizens have permanent access to the United States, while legal permanent residents remain subject to having their permanent residence revoked and have limited access to some public services; those

protected under Temporary Protected Status remain in legal limbo, but have the right to live and work in the country legally; and the undocumented have some civil and even some labor rights, but overall live in the United States with very few rights given that some consider their presence in the United States a crime. So anything below citizenship by birth or naturalization will hold to some degree or another a greater or lesser level of rights¹⁰. In addition, we must add that the immigration process is also a fundamentally gendered course. Thus, in line with the complexities of immigration law, we would like to note that when we use a particular case as an example in a category, it does not mean that the case could not also serve to illustrate another category. As such, for example, the category of undocumented contains cases of individuals who are undocumented or in legal limbo, and the category of refugee/asylum also contains examples of cases at various stages of legalization including temporary statuses. And while there are people who fit multiple these categories, there are also those who do not fit them neatly, and still others who do not fit any of the categories at all (they are the undocumented). And most, if not all, immigrants find themselves at one point or another in temporary categories (Coutin 2000a), in liminal legality (Menjívar 2006). Importantly, an undocumented status remains tied to other forms of quasi-legalization and legalization, and because of the fluidity that the movement between categories has come to embody, we treat undocumented status as integral to the entire process. And while mobility from one legal category to undocumented occurs with ease, mobility from undocumented into a legal category usually requires a lengthy emotional and financially trying process.

Undocumented

While an undocumented status is technically not a step to legalization, in reality, an undocumented status is where some immigrants start or, more significantly, where they find

themselves at some point in the legalization process. Also, a point that is often ignored in public debates (as well as in academic circles) is that more and more, laws have made it easier to shift from a documented to an undocumented status, but not visa versa. Increasingly, U.S. immigration policies have left immigrants, women and men, in undetermined legal statuses that can revert to undocumented status for longer, indefinite periods of time (Menjívar 2006) thus making an undocumented status a dynamic and integral category of the legalization process.

The undocumented include those individuals who enter the country without appropriate/no documentation, false documentation, overstay their visa,¹¹ or fail to complete a petition for permanent legal residence (LPR). In addition, those applying for LPR may become undocumented if they fail to comply with regulations on their paperwork. Estimates of how many undocumented individuals reside in the United States vary, but recent calculations indicate that there are between 11.5 and 12 million, and women are estimated to comprise about 35 percent of this group (Passel 2006). Unlike popular images that attribute individual volition to individuals in this category, painting undocumented immigrants as willingly “choosing” this status, bureaucratic backlogs and the structure of immigration law itself shape this status for a good part of this population. Family members, a majority of whom are women and children, can wait for as long as 10 to 15 years for an entry visa under the different family reunification categories (McKay 2003-see also Boyd and Pikkov 2005). Although women, especially from Mexico, were not overrepresented in the undocumented population, in recent years this has started to change (see Massey, Durand, and Malone 2002).

Thus, for most individuals, the process toward LPR and from there to citizenship is a long, costly, and difficult path in which gender plays a significant role. This is the case of Lucía, a 49-year-old Mexican woman whom we met as we stayed late to work at the building she had

been designated to clean at our university. One of the first things that strikes as one meets Lucía is her impeccable appearance; with her coiffed hair, make-up, and manicure she always looks as if she is on her way to an elegant event. At first our conversations centered on the fact that we usually were the last to leave the building, but as we got to know her, details about her legalization process started to emerge and she accepted to be interviewed formally. Lucía entered the United States undocumented for the first time in 1985. After thirteen years in the United States, her husband decided to return to Mexico. While he had obtained his LPR, she had remained undocumented because he never submitted a petition for her. As Lucía explained, this was just one of the many ways for her husband to maintain control and to ensure that she would continue to endure the abuse in their relationship. He would threaten that if she were to leave him, he would have her deported and her citizen children would stay with him. A year after they returned to Mexico, with the support of a neighbor and feeling her children were older and less dependent on her, Lucía left her abusive husband of twenty-two years. Upon her return to the United States, Lucía reasoned that her prior thirteen years of residence and her citizen children would make a difference in her application to regularize her status. Lucía soon found otherwise:

[B]ut no, later I found out that because I did not have anything [documents], to prove my residence here [in the United States] because I had not worked here and also because I had left him [her husband] those years were lost and I would have to find another way of getting my papers . . . Some people would tell me that I should find myself a boyfriend and get married, but I would say, ‘Why would I do that now?’

In deciding to leave her husband, Lucía gained her freedom from that relationship, but at the cost of severing ties with her family, including her children and the life of luxury her husband had afforded her. As she became familiar with U.S. immigration laws, she realized that her hope for

her husband to petition her LPR had always been an illusion that he had created. She had never had any documents to prove her U.S. residence such as pay stubs, utility bills, rental and later property ownership agreements, which are required to file an application; they had all been under her husband's name. Thus, she could not establish the proof of residence. Lucía would have to find another venue for acquiring her legal residence. She became aware that she did not qualify for VAWA as she did not meet any of the requirements listed for this protection. She had lived outside of the country and had no way of proving the abuse; she had never called the police in either country and thus there was no documentation in the criminal justice system. After living undocumented for three years, Lucía initiated her LPR application process through her eldest U.S. citizen daughter, who had turned twenty-one and could now petition for her mother. However as Lucía explains “this took time and \$4,000 dollars because no one helped me out [financially]; I did it all myself.” Yet, Lucía felt fortunate and was proud because unlike many other undocumented women and men, she was able to get her LPR through her daughter.

Lucía's case illustrates how gender ideologies seep through and influence the legalization process, as well as the very motivation to immigrate. In her years of marriage, she had lived in luxury but had also been the victim of abuse, and leaving that relationship came with high social, financial, and legal costs. In her words, “here [in the United States] I came to do what others did for me for twenty-two years, clean toilets and wash strangers' clothes. All in order to earn enough money to pay for a piece of document [the permanent residence/green card] that was earned years ago when I lived here with my [ex]husband.” Lucia's prior years of U.S. residence would not “count” toward legalization because only her former husband's presence had been formally recognized through bills, rental agreements, and the like. Thus, women whose presence is not formally recognized even when they contribute monetarily (and through paying taxes) or

who are not “attached” to a family member who has LPR or is a U.S. citizen (as we will document later on) have little if any chance of regularizing their status. Noteworthy, as Lucía’s case demonstrates, being excluded from formal legalization processes does not occur overtly on the basis of gender but on characteristics and behaviors that are associated with constructs of being a woman in which dependency through the law becomes reinforced. Examining Lucía’s experiences (and others like hers) leads us to question the stereotypes of undocumented immigrant women, and to situate their experiences within a framework of membership, exclusion, mobility, and gender ideologies and hierarchies, including notions of men as breadwinners and women’s “legal consciousness” (see Engel Merry 1990).

Antonio, a 30-year-old Mexican man we met as he was looking for work as a day laborer illustrates how men’s role as breadwinners become precarious as their earning potential decreases in their home countries and, as such, men also must contend with the frustrations and inequalities of immigration law. In contrast to Lucía’s wishes to remain in the United States and become a U.S. citizen one day, Antonio, a slim sandy blond tall man with large glasses, had little if any hope or wish of becoming a U.S. citizen. While he expressed a desire to be able to travel legally back and forth to visit his family in Mexico and work in the United States, his long-term goal was to save enough money to set up a business and buy a car in Mexico. In Mexico he had a young wife and at the time of the first interview, a four-year-old son. While he had a house in Mexico and counted on his family’s support and also on that of his in-laws who were looking after his wife and son until he got back, he stated that as the breadwinner, he was not meeting income expectations by working in Mexico and was forced to labor in the United States. His goal was intimately linked to his perception (and that of others) as the family’s breadwinner. Although he said he missed his family, in contrast to some of the women we interviewed, he

expressed no regrets and perceived his migration to the United States and leaving his family behind as part of his duty as a father and a husband. This is how he described his situation,

Yes, we all think about the future, as an adult one says what am I going to live on? That is why I came over here to save as much as possible. I am coming for a particular amount of time, but who knows if there is more work and all. A lot of people do that. They come for a certain amount of time and they stay longer or they stay here. I came to Juarez with the idea of crossing to the other side [coming to the U.S.], but when I got to Juarez I lived there a year before crossing over the first time. And there although I worked 2 years, I was not making ends meet.

This was actually Antonio's second time in Phoenix, but as with several other immigrants in our study, if ever needed, Antonio would experience difficulty in proving his residence in the United States as he was paid for his work and then paid for everything in cash, including rent, utility bills, travel expenses, etc. In an attempt to find a better paying job, he accepted a friend's offer to go to Colorado. On their way to Phoenix the first time, Antonio was apprehended and deported to Mexico along with four others. Thus, the only documentation of Antonio's prior presence in the United States was his record of deportation. His plans were to cross back to the United States immediately, but instead decided it was time to visit his elderly parents, his wife and child. As he said, "I had no idea of when I would be able to see them, if I crossed the border again right away." He visited for 15 days and spent Christmas with them before returning to the United States. We kept in touch with Antonio and the last time we spoke with him he was working in New Mexico. Contrary to his plans of returning to Mexico soon, he now had not seen his family in over 3 years and his son was about to turn seven. Clearly, Antonio did not *choose* to remain undocumented and would like to gain legal status; instead, current immigration laws do

not provide him with any options to regularize his status because he does not fit any of the legalization categories currently available. However, in contrast to the women who are separated from and seek to reunite with their children (and for whom gender ideologies shape meanings of motherhood at a distance—see Menjívar and Abrego 2009), Antonio was comfortable knowing that his extended family would care for his immediate family properly and in so doing lessening his burden, which would in turn allow him to send more money home and comply with his breadwinner role.

Family Reunification

Gender ideologies embedded in immigration law dictate that women are largely assumed to be part of a family unit, as mothers, wives, daughters or sisters and men are the breadwinners and heads of households, thus, many women rely on male relatives to petition for them in the legalization process. However, being a part of a family is not enough. U.S. immigration laws require marriage, and proof of it. Yet among many immigrants, particularly Central Americans, common-law unions are commonplace. This makes it difficult not only for women, but for children from such relationships to qualify for legal immigration because children born to common-law unions are considered “out-of wedlock” in the United States if the name of the father does not appear on their birth certificate, as can happen in births in common-law unions. In these situations, it is usually the mothers who advocate for the fathers to recognize the children and petition for them; thus, the burden of proof of paternity is greater on the father than on the mother. Again, the law does not formally differentiate the roles of women as part of a family unit and men as breadwinners and both women and men have the right to request LPR through a spouse. However, the assumptions behind family reunification position women as fulfilling these roles within a family unit. In this manner, while family reunification constitutes

only one of several paths to legalization, it is one of the greatest promoters of the increase in female immigration and the primary venue for female legal immigration into the United States (Jefferys and Monger 2008). As Jasso and Rosenzweig (1990) indicate, marriage provides a way to achieve immigration that would otherwise be difficult or impossible (for men and women).

Thus, family reunification has come to constitute the largest category for legal entry, particularly for women. Indeed, the family reunification category created in 1965 increased and continues to increase the number of women admitted to the United States via a spouse.

According to the Annual Flow Report of U.S. Legal Permanent Residents of March 2009, in 2008, out of a total of 1,107,126 new legal permanent resident applicants, the leading countries of birth of new LPRs were Mexico (17 percent), China (7 percent), and India (6 percent). El Salvador and Guatemala accounted for less than 2 percent of new LPRs and Honduras did not appear separately on the list. Out of the total of LPR applicants, 64.7 percent or 716,244 were family-sponsored immigrants. Of these family-sponsored immigrants, 58 percent were married, 54 percent were female and 46 percent were male.

Of importance here is not the number of men and women who apply for LPR as family-sponsored immigrants, but how family reunification regulations reinforce the expectations that women will continue to prove their domesticity by either not working outside the home or taking up jobs that are not recognized as “real” jobs. As Gardner (2005) points out, “Domesticity became the price of admission” (14). All individuals who apply for immigration status are exempt from labor certification. Thus, out of the 600,555 women who applied for LPR through family sponsorship 521,196 or 87 percent were in either the “no occupation/not working outside home” or the “homemakers” categories. In contrast, of the 506,549 males only 194,413 or 38 percent fit the latter categories (U.S. Department of Homeland Security 2009:25). As such,

gender role expectations embedded in the law structure the entry of women, such that these petitioned family members must prove their domesticity and dependency on a sponsor with economic solvency.

The process of entering the United States legally requires financial solvency not only on the part of those wishing to immigrate, but also on the part of sponsoring family members. For example, the 1996 Immigration and Naturalization Act stipulates that sponsoring relatives' earnings be at least 125 percent of the federal poverty line, with the exception of those on active duty in the armed services who may be at, rather than above, the federal poverty level (Clifford, Pearce and Tandon 2005:4). However, as Clifford, Pearce and Tandon (2005) observe, "Given the gendered and racialized nature of poverty in the United States, this requirement is more likely to prevent women of all races and men of color from sponsoring relatives more than white men" (2005: 4). The authors note the difficulty in accurately assessing the racialized and gendered nature of sponsorship. They argue correctly that existing data on sponsorship is not comprehensive enough to be broken down by gender not only for the immigrant but also for the sponsor. For example, although women's ability to sponsor relatives, such as their husbands, would be for our analysis here, these data remain unknown.

Although we are aware that there are cases of immigrant Latinas who have petitioned for their husbands, in this study, we did not find any such cases. However, we came across men who had married U.S.-born women and then, after regularizing their status, obtained a divorce and petitioned for their wives or common-law partners (whom they had to marry in order to petition) and any children under the age of 21 they had left in their home countries. This is the case of Juan, a 49-year-old Salvadoran man who arrived in the United States 20 years ago. He had left his partner, with whom he had lived for several years and had two children in El Salvador. He

said that he had been a drunkard back home and had always thought of “the bottle first.” Before arriving in the United States he had traveled and worked in Guatemala and Mexico in construction and other odd jobs that would pay for his drinking. In the United States he obtained help through Alcoholics Anonymous and later met a “ciudadana americana,” a U.S. citizen woman, whom he married and had a daughter.¹² In Juan’s words,

The truth is that I married an American citizen and that way I legalized my papers . . . I was not even thinking that my wife [his common-law wife in El Salvador] would be able to come. Never! That idea had not crossed my mind . . . It turns out that I separated in ’85 and . . . in ’92 we started to communicate [with his common-law wife in El Salvador]. And in ’93 was when we applied for her residence . . . So, when I went to fill out her papers, this person reported and said, ‘Aha! First you come here, get married, then you bring your woman over and you get married again in order to get her legal papers.’ No, things were not that way.

Juan explains that the time away from his current wife, his rehabilitation, his marriage to what he calls an “independent” U.S. citizen woman, and knowledge of the legal resources granted to women and their children in the United States helped him to “mature and made this relationship work by me being more understanding that women have the same rights as us in the household.”

In several cases, the women spoke of how their husbands’ immigration process became the preamble for their LPR process; therefore their legalization began far in advance of the actual submission of an application to immigration officials. However, often the women did not benefit fully from their husbands’ legalization because a woman who is petitioned by a spouse may also bear responsibility for his actions in her petitioning process. For instance, Adriana, a 54-year old Salvadoran woman who is small in stature, but through her body language commands authority,

entered the United States through family reunification. She and her three children did not see her husband for approximately 15 years after he left for the United States. During the time he was in the United States alone he was able to obtain his LPR. She spoke about the long and difficult process of legally entering the United States. Adriana also explains she could apply for limited types of jobs given the long wait for her paperwork to process. It had been 9 years since she submitted her paperwork to immigration and was still waiting for her LPR.¹³ In her words,

They give you one permit to be in all of the United States and to work . . . [and] every year it expires and every year I have to go to immigration to request it again and pay and all. Yes, since I put in my papers, I have only had 3 permits, before that I had nothing. 3 permits is what I have, 3 years of living with that . . . I spent lots of time not working, only at home. I would take care of children, but you know that is nothing . . . I have taken advantage of my permits now. . .

Adriana had stopped working as a babysitter and cleaning offices and homes and other odd jobs and now had a more stable, permanent job at a factory making plastics. However, she continued to drive without a driver's license. And most of her possessions were under her husband's name, including the utility bills, her car, the car's insurance, and even her home. Admittedly, the huge backlogs in the processing of applications apply to both women and men. However, the long waiting time often reinforces women's dependency on their husbands' petition.

As we mentioned in the case of Antonio, men often spoke of leaving their home countries to work in the United States so as to fulfill their obligations of breadwinners and heads of their households.¹⁴ As Pablo, a 31-year-old Salvadoran with three children in El Salvador including one he has never met stated, "I always think that the economic is the principal [responsibility]. To give them the best that one can." Pablo seemingly was at ease with not seeing his children

because he had kept in touch with them over the phone and had always cared for them financially. And while many of these men pointed to the social expectation of providing financially first for their family and lending emotional support second, the women who were in comparable predicaments expressed a struggle between providing financial and emotional support for their children. However, some men shed tears over the agony of not being close to their loved ones, although socially (and in their and their families' eyes), they were being good fathers even if it meant living away from their families. In the end, immigration policies reinforce a male-led family reunification by which a male relative remains the primary breadwinner and the source for female legal immigration.

Women also see family reunification as the only means of avoiding entering the United States undocumented. Elena is a 31-year-old Mexican woman with a bachelor's degree who married a 43-year-old U.S. citizen professional. She attempted multiple times to obtain a tourist (at least once she attempted to get an employment-based) visa when she was single, but she was always denied. Elena explained that although she was an educated woman with a good professional job, from comments that she would hear from others and from her multiple experiences, she gathered that visa officers at the U.S. embassy suspected that as a young attractive woman, she would overstay her visa. Even after becoming engaged to a U.S. citizen, she attempted to get her visa on her own while her then fiancé had to return to the United States to work. While he was away, she attempted 3 more times to get a visa. Upon his return to Mexico and seeing that all of her attempts had failed, they married. "We got married . . . [W]hen we were married for four months, they gave me my visa. They gave it to me because I was married to a U.S. citizen." Although she entered the United States legally and was on her way to gaining her LPR, she complained about her inability to work for pay during the time she was

waiting. “The only thing that I could do was to babysit my husband’s grandchild without pay until I was able to obtain a work permit.” She also feared that her husband would want to return to Mexico and permanently live there after his retirement. Elena said she did not have a “big story to tell.” However, her case illustrates how women remain suspicious to immigration officers who introduce gender stereotypical views about women while implementing the law. Thus, while the law may require one thing, those administering it hold the power of interpretation. In Elena’s case, even as a professional, those who implemented the law pushed her to depend on a man to assist her in the process of entering the United States legally.

As Assar (1999) points out, “Family reunification policies multiply opportunities for immigrants on the condition that they accept the definition and constitution of family in particular, prescribed ways . . .” (87). This indicates that men, the normative heads of household, continue to dictate women’s ability to petition their legal status and remain under the purview of the “good housewife and mother” dependency status. And as Hirsch (2003) observes, not all immigrant women are equally positioned to take advantage of the opportunities that moving to the United States potentially affords them. Boyd and Pikkov (2005) and Sokoloff and Pratt (2005) argue that the intersection of race, gender, and migration status creates not only what traditionally has been called in U.S. scholarship a “double disadvantage,” but also a “triple disadvantage.” Thus, our empirical observations illustrate that though not formally encoded or overtly enforced, gender ideologies continue to be embedded in immigration law as many requirements reflect specific conceptions of women and men and thus can be interpreted by officials in ways that privilege some and disadvantage others.

Employment-Based

Of all the forms of legal entry, employment-based visas are the most skewed along gender lines. Although these visas represent the second largest form of legal entry and in recent years allotted quotas in this category have increased, they constitute a relatively small portion of the total legal admissions into the country; thus, in 2008, 15.4 percent of entries were employment-based admissions (Monger and Rytina 2009). For immigrants who enter under this preference, an employer must petition for them (among non-skilled and semi-skilled workers often the employee is already in the country and the petitioning process only takes place on paper). Currently, 140,000 legal permanent cards (green cards) are issued annually, plus any unused family preferences from the previous year. For 2008 this meant 22,704 from the previous year plus 140,000 for a total of 162,704 visas available under employer sponsorship. Yet according to Jachimowicz (2004) in past years only 5,000 have been set aside for employment-based low-skilled workers. The overwhelming majority of these visas go to large companies, particularly those in the electronic industries, who petition congress heavily to increase this allocation. According to the Yearbook of Immigration 2008, Asians comprise the majority of employment-based admissions, with a total of 93,882 persons, or 58 percent. Broken down by countries, India (25,577), Korea (16,165) and China (15,329) use 57, 071 of employment-based sponsorships, or 35 percent, and Europeans with 28,601 and North Americans with 20,436 comprise 30 percent. In contrast, Mexicans (8,767) and Central Americans (El Salvador 1,038, Guatemala 758, Honduras 445, and Nicaragua 67) obtained a total of 11,075 combined, or less than 1 percent (U.S. Department of Homeland Security 2009). Although women receive nearly half of the employment-based visas, only 28.8 percent were principal visa holders and 73.2 percent were dependents of a principal visa holder. In contrast, the majority of men, 64.3 percent, were principal visa holders compared to 34.7 percent who were dependents (Pearce 2006).

The following case illustrates these gender differences, as the woman's own process is not considered to be a priority. In her family, Cristina remains the only one without a regular legal status. While Cristina, age 43, and her husband Onésimo, age 50, initiated their immigration process to the United States in the same manner, they are now at widely different stages in the process of legalization. They arrived from Mexico 13 years ago on tourist visas. Yet while she became undocumented through visa overstay, at the time of the interview, Onésimo was only a few months away from being eligible to apply for naturalization. He had worked for a company that offered him an employment-based visa and sponsored him to obtain his LPR.

Cristina originally did not emigrate for economic reasons, but as she put it, for "love" and got married in Arizona. At the time of her marriage, she was working for a national bank in Mexico, dealing with business and real estate transactions and earning enough income to qualify for a tourist visa. She continued to work for the bank and flew regularly to Arizona for a year after her marriage to visit her husband. "Con el dolor de mi corazón/With a throbbing heart, I resigned my job after a year of traveling and moved here permanently." She said that in addition to quitting her job, she also had lost her status as a *licenciada* (the title used in Mexico for those with a BA degree that conveys social status). When her son was born she remained at home and re-entered the labor force when he was five. Financially, they needed her income but they had decided that her job would not pay enough to offset the cost of childcare. Staying at home not only created social isolation for Cristina, but importantly for our discussion here, it did not create the paper trail needed to support her legalization application. As she explains,

Fortunately, Mr. Trujillo has given me the opportunity of working with him and he has not demanded that I have documents . . . I tell you unfortunately not having my documents keeps me from having a better job . . . The moment I get my papers, I will

look for something better that would provide me with insurance for my son . . . We [those who do not have legal status] have jobs that do not go along with [fit] us, that we do not like, but we do them because we have no choice, it is out of necessity.

Cristina continues to wait for Onésimo to submit her petition, but according to Onésimo, he had not submitted an application for Cristina's LPR because he was waiting to become a citizen, which expedites the process. They also had financial difficulties that kept them from affording the high costs of the legalization processes. In the meantime, Cristina works as a desk clerk at a store that pays her in cash, regardless of her B.A. in Economics and her work experience in banking. She drives without a license and would like to improve her English, but cannot take language classes due to her work (and home) schedule. And while her job does not demand that she learn English or that she obtain a work permit, she realizes that her unresolved status could mean a deportation at any moment and consequently separation from her immediate family.

While not all women are dependent on men for their legalization process, gendered conceptions of work still play a key role in their employment-based legalization process. Nora, a 19-year-old Guatemalan with a second grade education, works three jobs to support family in Guatemala and in Phoenix. She works 3 night shifts a week at a McDonald's, cleans model homes on the other nights, and takes care of an elderly couple during the day, but none of her jobs offer her the opportunity to legalize through employment because her jobs are seen simply as extensions of domestic work, and not what the law encodes as "high demand" jobs. She has consulted with notaries and immigration lawyers and she has been told that,

There is no way on this earth to even try to apply because the work I do is not good, like high status. So there is no reason why the United States government would want to grant me legalization for cleaning or cooking or taking care the elderly couple. I have been told

that for me it's impossible, that only people with good jobs can be legalized through jobs.

Yes, I work and work and work, but what I do is not what the law recognizes.

Nora's case illustrates that even when women support their families as heads of household (here and there) and contribute to the economy by literally working day and night, their possibilities for legalization are non-existent because the work they do, considered unskilled and expendable in part due to its domestic connotations, is not deemed valuable enough to warrant an employment visa.

Temporary Protection Status, NACARA, ABC, and Political Asylum

We group these statuses in the same section because for the Central American immigrants in our study they are often intertwined. In principle, Temporary Protected Status is a legal dead end; this protection is meant to be temporary and not a path to anything permanent and it usually is granted for extendable periods of 9 to 18 months. NACARA (the *Nicaraguan Adjustment and Central American Relief Act of 1997*) is intended to bring in line the reality of the violence of the Central American civil conflicts with U.S. legal protection by extending a "cancellation of removal" to Salvadorans, Guatemalans, and Nicaraguans who applied for this dispensation by a certain date. In practice, NACARA has been an important avenue for Central Americans to apply for asylum (Coutin 2000b; Menjívar 2006). The ABC (*American Baptist Churches vs. Thornburgh*) legislation was based on alleged discrimination against Guatemalans and Salvadorans on the part of the Immigration and Naturalization Service, and allowed Salvadorans and Guatemalans to resubmit asylum applications. Often individuals who have had TPS apply for another protection, and often do so simultaneously; thus it becomes difficult to compartmentalize their legal paths neatly into one or another status. Thus, we include all four statuses in the same section.

Like other major immigrant receiving countries around the world, the United States increasingly has been making use of temporary statuses to deal with the influx of immigrants from poorer countries. Through the years, these provisions have included Temporary Protection Status (TPS), Deferred Enforced Departure (DED) and Extended Voluntary Departure (EVD) as well as other temporary statuses. The United States currently provides some type of temporary relief from deportation to nationals from seven countries.¹⁵ Temporary relief is granted to foreign nationals whose homeland conditions, such as political conflicts or natural catastrophes are recognized by the U.S. government as being temporarily unsafe or overly dangerous for return. In 1990, when Congress enacted the TPS statute, it granted TPS for eighteen months to nationals from El Salvador who were residing in the United States because there was a civil war in their country, although this came toward the end of the conflict. After a few extensions it expired for good in 1995. New TPS has been granted to Salvadorans, Hondurans, and Nicaraguans after recent natural disasters in their home countries. Even though Guatemala suffered both a 30-year violent political conflict and natural disasters, Guatemalan immigrants have never been deemed in need of TPS protection. Since individuals granted TPS are not eligible to become legal permanent residents, a special act of Congress is required for such aliens to adjust their immigration status to that of permanent legal residence. Congress has granted Nicaraguans the opportunity for adjustment to LPR without a hearing on a case-by-case basis, a critical component of this Act that has not been extended to the other Central Americans. And the qualifications for NACARA relief and TPS have various timeframes and requirements.¹⁶

The definitions of refugee and asylee are based on persecution on account of membership in different social groups, except that those who are in the United States or at a U.S. port of entry apply for asylum, while those who are displaced and are processed abroad are categorized as

refugees. According to Martin and Hoefler (2009), the maximum number of refugee admissions had been set at 70,000 since 2003, but due to the expected resettlement of individuals from war torn regions such as Iraq, admissions increased to 80,000 in 2008 (2009: 2). With respect to asylum, there is no numerical limit on the number who can be granted asylum annually. Of the total number of new LPRs in 2008, 15 percent or 166,392 were refugee/asylee adjustments. Of these 54 percent (90,030) were refugee admissions and 46 percent (76,362) were asylee adjustments, and approximately 1 percent adjusted their status under NACARA (Monger and Rytina 2009:2-3). The standards of proof and minimum thresholds we discussed for other visa categories are similar here, but the procedures and priorities for asylum and refugee admissions are quite different, as political asylum and refugee policy work as extensions of foreign policy. Thus, regardless of individual plight, those who flee countries with close diplomatic relations with the receiving country are not usually granted this status (while the opposite applies as well). Thus, Guatemalans and Salvadorans, whose governments are close U.S. allies, have not fared well in political asylum applications (see Menjívar 2000).

For most individuals going through one of the processes mentioned above, the experience is marked by long waiting periods that can range from a few years to decades depending on bureaucratic delays, the documentation the person presents, the organizations (if any) that assist the individual, and the professional skills of the lawyers and “notaries” who prepare the applications. Often applicants know quite a bit about the laws and their rights but do not know which, if any, law applies to them (Lewis 2006), and thus rely on presumed professionals to handle their applications. Sara, a 46-year-old Salvadoran with two years of college explains, hers is a “long story.” She applied for ABC and describes the handling of her legalization process by U.S. officials as a “joke.” She noted that individuals sometimes end up twenty years in the

process only to hear that they will need to go back. Sara left El Salvador at the end of 1982, during the war, but her time in the United States has been of little help. In her words,

I applied for political asylum and I was denied . . . because we couldn't present enough proof but I don't understand which type of proof. I don't have a cut arm, I don't have scars, I don't have anything to show, thank God. But why would we have to stay [in El Salvador] any longer and leave until something happened to us?

Sara and her family left El Salvador and lived in Mexico for a year. However, in Mexico they experienced financial struggles and decided to return to El Salvador. By that time, "things were worse . . . so we decided to move as far as we could." However, they did not keep what would later prove vital in a court of law to prove what they went through and the potential dangers they would face if they ever returned. "We never thought of keeping all these little papers [with death threats]." But even if they had kept the documents, they would not have helped Sara because those threats were directed at her husband. And as Sara and others in this study indicated, ABC and NACARA cases are some of the lengthiest, keeping individuals and entire families in legal limbo for decades. And when they are in the process of legalization, their rights are limited, which may result in reduced employment and housing opportunities, and a path of sacrifices that in the end, as in the case of Sara, concludes in denial for some members of the family who cannot produce the proof of suffering that the law requires.

In contrast to Sara's case, Roberto, a thin and small-framed 32-year-old Salvadoran still struggling with health issues related to his experiences during the civil war, had been living in the United States for 11 years when he received political asylum. Back in his country, he was a teen activist demanding basic services for his community in a small poor town. For his actions, he was captured, tortured and placed in a clandestine prison and left for dead. The Red Cross and

other human rights groups were crucial in assisting him to flee the country and then helped him file for political asylum in the United States. In his words,

When I first got here to Phoenix, I came from California disoriented. I came to a center, a home called Friends and they took us to a church and I liked it a lot . . . I read a book that talks about the church and how they have helped refugees [and asylum seekers] from Guatemala, El Salvador and they help people from Mexico and many others.¹⁷

After 13 years in the United States, Roberto was getting ready to see his mother in Chiapas. Although he was not sure if he would return to the United States, he said he felt safer here than in Mexico or El Salvador and at least he had the option. Unlike Sara, Roberto not only had physical proof of his political persecution, but his experience had been validated by the NGOs that facilitated his escape and then his resettlement in the United States. We do not argue that only men receive this sort of assistance, but as scholarship shows, even when women were directly involved in the conflict as soldiers, they are more likely to migrate to the United States either without an entry visa or through family reunification (see Menjívar 2000). In addition, we note that both women and men face these circumstances in the context of other markers such as age, geographic area, ethnicity, and class, but gender often becomes a central factor in shaping an individual's journey to and through the legalization process in the United States.

DISCUSSION/CONCLUSION

With increased population movements globally, the wealthier immigrant receiving countries, such as the United States, have sought to restrict and reinforce narrow notions of citizenship. As such, legal citizenship and belonging have come to mark insiders, those deserving of rights and services and outsiders, those who lack even basic forms of protection, access to services, as well as the duties and responsibilities that come with citizenship. However, even

when laws are in place to confer immigrants' rights and responsibilities, not everyone has the same experiences in obtaining the legal status that bestows such privileges. In a nation-state, social positions such as race, ethnicity, class, and most importantly for our discussion here, gender, also inform processes of inclusion and exclusion. And as the recent literature points out (Boyd and Pikkov 2005; Calavita 2006; Clifford, Pearce and Tandon 2005; Pessar 2005; Piper 2006), men and women have different citizenship experiences that begin long before they initiate their formal path to legalization.

Based on the case of Central Americans and Mexicans in Phoenix, we examined how gender structures the different avenues and stages in the process of legalization and the gender-informed requirements and expectations that affect differently immigrant women and men in this process. Purportedly gender neutral, the law and its implementation shapes differently the experiences of immigrant women and men. Our observations illustrate how gendered relationships of power create subordinated political and legal positions for immigrant women. As Luibhéid notes: "Family reunification provisions constructed women's sexuality not just as heterosexual but also as procreative within a patriarchal framework...[T]hey reified women's sexuality as a form of property that men owned...channeled into marriage and reproduction" (2002:3). Important, gender differentiation does not occur in overt ways but rather in a veiled fashion; the law does not formally differentiate between women and men, but in the process of implementing requirements that are based on orthodox expectations of behavior for women and men the law ends up creating gendered paths to legalization. Women's and men's experiences are shaped differently because gender ideologies position them in situations in which their characteristics and behaviors, such as leaving the work force to care for relatives and children,

exclude them from the process. Thus, this is not the overt exclusion of the past; it is veiled exclusion by association (see Massey and Denton 1993).

To be sure, even though there are gender differences in the legalization process and legal status is central for immigrant success, attaining regular legal status does not automatically mean emancipation (for women or men). This is particularly the case for women who are restricted to female-marked lower paying jobs or who do not work for pay because they must care for their families or because immigration policies, such as family reunification, channel them away from being recognized as workers in their own right. Even women who do not depend on men to petition for them are reminded that they go through a legalization process that works within the confines of a male privileging society. Under the current immigration laws, even laws that are meant to assist victims of gender-based crime still carry with them the possibility of extending and even jeopardizing the process of obtaining legal status. Furthermore, our work also draws attention to the fluid movement between legal categories by including the category of undocumented; under current immigration law immigrants easily return to this category during the legalization process. Thus, our observations reveal that both women and men encounter barriers in the legalization process, but gender remains an important marker that often exacerbates the complexities of a non-linear legalization process.

As scholars suggest (see Castles and Davidson 2000; Bosniak 2000), the exclusion of immigrants questions citizenship in general as a form of integration. Our study highlights the potential transformatory power of this process; it points to the need to redefine legal citizenship with attention to differences based on social position. Immigration policies that eventually lead to legal citizenship should factor in social hierarchies, such as gender, and create categories (and guidelines for administration) that deviate from orthodox and conventional expectations to

incorporate the experiences of those who are marginalized and excluded due to their social position. Just as important as existing laws are, this study shows that laws are not created or implemented in a vacuum of broader social practices in which they are enacted. Thus, it is imperative to train individuals, such as lawyers, advocates, judges and immigration officers, who play key roles in interpreting and assisting immigrants during the legalization process. These key players should recognize that formal citizenship does not automatically grant equal rights because social positions based on class, race/ethnicity and, most telling in the case we examined here, *gender*, can affect how laws are interpreted and implemented. Thus, the law, presumably neutral, can marginalize individuals and block opportunities when it is implemented without attention to the influence of extra-legal factors. As such, those who write and pass, as well as those who implement the law need to be cognizant of the critical effect of the social milieu (and its hierarchies shaped by multiple social positions) in which the laws are enacted and practiced.

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Notes

¹ Bosniak (2000) differentiates four “strands” or dimensions of citizenship: rights, legal status, political activity, and collective activity and sentiment. We use the term to mean legal status.

² We use Massey and Denton’s concept of “statistical discrimination” that they developed on their work on race (Massey and Denton 1993: 96), which happens “when race and socioeconomic characteristics become intertwined and discrimination is not directed at race *per se* but at the characteristic that is strongly associated with race” to capture a similar situation with gender and the law.

³ For a list of requirements see

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=499a6c854523d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

⁴ These data come from different studies, all IRB approved, that generally sought to examine the experiences of new Latin American origin immigrants to the Phoenix metropolitan area. The in-depth interviews (akin to oral histories) covered a range of topics, such as immigration and work histories, family separation, reunification and transnational practices, sense of community and inter-ethnic relations, religion, and educational aspirations and views of the future. They were analyzed for content and the theme of gender differences in the legalization process that we analyze here emerged from such analysis. Importantly, the objective in these interviews was not to uncover gender as embedded in immigration policies; rather, it surfaced strongly in the analysis and thus we deemed it an important aspect of the immigrants’ experiences.

⁵ The foreign-born population includes naturalized citizens, lawful permanent immigrants, refugees and asylees, those on student, work, or other temporary visas, and persons residing in the country without authorization.

⁶ While Arizona is a state with a large foreign-born population it also remains one of the most anti-immigrant states in the nation. In recent years, law enforcement officials, such as Maricopa County Sheriff Joe Arpaio, have launched and successfully passed a series of propositions/laws banning immigrants from services and curtailing their civil rights.

⁷ At the national level, 47.5 percent of the foreign born reported a Hispanic or Latino origin (South America, Central America, Mexico, and the Caribbean).

⁸ More than half of the immigrants were interviewed multiple times, but others were interviewed only once due to the immigrants' high residential mobility.

⁹ One woman claimed Mexican citizenship and we classified her as Mexican, but was not recognized by the Mexican consulate as such because she had no documents to prove it and had resided in the United States since she was an infant and was no longer fluent in Spanish.

¹⁰ Please note there is a difference between legal status from rights. Even the undocumented have certain civil, and some labor, rights.

¹¹ For 2004 the Department of Homeland Security (DHS) estimated that there were 179 million nonimmigrant admissions, such as individuals authorized for temporary stays and that in recent years an estimated 1 to 1.5 percent or approximately 250,000 to 350,000 overstay their visas every year (Pew Hispanic Center 2006.).

¹² Menjívar (2000) found similar cases in her study in San Francisco.

¹³ The effects of these long-term separations are manifold (see Menjívar and Abrego 2009).

¹⁴ This was the case regardless of national origin, even though there are some distinct migration patterns between Central Americans and Mexicans (e.g., Mexican migration began with men-led, institutionalized labor migration program which has set in motion a particular pattern of family reunification, whereas this is not the case among Central Americans among whom women have participated at higher rates and also have lower rates of marriage) as well as within Central Americans (e.g., Maya Guatemalans have different socio-demographic profiles, origins, language skills, etc.). In spite of these differences, the narratives of men in all groups as breadwinners often came up when they talked about their motivation to migrate.

¹⁵ Nationals who have been granted relief from deportation in the past: Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan. The estimated number of aliens currently protected range from 30 Burundis to 248,282 Salvadorans (Wasem and Ester 2006).

¹⁶ For further details please visit the US Citizenship and Immigration Services (USCIS) website last updated 10/28/2008 and view NACARA 203:

<http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=140748afcb41e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=828807b03d92b010VgnVCM10000045f3d6a1RCRD>).

¹⁷ Roberto's case also highlights the differential access to social capital along gender lines that facilitates access to legalization.