

April 27, 2004

I, Thomas M. Davies, Jr. declare:

1. Attached to this Declaration as Exhibit A is a true and correct copy of my curriculum vitae.

2. I am a Professor Emeritus of Latin American History, Director Emeritus of the Center for Latin American Studies, and former Chair of Latin American Studies at San Diego State University in San Diego, California. I was at San Diego State (SDSU) for 22 years (1968-2001), and was Director of the Center for 22 years (1979-2001). For more than 30 years, I have devoted my academic studies, teaching, field work, and scholarly research to politics in Latin American countries, with a particular emphasis on Central and South America and Mexico.

3. I have also held several national-level posts including six (6) years on the Institutional Grant Board of the National Security Education Program in the U.S. Department of Defense, seven (7) years on the Fellowship Board of the Inter-American Foundation, five (5) years as Executive Secretary of the Conference on Latin American History (CLAH) of the American Historical Association, and eight (8) years as the Executive Secretary-Treasurer of the Consortium of Latin American Studies Programs (CLASP). I am also a Past President of both the Pacific Coast Council on Latin American Studies (PCCLAS) and the Rocky Mountain Council on Latin American Studies (RMCLAS).

4. Although my BA, MA and Ph.D. degrees are in history, I have vast experience with and expertise in multi-disciplinary and inter-disciplinary studies of Latin America. As noted above, I was Director of the Center for Latin American Studies at SDSU for

22 years and as such had to learn our faculty's disciplines well enough to be able to make recommendations to the Dean and the Provost on tenure and promotion. Also, I developed an entirely new, multi-disciplinary, inter-disciplinary curriculum.

Moreover, I served long periods on both the Inter-American Foundation Grants Board (1986-1992) and the Institutional Grants Board of the National Security Education Program in the Department of Defense (1995-2001). Both of those positions required solid expertise in language and area studies. I would never have been appointed to those boards if I did not have a national reputation in multi-disciplinary, inter-disciplinary Latin American Studies.

Over the years, I was asked by 15 university presidents in the United States to prepare formal, outside reviews/evaluations of their programs in Latin American Studies and Language. In each case, I reported directly to the President and Provost of each campus.

In addition, for 22 years, I attended at least one meeting a year in Washington, D.C. at the U.S. Department of Education, concerning the Title VI, National Resource Centers for Latin American Studies Programs. Three times I was asked to chair that meeting. Title VI funded the Center for Latin American Studies at San Diego State University 1976-2003 for a total of over \$4,000,000.00.

Finally, The William and Flora Hewlett Foundation awarded me and Professor Brian Loveman (1997-2002) over \$765,000.00 for collaborative, **interdisciplinary** research on Chile with Chilean scholars, universities and research centers.

5. As part of my research for my first book, Indian Integration in Peru: A Half Century of Experience, 1900-1945 (Winner of the 1973 Hubert Herring Award for the best book on Latin America), I traveled extensively throughout Peru for about two (2) years (by train, car, bus, truck, and on foot) and I know the country as few others do (including the vast majority of Peruvians). I have also traveled extensively in Bolivia, Ecuador, Central America, and, of course, Mexico and the U.S.-

Mexico border region. As a direct result of those travels, I learned Hispanic culture and how that culture affects the daily decision-making of people, something very few foreigners are able to accomplish.

6. In addition to my extensive travel in Latin America, I read on a daily/weekly/monthly, basis over six (6) magazines and journals from Central America, three (3) United States newspapers, and more than ten (10) United States and British publications on Guatemala and Latin America. These include: NACLA Report on the Americas, The Journal of Inter-American Studies and World Affairs, Guatemala: Bulletin of Guatemala Human Rights Commission/USA, Mesoamerica, Washington Office on Latin America, all the publications by EPICA (Ecumenical Program on Central America and the Caribbean) the U.S. Department of State Human Rights Reports on Latin American nations (particularly the Andean and Southern Cone nations), for the past ten years, CIA World Factbook 2003, CIA Regional Reports on the Caribbean, Central America and South America, and other Country Reports, Amnesty International Reports and Updates on the Andean republics, the Southern Cone and Latin America. World Watch and Americas Watch publications on Mexico and Latin America. World Refugee Survey 2003 and Refugee Reports of the Immigration and Refugee Services of America, the web pages of all the Latin American Military and Police Forces by Country, and the Latin American Data Base.

7. I also taught a course on Modernization and Urbanization in Latin America and a course on Guerrilla Warfare in the Western Hemisphere, with an emphasis on Central and South America. I am often called upon to offer expert opinion on radio and television (including the Voice of America) and speak extensively in the greater San Diego community on Mexico, the U.S.-Mexico Border area, Central and South America, as well as U.S.-Latin American relations.

8. I am recognized, both nationally and internationally, as one of the foremost experts on terrorism and guerrilla warfare in Central and South America. Since 1992, I have been asked to serve as an expert witness in over 160 political asylum cases in San Diego, Los Angeles, San Francisco, Sacramento and El Centro, California; Portland, Oregon; Seattle and Tacoma, Washington;

Eloy, Arizona; Dallas, Texas; Omaha, Nebraska; Chicago, Illinois; Miami and Jacksonville, Florida; New York and Ithaca, New York; Washington, D.C. and Boston, Massachusetts. In every case, in all of the above named cities, I was recognized as an expert on Latin America by Immigration Courts.

9. For almost twenty-six (26) years, I was married to a Peruvian national, Eloísa Carmela Monzón Abate de Davies, who died of cancer in 1994. One result of that marriage was that I developed unusually broad and deep personal and professional friendships with military and paramilitary police officials, not just from Peru, but also from a number of South American countries, particularly Argentina which is Peru's ally in the South American balance of power construct. My Peruvian father-in-law, Gen. José Monzón Linares, was a Lieutenant General (Three-Stars) in and former *Director General* (Commander-in-Chief) of the *Guardia Civil del Perú* (Civil Guard of Peru, the nation's paramilitary police force). General Monzón's brother, Guillermo Monzón Linares was the *Inspector General* (Inspector General) of the *Policía de Investigaciones Peruana* (Peruvian Investigative Police, Peru's FBI). General Monzón Linares' friends were almost all military personnel from Peru and neighboring republics. I thus had an incredible opportunity to know, interact with and develop close interpersonal relationships with dozens of military and police personnel.

10. Each of these military and police officers taught me their own particular versions of military lore and ideology, ideologies which were always identical in two areas: the preservation of *La Patria* (The Fatherland) through the maintenance of internal order, and the need to "cleanse" *La Patria* continuously by ridding it of traitors and sexual deviates (two groups they believe to be identical). The truth is that the Peruvian *Guardia Civil* (Civil Guard—a paramilitary national police force), as well as officers from similar police units in Argentina, particularly the *Policía Federal Argentina* (PFA) (Argentine Federal Police) were and are even more vehement in their attacks so as not to appear less patriotic than the regular military. The point of this is that the police and military forces of Argentina, Guatemala, and Peru, etc., are imbued with virulent homophobia from their very first day of service.

11. These family contacts, together with my forty years of travel and study in Latin America, provided me with an extensive network of individuals from every social, political, and economic strata of the country: my Peruvian extended family (including my brother-in-law, Pedro Monzón Abate, who was one of four Vice Presidents of the *Banco de la Nación*-National Bank of Peru), my relationships with individuals inside and outside of the family through the ritual kinship of *compadrazgo* (entering into compact to be the godparent of a child), the Latin American academic community with whom I have worked closely, huge numbers of social friends, high-ranking military officers, government officials, congressmen and senators, private businessmen, and the thousands of Latin Americans I have interviewed, both formally and informally, over the years. I continually renew these contacts through long-distance phone conversations, e-mail correspondence and travel. Therefore, I have an intimate knowledge of current political, economic and social conditions in these nations, particularly the Andean republics and the Southern Cone nations including Argentina.

12. Within the fields of Andean American and Latin American Studies, I have concentrated particularly on the role of the military and guerrilla movements in several Latin American countries, including Argentina. My curriculum vita details the books, articles, translations of Latin American military documents, papers and lectures I have prepared or presented on this topic. I would point particularly to the two books I have written with Professor Brian Loveman: The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997; and Che Guevara on Guerrilla Warfare. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997 (the first edition of this work won a national prize, the 1985 Hubert Herring Award for the best book of the year on Latin America). The Politics of Antipolitics contains extensive treatment of Argentina.

13. I am also a recognized authority on Latin American culture, including Latin American views of sexuality, both heterosexual and homosexual. When I married my Peruvian wife, I became part of a very large, extended Peruvian family which

contained several homosexuals (none of them "out" to the family). In fact, one of my Peruvian aunts-in-law was literally driven out of the country. She currently lives in Guayaquil, Ecuador with her partner.

14. As noted above, since 1992, I have been asked to serve as an expert witness in over 160 political asylum cases and, while the majority of those cases dealt with death threats from the military or the guerrillas of a given nation, I have also testified on behalf of 78 homosexual males and females, all from Latin America, four from Argentina.

15. For the past eight (8) years, I have conducted extensive research on gender and sexuality in Latin America, particularly on LGBT (lesbian/gay/bi-sexual/transsexual) themes. I undertook this research in order to teach the courses listed below and to prepare affidavits for the above mentioned 78 homosexual/transsexual males and females for use in Immigration Court.

16. I developed three courses which contained extensive treatments of sexuality, family and religion:

- A. Modernization and Urbanization in Latin America, a 500-level course which at SDSU means senior undergraduates and graduate students.
- B. A Graduate Seminar on "The Andean Peoples and Their Cultures: Collision and Syncretism" which dealt with Iberian, pre-Columbian, colonial, mestizo, Afro-Andean, and the development of national culture after independence.
- C. A Graduate Seminar on "Traditional and Syncretic Religion and Medicine in Latin America. The religions covered included indigenous, Roman Catholic, Folk Catholic, Yoruban-based African (Condomblé in Brazil, Santería in the Caribbean and New York, and Vodun in Haiti) and Pentecostal Evangelical Protestantism. Included were in-depth analysis of traditional

medicine, medieval Spanish medicine (*casera*), folk medicine and magic, and so-called "modern" medicine. Deeply interwoven into all of these are attitudes on sexuality, homosexuality, family and gender roles and discrimination.

17. My testimony concerning the treatment of gay men with "female" sexual identities was discussed prominently by the States Court of Appeals for the Ninth Circuit in the case of Hernández-Montiel v. INS F.3d 1084 (9th Cir. 2000). (See Below)

18. I do not know Mr. XXXX, but I have been asked by his attorney to assist with this case. After reviewing the facts of his case and reading his affidavit with care, I agreed to help because I find his situation to be particularly compelling and very typical of any like person in his circumstances. As I will explain in this affidavit, I believe Mr. XXXX's fear of persecution as a homosexual who is HIV+ to be well-founded.

19. Although the percentage of homosexuals in Latin America is the same as it is everywhere, Latin Americans, historically and to the present, have refused to recognize it as anything other than a "demonic lifestyle." The view and treatment of homosexuals, particularly males, is that they are the "lowest of the low" and strenuous, even violent persecution of them is not only accepted, it is praised in Latin American society.

20. The definitions of homosexuality in Anglo-America and Latin America are very different. In Anglo-America, little attention is paid to the "role" of the two sexual partners. Although there are often deprecating references to "effeminate" and "swishy" males or masculine and "bull dyke" females, Anglo-Americans do not really recognize an appreciable difference, i.e., both of the partners are homosexual and are thus treated equally.

21. In Latin America, on the other hand, a sharp distinction is drawn between the two, each according to his/her supposed role in the relationship, i.e., either the "male" or the "female role." It is assumed that each homosexual partnership has a clearly defined "male" and an equally clear "female." It

is also true that the latter group is viewed with contempt in the *macho* Argentine society as having rejected the proper role of the male. This distinction is of paramount importance in Argentine society for it will literally determine the extent and severity of rejection and persecution, with greater severity reserved for the homosexuals perceived to be more effeminate and passive.

22. Culturally speaking, Latin Americans are Spaniards and Spaniards are as much or more Moorish than they are European. In fact, I have always taught that Spain belongs to Eastern Mediterranean-North African culture far more than to Europe and that it must therefore be studied and treated differently.

23. From 711-1492, the Moors occupied the Iberian Peninsula (now Spain and Portugal), transferring to the Iberian population not only their architecture, farming techniques, building skills, etc., but their views on sexuality as well. In Moslem culture (and therefore Spanish and Latin American culture), a male is not considered to be homosexual if he is performing the role of the male, i.e., he inserts his penis into the other. Before marriage, it is considered to be quite normal. Even after marriage, it is barely denigrated. For example, Mohammed Daud, a resident of Kandahar, Afghanistan, is unmarried and has sex only with men and boys. But he does not consider himself homosexual, at least not in the Western sense. "I like boys, but I like girls better. It's just that we can't see the women to see if they are beautiful. But we can see the boys" (quoted in a brilliant article, "Kandahar's Lightly Veiled Homosexual Habits," by Maura Reynolds, *Los Angeles Times*, April 3, 2002. p. 5).

24. For a Latin American viewpoint on this same subject, one need only turn to Octavio Paz, one of the greatest thinkers and writers in Latin American history and recipient of the 1990 Nobel Prize for Literature. In his world-renowned *El laberinto de la soledad* (The Labyrinth of Solitude), Paz wrote: "It is likewise significant that masculine homosexuality is regarded with a certain indulgence insofar as the active agent is concerned. The passive agent is an abject, degraded being. This ambiguous conception is made very clear in the word games or battles--full of obscene allusions and double meanings--that are so popular in Mexico City. Each of the speakers tries to humiliate his adversary with verbal traps and ingenious

linguistic combinations, and the loser is the person who cannot think of a comeback, who has to swallow his opponent's jibes. These jibes are full of aggressive sexual allusions; the loser is possessed, is violated, by the winner, and the spectators laugh and sneer at him. Masculine homosexuality is tolerated, then, on condition that it consists in violating a passive agent. As with heterosexual relationships, the important thing is not to open oneself up and at the same time to break open one's opponent" (The Labyrinth of Solitude. Translated by Lysander Kemp (New York: Grove Press, Inc., 1985), pp. 39-40.

25. Indeed, I have known many Latin American males, who consider themselves to be very manly (*muy macho*) even though they engage in both heterosexual and homosexual relations. In fact, a high percentage of these men will openly brag about their "conquests" of both females and effeminate males, particularly when drinking in male-only social situations. Please see my **"Selected and Annotated Bibliography"** on these subjects which is attached to this declaration.

26. The view and treatment of the "female" partner (the receptor) could not be more diametrically opposed to that of the "male." The "fem" is despised as the "lowest of the low" and strenuous, even violent persecution of "fems" is not only accepted, it is praised in Latin American society. At the family level, male "fems" are perceived as constituting a threat to the *machismo* of all the males in the family. At school and in their neighborhoods where they grew up, "fems" almost always encounter discrimination and harassment, particularly in Argentina.

27. In one of the most concise and cogent statements on gay males in Argentina ever written, Sofia Kamenetzky, M.D. stated: "Argentina is still, to a large extent, a macho society, and machos detest gays whom they see as effeminate. For a majority of the population, including physicians and psychologists, homosexuality is felt to be a perversion and a disease. Teenagers who feel a strong attraction to members of their same sex experience, first extreme confusion about their feelings. When the picture becomes clear in their mind, they awake to the unpleasant reality of belonging to a group that society marginalizes. ... To be gay or lesbian in a repressive environment whose stereotypes are the macho man and the submissive reproductive woman is not an easy task indeed. Anyone who

deviates from a strict heterosexual behavior is ridiculed: A gay is not a man, a lesbian is a degenerate woman" (Sofia Kamenetzky, "Argentina," in Robert T. Francoeur and Raymond J. Noonan, eds. The Continuum Complete International Encyclopedia of Sexuality. Updated With More Countries. New York: Continuum, 2004), p. 10).

28. Dr. Kamenetzky further substantiates her thesis of anti-homosexual attitudes when she takes note of neighborhood patterns: "I also did not find neighborhoods exclusively or predominantly homosexual. Most mix with the mainstream population of their own class. Those who have a well-defined and highly visible economic or political role are still in the closet. The same is true for members of the armed forces and the Church. To confess their lifestyle and orientation would be suicidal" (Ibid., p. 10).

29. Mr. XXXX, for example, knew at an early age that he was different. As early as kindergarten he felt different from the other kids, but he did not know why. He did not like to play with cars or balls; he preferred dolls and other toys girls with which other girls play. Unlike his male classmates, Mr. XXXX did not play football or other rough sports and they made fun of him as the effeminate one, the *maricon* (slang for queer). Recess was the worst time at school because everyone made jokes about him, and, then later, the verbal abuse turned into aggression and ultimately physical abuse, thereby further distancing him from his classmates.

Complicating the situation was the fact that Mr. XXXX had a voice that sounded feminine, together with effeminate mannerisms in the way he walked, moved his hands and carried his body, mannerisms which convinced the people around him that he was indeed gay.

As Mr. XXXX grew older, his male classmates all talked of their sexual experiences with girls and when it came his turn to speak, they would ask him if he liked the "banana" or the "cucumber" or other phallic symbols and references.

30. Like other gay males in Argentina and the rest of Latin America, Mr. XXXX chose to isolate himself from classmates, family, indeed everyone in the society. He lived in constant fear, not only of being discovered and/or "outed", but of being denied employment, thrown out on the street, even beaten or killed by the police, the military, or thugs in the street. As noted below, Mr. XXXX had every reason to fear the police and the military.

These are exactly the type of reactions I have heard in Latin America since I first attended the National Autonomous University of Mexico (UNAM) in 1961. In fact, I have heard such reactions in every Latin American country I have visited over the past 40 years.

31. The idea of having a homosexual son or brother or other family member is overpowering in Argentina. Thus, Mr. XXXX was constantly scolded by his parents from an early age for his predilection to wear feminine clothing, jewelry, shoes and makeup. This resulted in him distancing himself from his parents.

32. In addition, the male "fem" is a threat not only to the machismo of other males, he represents a threat to all the females in the society as well, because the female is always responsible for the maintenance of family values, family morals and the image of the family and the nation in the outside world.

It is here that the Roman Catholic Church's dogma on the role of females and family is particularly visible. The ideal female in Christianity is, of course, the Virgin Mary, Mother of God, who is idealized and revered in Mexico and Latin America to a much greater degree than anywhere else in the world. In Spanish, devout "femininity," i.e., devotion to Mary, is called *marianismo* which is the direct opposite of *machismo*.

This is nowhere better seen than with Pope John Paul II's canonization of Juan Diego Cuauhtlahtoztzin on July 31, 2002. Juan Diego is the Chichimeca Indian to whom the Virgin of Guadalupe appeared in 1531. She is the most revered Virgin in Mexico and Latin America, worshiped as the ultimate, perfect female, the model for every female in the nation. The gay male is not only an abomination, but a frontal attack on *marianismo* in that the male appears to be trying to be female.

33. It is no surprise, therefore, that Mr. XXXX's mother reacted negatively to his playing with dolls. At first she treated it as a joke, but later turned against him, forcing him to distance himself from her as well.

34. Since the concept of *machismo* is so critical to an understanding of Mr. XXXX's treatment by his co-workers, the police and other members of Argentine society, an explanation or definition is needed here. Please see my brief discussion of *machismo* which is appended to this declaration.

35. Unfortunately, the danger to male homosexuals is not confined to the family and co-workers. In Argentina, Guatemala, Honduras, Mexico, Ecuador, and Chile, for example, it is common for the police, without provocation, to detain gay males, beat them up, rape them with batons or other foreign objects in the anus, and otherwise abuse them physically, always accompanied, of course, by verbal and psychological abuse. As a result of these beatings/rapes, many gay males have died in these countries.

Moreover, the police in Argentina do not differentiate between gay males with feminine characteristics and transvestites. They are considered to be the same. Therefore, almost all reports in Argentina regarding attacks on gay males state that the victim was a transvestite, thereby lumping all male homosexuals into one solo group.

36. It must be noted here that homophobia is particularly virulent in Argentina where the military has a long history of extreme political views and of even more extreme violence against its people (See Robert A. Potash, The Army and Politics in Argentina, 3 vols. Stanford: Stanford University Press, 1969-1996). Many Latin American countries and militaries were pro-Fascist before and during World War II, but only the Argentines were avowed Nazis, mirroring Hitler's virulent policies on Jews and homosexuals, in both word and deed. In fact, Argentina did not even declare war on the Axis Powers until she was officially threatened with economic, political, diplomatic and military isolation in March, 1945 (even exclusion from the United Nations), by the Inter-American Conference on Problems of War and Peace meeting in Mexico City.

The period 1945-1976 was fraught with military violence and *coups d'etat*, with ongoing military harassment of all dissidents, most particularly Jews and homosexuals. In 1976, the Argentine military took power in an incredibly bloody *coup* and began a systematic massacre of its own population (it is generally agreed that the military murdered and "disappeared" between 25,000-30,000 people over a seven-year period, 1976-1983). Singled out for particular "attention" were the Jewish and homosexual populations (for a terribly chilling account of Navy Lt. Cmdr. Francisco Scilingo throwing live people out of military planes over the Atlantic Ocean, see Horacio Verbitsky, The Flight: Confessions of an Argentine Dirty Warrior. New York: New Press, 1996; see also Alicia Partnoy, The Little School: Tales of Disappearance and Survival in Argentina. San Francisco: Cleis Press, 1986; and Loveman-Davies, The Politics of Antipolitics, pp. 61-74, 158-170, 228-238, and 365-423).

37. Mr. XXXX's description of his encounters with the Argentine police, although horrific are perfectly consistent with as well as symptomatic of the homophobia of Argentine security forces. In December, 1993, two men dressed as police officers approached Mr. XXXX, showed him their badges and threw him against a wall. They demanded his identification papers, then tore off both the gold chain and the watch he was wearing. They shoved him into a green car before letting him out a few blocks later with a warning not to look back or he would not see his family over the holidays.

Parenthetically, I would add that the police in Argentina, and particularly Buenos Aires, used dark green cars, jeeps and small SUVs during the "Dirty War" (1976-1983). Please see: Humberto Costantini, The Gods, The Little Guys and the Police. Translated by Toby Talbot. New York: Harper & Row, 1984.

In the spring of 1998, Mr. XXXX was sitting in a local park eating ice cream and reading a book when a police officer approached him and demanded to know if he were homosexual. Since Mr. XXXX did not respond, the officer ordered him to follow him then arrested him. Mr. XXXX was in jail for six hours while the police said they were doing an identity search. During that time the officer constantly berated him, called him a fag and threatened to attack him sexually. When Mr. XXXX told the officer that he needed to take his medicine, the officer threw him against the wall and told him he would not get any medicine.

Then, in 1999, the police raided a gay bar where Mr. XXXX worked. They began to beat several of the patrons and threw them against the wall. Mr. XXXX was arrested and held in jail for several hours until one of his friends came to get him out.

Finally, Mr. XXXX's account of the police harassment of his homosexual brother is revealing. The brother was arrested for being gay and held in jail for 10 hours even though he had committed no crime at all.

38. It is absolutely vital here to make clear that the police who harassed and sexually abused him were acting not out of homosexuality, but rather enhancing their *macho* image by dominating a "queer." It is horrific, but not unusual in Argentina. In fact, it is consistent with everything I have read, heard or seen in my forty-three years of experience in Latin America.

39. Over the past three years, discrimination against and abuse of LGBT peoples has actually increased in Argentina, despite the anti-discrimination laws that have been approved in Buenos Aires, City and Province and Río Negro Province. For example, on February 11, 2000, police arrested Miguel Angel Ledesma (aka Vanesa Lorena Ledesma), a transvestite in Córdoba. Ledesma died five days later of what the police claimed was a heart attack. An autopsy revealed, however, that Ledesma had severe bruising to his feet, arms, back and shoulders, obviously inflicted by torture (International Gay and Lesbian Human Rights Commission (IGLHRC), "HIV+ Transvestite in Police Custody, Dead Under Suspicious Circumstances," March 2000. See also "Update on Vanesa Ledesma's Murder," May 2000, and "Update on Vanesa Ledesma's Murder," June, 2000).

Also, in March, 2000, The International Gay and Lesbian Human Rights Commission issued an urgent appeal for Marlene Guayas who was arrested by two policemen while resting in her house for no reason other than she was a transgendered individual who worked as a prostitute which is not a violation of the law in either Buenos Aires or Argentina (IGLHRC, "Urgent Fears for Jailed Transvestite Activist's Safety," March, 2000).

In June, 2000, Ana Di Toro, a member of the Commission for the Right to Abortion, a non-governmental organization, was

physically and verbally attacked by Catholic groups. As in the cases of attacks on LGBT people, the police did nothing to protect her, even though they were present (IGLHRC, "Right-Wing Demonstrators Physically Attack Campaigner for Women's Reproductive and Sexual Rights; Police Fail to Intervene," June 22, 2000).

Then on August 9, 2000, police car #3041 belonging to Precinto #1(Police Station #1) in Córdoba, stopped in front of Vanesa Piedrabuena's house. Four uniformed policemen, armed with shotguns got out of the car and began to shout threats against Ms. Piedrabuena, calling her a "police accuser," ordered her to "stay locked in her house," and promised her that at any moment she would "be found in a ditch" and that "no one would stand up for her" (IGLHRC, "The Life of Vanesa Piedrabuena, Transvestite Activist From Córdoba, Argentina, Is At Risk," August, 2000). Interestingly, yet very ominously, Ms. Piedrabuena is the activist who denounced the torture and murder of her friend Vanesa Ledesma (see above).

On December 18, 2000, Tamara (legal name Alejandro Moreno) was arrested in the Provincia of Santiago del Estero on a charge of "instigation to commit carnal acts." She was sent to the local prison where she was still incarcerated five months later. Astonishingly, the judge condemned Tamara's attorney, Sandra Zamón, to a month's suspension of her license for even accepting the case because, as the judge stated, "Transvestites are dirty and they deserve death." Both Tamara and her attorney have also been threatened and have received death threats since the case became public (IGLHRC, "The Rights of Transvestites in Argentina," April 3, 2001).

40. Conditions didnot improve in 2001 as can be seen in a number of cases. On February 14, 2001, Diana Sacayán, a transgender person whose legal name is Walter Oscar Sacayán, was arrested in the city of Don Bosco, in Buenos Aires Province. The police said she was being charged with robbery, but there were no witnesses to the "crime," and no evidence was found. Ms. Sacayán argued that her refusal to pay bribes to the police was the real reason for her incarceration. Three months later, however, she was still in jail with no formal charges yet filed. Moreover, she was being held under harsh and unsanitary conditions. She was denied blankets at night and food for days on end, forced to

share space with male inmates and subjected to verbal and psychological abuse by the guards who continually attacked her gender identity (IGLHRC, "Justice Delayed, Equality Denied," June 1, 2001).

In May, 2001, in San Martín in the Provincia of Buenos Aires, unknown assailants murdered a transvestite known as Andrea and dumped the body in a trash can. Nothing was done to investigate the case (International Gay and Lesbian Human Rights Commission, Resumen del año 2001 en américa latina y el caribe. San Francisco: IGLHRC, 2002. Hereafter cited as IGLHRC, Resumen del año 2001).

On October 19, 2001, Buenos Aires police arrested Ms. F.A. Rodríguez, a transvestite who was waiting for a friend. She told them that she was not engaged in sex work, but they grabbed her, tear-gassed her, forced her into a police van, handcuffed her, threw her to the floor and kicked her in the head. She was then taken to the police station where she was again kicked, slapped in the face and beaten with police sticks and subjected to verbal threats. Police officers claimed that they could "make her disappear" and called her a "*puto sucio*" (dirty faggot) and a "*gordo de mierda*" (ball of shit). She was forced to sign documents she could not see due to the beatings and the tear gas. Finally, she was released at 3 a.m. on October 20 with no charges filed against her. She filed a formal complaint with the Juzgado de Instrucción 27 (Magistrate Court), but nothing was done about her complaint (IGLHRC, "Torture of Transvestites Must Stop Now!," November 5, 2001. See also, IGLHRC, Resumen del año 2001).

Police continued to raid gay bars and restaurants, even in cities that have adopted anti-discrimination ordinances for homosexuals. For example, in May, 2001, police raided Tacla, a gay restaurant in Buenos Aires, detaining and harassing about 40 patrons. The local LGBT organizations filed a complaint, but nothing was ever done to investigate the charges. Then in June, 2001, police raided and subsequently closed the gay bar Mamanodansa and the lesbian bar El Refugio in the city of Rosario, State of Santa Fe, about 200 miles from Buenos Aires (IGLHRC, Resumen del año 2001).

Finally, despite anti-discrimination legislation, gays and lesbians were still being fired from their jobs because of their sexual orientation. For example, in June, 2001, Karina Lucero, a lesbian, filed a complaint charging that she had been dismissed

from her position with the provincial judiciary in Comodoro Rivadavia after her sexual orientation became known to her superiors (IGLHRC, Resumen del año 2001).

41. Discrimination against homosexuals, as well as physical and verbal abuse, continued throughout 2002 and 2003. On the night of May 26, 2002, police fired rubber bullets on transsexual activists who were trying to photograph and document a police attack on a transvestite. Rubber bullets do and did cause serious injuries. In this case, two transvestites were wounded. The incident was but another example of escalating police violence against any person or group of persons who are deemed by the authorities to represent a danger to public order. Police violence against homosexuals has a very long history, but there are indications that it may even be increasing in intensity and viciousness in part due to a backlash against the anti-discrimination legislation which Buenos Aires and other cities have passed recently.

There was also severe discrimination against LGBT students which obviated any gains made in the legal realm. For example, a transgender student, Lohana Berkins, who had been studying in night school in order to obtain a high school certificate faced tremendous discrimination from the principal of the school who refused to address her by her feminine name or to give her a school certificate in that name. This despite the fact that Ms. Berkins had been extremely active in facilitating workshops on gender issues to educate the school community and the fact that both her teachers and her fellow students accepted her for what she is (IGLHRC, "Act Now to Support the Right of Transgender People to Education," October 21, 2002).

Moreover, there still have been serious problems for LGBT organizations when they sought to register their organizations, even up to the present. In October, 2003, ALITT, a transgender and transvestite organization in Buenos Aires was denied legal registration by the government because the organization's aims "do not contribute to the public good nor offer a valuable framework for the development of coexistence, becoming part of the community's spiritual and cultural heritage." Lack of legal registration means that the organization in question has a very restricted access to funds, as well as less protection in case the organization or its members are attacked (IGLHRC, "Protest Denial of Legal Registration to Transgender Organization," October 6, 2003).

Finally as late as November, 2003, the Argentine police were still harassing transvestite and transgender sex workers, while turning the other eye to female prostitutes who openly worked on the city streets. The transvestite and transgender workers were arrested under a myriad of laws such those against "public scandal," "prostitutes and homosexuals," and "men wearing women's clothes" (IGLHRC, "Urgent Support Needed for Proposal to Decriminalize Sex Work and Transgender Expression in Buenos Aires Province," November 3, 2003).

42. These incidents are not unusual in Argentina. Indeed, police abuse and torture of male and female homosexuals is so common that it is mentioned almost in passing in accounts of "gay-bashing" in Argentina. If Mr. XXXX is forced to return to Argentina, it is quite likely that, in time, he will again encounter problems with the police. If this happens, he risks police abuse and torture. Please see the last five to ten years of reports by Amnesty International, World Watch, Argentine human rights NGO's, and the Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices-Argentina. See also the two most important Buenos Aires newspapers: La Nación (December, 1995-April, 2004) and Clarín (March, 1996-April, 2004).

43. What happened to these people were but a few cases in a horribly long list of abuse and torture of LGBT people by the Argentine authorities. Obviously, Mr. XXXX cannot file a complaint because the police will always protect their own and refuse to take his statement. Nor will the police ever investigate such incidents or prosecute the perpetrators because such abuse is tacitly accepted and often encouraged. In fact, gay males in Argentina can not count on protection from assault on the part of any civil or military official in local, state or national governments. On the contrary, gay males, particularly those who are HIV+, are viewed as constituting a threat to *La Patria* and must be eliminated so that *La Patria* will be "clean."

44. This is no where better seen than in official and unofficial views of Acquired Immune Deficient Syndrome (AIDS), or *Síndrome de Inmunidad Deficiente Adquirida* (SIDA) as it is known in Latin America. Latin Americans will rarely admit that AIDS even exists in their country, but if they do they will describe the disease as an abomination, caused by the Devil or an angry

God who has cursed a person or a family. That the blame for AIDS always falls upon the "fem" in the homosexual encounter is an even more powerful rationale for persecuting "fems" and cleansing *La Patria* and/or the family of all AIDS. The fact remains, however, that HIV+ or AIDS patients are lumped together into one horrific group whose existence is a threat to every individual, every family, yes, even to the nation (*La Patria*) itself. According to this way of thinking, therefore, abuse of these people is deemed to be deserved.

45. Ms. Mirta Roses Periago, Director of the Pan American Health Organization noted: "Important gains in child health and life expectancy in the continent are being swept back by AIDS, destroying the efforts and investments of past decades. The poor get infected, and those infected become poor and isolated by stigma and sickness, rejected from schools and jobs" (quoted in Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, pp. 1-2).

46. In this same incredibly important report, Peter Aggleton, Richard Parker and Mirima Maluwa stated: "HIV/AIDS plays to some deep-seated fears and anxieties----fear of germs and disease, fear of death, and anxieties about sex. There are major similarities between HIV/AIDS-related stigma and discrimination and some of the negative social reactions triggered by diseases such as leprosy, tuberculosis and cancer."

"But the stigma and discrimination that HIV/AIDS has given rise to is much more than this. All over the world, and especially in Latin America and the Caribbean, it has systematically played to, and reinforced, existing prejudices and anxieties--about homo- and bisexuality, about prostitution and sex work, and about injecting drugs." Please see Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, p. 3.

47. This becomes an even more dangerous situation when one looks at the increasing prevalence of HIV/AIDS in Argentina. In 2001, the rate was 0.69 percent of adults aged 15-49, just slightly above the rate in the United States. At the end of

2001, UNAIDS estimated that there were more than 130,000 persons infected with HIV out of a total population of 37 million (United Nations Development Programme, Human Development Report 2002. New York: Oxford University Press, 2002, p. 170).

The supply of HIV/AIDS medicine was/is therefore particularly vital in Argentina, yet, in September, 2000, for the second time in two months, the Argentine Ministry of Health failed to provide a continuous supply of the antiretroviral medications needed by AIDS patients to stay alive. The companies who had contracted with the government to guarantee these medications failed to fulfill their contracts and the government did nothing to enforce those contracts (IGLHRC, "AIDS Treatment Interrupted in Argentina," September, 2000).

The situation is still unresolved today, a disaster for Mr. XXXX (and other HIV+/AIDS patients) because not only is Mr. XXXX HIV positive, he exhibits clearly defined homosexual mannerisms. Moreover, there is no way for Mr. XXXX to alter his feminine mannerisms. He is what he is, thereby complicating enormously his efforts in Argentina to obtain true medical assistance rather than some meaningless palliative substitute.

48. There is no doubt that male "fems" and other homosexuals are members of a particular social group and that Mr. XXXX is in danger due to that membership. As The Honorable A. Wallace Tashima, Judge, United States Court of Appeals for the Ninth Circuit wrote in *Geovanni Hernández-Montiel v. Immigration and Naturalization Service*: "Geovanni's female sexual identity must be fundamental, or he would have changed years ago. . . . Geovanni should not be required to change his sexual orientation or identity. . . . Because we conclude that Geovanni should not be required to change his sexual orientation or identity, we need not address whether Geovanni could change them. Geovanni's credible and uncontradicted testimony about the inherent and immutable nature of his sexual identity compels the conclusion that Geovanni was a member of the particular social group of gay men in Mexico with female sexual identities."

49. In that same case, the Honorable Melvin Brunetti, Judge, United States Court of Appeals for the Ninth Circuit, in a concurring opinion stated: "The evidence presented by Professor Davies supports the legal conclusion that in Mexico, gay men who have female sexual identities constitute a particular social

group for asylum purposes. Hernández-Montiel's uncontradicted testimony regarding his physical and mental state is sufficient to establish that he is a member of this particular social group. Professor Davies testified that gay men with female sexual identities are persecuted in Mexico. Hernandez-Montiel's testimony before the Immigration Judge that he suffered persecution on account of his membership in this social group was found credible by both the Immigration Judge and the Board of Immigration Appeals. Hernández-Montiel is therefore entitled to asylum and withholding of deportation based on his well-founded fear of persecution should he be returned to Mexico."

50. The situation in Argentina in 2004 is actually much worse than it was in Mexico at the time the Hernández-Montiel case was heard. As I will show below, Mr. XXXX's life is in much greater danger in Argentina than in any other country in Latin America (with perhaps one or two exceptions). Indeed, it is my expert opinion, which I will detail below, that Mr. XXXX is an extremely high profile target and would be in grave danger of being tortured and/or killed if he were forced to return to Argentina.

51. First, Argentina is the very epitome of a country ravaged by neo-liberal economic policies. Through most of the twentieth century Argentina was the wealthiest country in Latin America, one well down the road to becoming a first-world nation, but then the entire economy declined precipitously causing disastrously unstable political conditions. Although the economic crisis really began in 1998, Fernando de la Rúa was elected President in 1999 amidst a great wave of confidence in the future, confidence which was quickly dashed. The economy continued to decline throughout 2000 and most of 2001, but then in October, 2001, it crashed. First, there were rumors of a stock market crash and currency shortages which prompted a run on the banks. In December, there were food riots and widespread looting which prompted the President to impose a 30-day state of siege. On December 20, President de la Rúa was forced to resign, replaced by the President of the Senate, Ramón Puerta. Four days later, Puerta was replaced by Adolfo Rodríguez Saa who immediately suspended payments on Argentina's international debt (approximately \$145 billion) and issued a new currency to stop bank runs.

On January 2, 2002, Eduardo Duhalde became the fifth President of the Republic in two weeks and immediately devalued the currency by 40 percent and froze all bank accounts touching off massive protests. He then allowed the currency to float on the world market and declared a five-day banking freeze. Throughout February, March, April, May and June, there were massive demonstrations, protest marches and riots by the unemployed. Added to the riots was a wave of kidnappings for money by the desperate. By October-November, there was massive unemployment, 25 percent of Argentinians below the poverty line, thousands of homeless children on the street homeless and the spectacle of thousands of people scavenging garbage cans in search of something to eat. Finally, there were massive demonstrations and riots on December 19, the first anniversary of the first riots in 2001.

In April, 2003, in the midst of economic chaos, presidential elections were held and Nestor Kirchner, the former governor of Patagonia was elected, but there were no economic successes. Indeed, per capita gross domestic product dropped from \$7,418 in 2001 to below \$2,700, unemployment rose to 21.5 percent, underemployment was so high it was almost immeasurable, income disparities vastly increased and the percentage of Argentinians living below the poverty line rose to over 50 percent. Moreover, as late as November, 2003, the government was still trying desperately to reschedule over \$141 billion in international debt.

Then on December 20, 2003, tens of thousands of Argentines marched on the Presidential Palace in Buenos Aires, demanding jobs as well as commemorating the second anniversary of the riots which drove President De La Rúa from the presidency (December 20, 2001). Although peaceful when compared to the 2001 riots, the demonstrations were marked by a number of explosions and the fact that dozens of people were injured, including three who were badly burned when a bomb went off in a garbage can.

In mid-January, 2004, President Nestor Kirchner met with U.S. President George W. Bush at the Summit of the Americas held in Monterrey, Mexico. Relations between the two countries cooled when Kirchner cancelled a major joint military exercise between Argentina, Brazil and the United States because of Argentina's refusal to grant U.S. troops immunity anywhere in the world from any human rights charges that might be leveled against them.

Moreover, Kirchner defied Bush's "suggestion" that he not meet with Venezuelan President Hugo Chávez who has been at loggerheads with the Bush Administration over myriad conflicts and disagreements.

At that same meeting there was continued conflict between Kirchner and Horst Kohler, the Managing Director of the International Monetary Fund (IMF). Kirchner had offered to pay private investors only a fraction of the \$90 billion debt owed them. Kohler, on the other hand, was adamant that Argentina pay the full amount owed (Héctor Tobar, "Argentine President Passes the Test," *Los Angeles Times*, January 14, 2004).

52. Finally, in early March, 2004, President Kirchner and the IMF reached a tentative agreement on Argentina's \$3.1 billion debt to the IMF. The negotiations, which were described as "testy," provided both President Kirchner and the IMF a temporary breathing space, but the major structural problems remained. Moreover, although the official unemployment rate declined in 2003, the truth is that the real unemployment rate had inched higher and the unemployment rate had continued to soar. The anti-IMF demonstrations in Buenos Aires were symptomatic of the massive economic crisis which continues to wrack the nation, an ominous portent for Mr. XXXX. See: Bill Cormier, "Argentina, IMF in Accord Over Repayment of Debt," *The San Diego Union-Tribune*, March 10, 2004.

For an almost daily analysis of the economic breakdown, see *The Miami Herald*, *The Los Angeles Times*, and *The San Diego Union-Tribune*, 2001-2003 and the U.S. Department of State Country Reports, 1998-2002.

53. Mr. XXXX's economic situation is far graver. The vast majority of Argentine-owned large and medium firms and businesses, as well as most foreign companies and the maquilas in Argentina, will simply not hire obviously gay males. Not only is Mr. XXXX HIV+, he exhibits homosexual mannerisms which "proves" the Argentine that all homosexuals are HIV+ (which they are not) and all individuals who are HIV+ are homosexual (which is likewise false). Given this prejudice AND, the horrendous economic situation in Argentina, there is no way that Mr. XXXX could earn enough money to feed himself adequately, let alone obtain any medical treatment he might need.

54. The natural result of such massive economic collapse as that described above is almost always a breakdown in law and order and a diminution of basic human and civil rights for all citizens, but most particularly for homosexuals and other perceived "enemies" of *La Patria*.

55. As the U.S. Department of State put it: "There were instances of killings and brutality by police and prison officials. Authorities prosecuted some police for such actions, although impunity continued, particularly in jails and prisons. Police corruption was a problem. Overcrowding in jails and prisons was a problem. Police sometimes arbitrarily arrested and detained citizens. The judiciary showed clear signs of politicization. The judiciary continued to work through the legacy of human rights abuses of the "dirty war" of the 1976-83 military regime. Anti-Semitism remained a problem, despite steps to combat it. Domestic violence against women was a problem. Discrimination against racial and ethnic minorities persisted. Child labor was a problem. There were reports of trafficking in women and children" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2003-Argentina, February 25, 2004, p. 1. Hereafter cited as 2002 Country Report on Argentina).

56. Routine torture by the police is of particular concern in Mr. XXXX's case. "Torture and brutality by police and prison guards continued to occur. Human rights organizations described police brutality, the occasional use of torture on suspects, and corruption within the prison and police forces. The Government investigated some past reports of police or prison brutality; however, few cases were tried and even fewer resulted in convictions. Threats to witnesses and advocates made prosecution of abuses and reform more difficult" (2003 Country Report on Argentina, p. 3).

Just last year, the Department of State noted that: "A January 2001 report of the U.N. Special Rapporteur on Torture recalled concerns raised in the U.N. Human Rights Commission's October 2000 review under the International Covenant on Civil and Political Rights. In particular, the Rapporteur noted concerns about allegations that torture and excessive use of force by police officials were 'a widespread problem and that government mechanisms established to address it are inadequate'" (2002 Country Report on Argentina, p. 4).

"A 2000 Amnesty International (AI) report expressed concern over reports that police targeted, tortured, and harassed gays, lesbians, and bisexuals. The report included information regarding the 2000 death in police custody of a transvestite whose body showed signs of torture. AI noted that police bylaws and provincial codes of misdemeanors allow police to detain or sanction members of sexual minorities for actions that do not constitute a criminal offense" (2002 Country Report on Argentina, p. 10).

57. Also of great concern was police involvement in unlawful killings. "Police and prison officers were responsible for killings involving the use of unwarranted or excessive force. The authorities investigated, and in some case, detained, tried and convicted the officers involved; **however, impunity for those who committed abuses was sometimes a problem.** The Center for Legal and Social Studies calculated that in the Buenos Aires region there were 149 violent deaths, civilian and official, involving security forces in the first 6 months of the year" (2003 Country Report on Argentina, p. 1). Emphasis Mine.

58. In its 2002 Country Report on Argentina, the Department of State expressed great concern about the pervasiveness of police corruption: "There were numerous charges of police corruption. Police activities were often not well financed and police were not well paid, with a starting monthly salary of \$110 (400 pesos) compared with an average worker's earnings of approximately \$150 (550 pesos) monthly. ... Police corruption was systemic; some of the most common practices included extortion of and protection for those involved in illegal gambling, prostitution, and auto theft rings, as well as detention and extortion of citizens under the threat of planting evidence to charge them for crimes. Addressing police corruption was difficult in part because the suspects intimidated whistle blowing colleagues, judicial officials, and civilian witnesses. Threats and beatings allegedly aimed to intimidate witnesses were common and, in some cases, occurred in connection with murders believed committed by members of security forces" (2002 Country Report on Argentina, p. 5).

59. Added to that concern this year was concern about arbitrary arrest and detention by the police: "The Penal Code limits arbitrary arrest and detention, however, provincial police sometimes ignored these restrictions and arbitrarily arrested and detained citizens. In the past, human rights groups reported difficulties in documenting such incidents because victims were reluctant to file complaints for fear of police retaliation or inaction. There were reports that in some provinces paramilitary groups worked in conjunction with police elements" (2003 Country Report on Argentina, p. 4).

60. Just a few weeks after having taken office President Nestor Kirchner moved to gain control over the nation's military and police forces which had been allowed to run themselves during the political crisis 2001-2003. He forcibly retired over two dozen army officers and announced that his government would appoint new chiefs for the 53 federal police stations in Buenos Aires. Many presidents had tried to dominate the nation's security forces, but all had failed in the end. Although it appeared initially that Kirchner would succeed, the staying power of the security forces became evident at the end of November when he began to receive anonymous calls on his cell phone threatening him and his family. Thus, it is extremely doubtful that the president will be able to clean up police corruption any time soon, certainly not soon enough to be of much good to Mr. XXXX should he be forced to return to Argentina. For a superb, in-depth analysis of this problem, please see: Héctor Tobar, "Argentina's New President Cleans House," *The Los Angeles Times*, June 5, 2003, and "Quiet Exit of Argentine Top Brass Says Much," *The Los Angeles Times*, June 8, 2003. See also Alistair Scrutton, "Argentine Leader Gets Threats in Cops Probe," *The San Diego Union-Tribune*, November 28, 2003, and Loveman, Davies, The Politics of Antipolitics, particularly pp. 3-14; 61-74; 158-170; 228-238; and 365-423.

61. Terrifyingly reminiscent of the past were reports of anti-Semitism and racism in the Argentina of 2003. "Acts of discrimination and violence against religious minorities, particularly the Jewish and Muslim communities continued. ... There were a number of reports of anti-Semitic acts and of threats against Jewish organizations and individuals during the year. **The most frequent incidents included the appearance of anti-Semitic and pro-Nazi graffiti and posters in cities throughout the country.**"

"Cemetery desecrations continued to occur. On September 20, a Jewish Cemetery in the Province of Santa Fe was desecrated."

"There were no developments in the desecration of approximately 150 tombs in an Islamic Cemetery in La Matanza in July 2002 nor in the case of an anti-Semitic note left with an anti-tank grenade outside a Jewish Club in La Plata in November 2002."

"Racist incidents were underreported, and racism often was denied as a problem; however, members of racial minorities, such as those of African descent, reported frequent cases of verbal insults and, in some cases, physical assaults on the streets of Buenos Aires. Accounts by those who have been subject to incidents of racial prejudice indicated that the problem was more common than reported. Members of minority groups reported avoiding buses and other crowded public facilities out of fear of being subjected to racial harassment."

"Individuals of indigenous descent from the northern part of the country, as well as from Bolivia, Peru, and other Latin American countries, reportedly were subjected frequently to verbal insults because of their dark skin" (all of the above from the 2003 Country Report on Argentina, pp. 6 & 10).

"In March 2001, the U.N. Committee on the Elimination of Racial Discrimination expressed concern regarding reports throughout the country of police brutality committed on a variety of pretexts on grounds of race, color, or ethnic origin" (2002 Country Report on Argentina, p. 12). Emphasis mine.

62. Moreover, prison conditions in Argentina are grim indeed. As the Department of State puts it: "Prison conditions were often poor. Some facilities were old and dilapidated, and many prisons and jails were overcrowded. A notable increase in crime and stricter provisions for early release, combined with a slow judicial system, led to overcrowded prisons and police stations. In September, a press report on Buenos Aires Province stated that there were 6,200 detainees in police station facilities designed for 3,000, and the 36 provincial prison units designed for 15,000 inmates held 22,000" (2003 Country Report on Argentina, p. 3).

Last year, the Department of State reported that: "Torture and brutality by prison guards and officials remained serious problems. A number of prisoners who had previously filed complaints about torture and mistreatment were killed in prison in 2001 and 2002. ... There was no reported serious investigation of these cases by the penitentiary service" (2002 Country Report on Argentina, p. 5).

63. It must be noted here that all prisons (including those in the United States) are particularly dangerous for homosexuals. Not only are they raped and gang-raped, beaten severely, even killed by other prisoners, but prison guards and other prison employees also harass, beat, rape, and force homosexuals to perform oral sex. The fact is that **HOMOSEXUAL PRISONERS are ALWAYS TREATED THE WORST IN ARGENTINE PRISONS**, a gruesome prospect for Mr. XXXX.

64. Given this scenario of life in Argentina, it would be absolutely impossible for Mr. XXXX to receive any type of protection from state security forces. If they wantonly torture, murder and illegally detain their citizens, otherwise violate basic human rights of women, children, and the disabled, how could anyone expect them to respect Mr. XXXX's rights as a homosexual who is infected with the HIV/AIDS virus? The answer is that they will not and they will harass and abuse Mr. XXXX physically, verbally and emotionally, perhaps even kill him, very soon after his arrival in Argentina.

65. As noted above, Mr. XXXX's homosexuality and his current medical status (HIV+) makes him a particularly high profile target. The Military, the Police, the death squads, even the gangs firmly believe that they are "cleansing" the body politic and therefore *La Patria* of all that is dirty, undesirable, and dangerous to the morality of *La Patria* and its children. Indeed, given the climate in Argentina and the role the authorities play in denying basic human and civil rights, it is my considered opinion that Mr. XXXX is at high risk for arrest at the airport and imprisonment. At best, there would be some form of preventive detention with the same end result: Mr. XXXX either going directly to jail or being tortured or killed "while trying to escape," or some such scenario. His chances of avoiding the authorities and detention are nil. Moreover, once

incarcerated, the general prison population will immediately target Mr. XXXX for massive abuse and most probably death. As outlined below, neither the government nor the police can or will do anything to help Mr. XXXX.

66. Moreover, people in all cultures begin to look for scapegoats to explain THE CRISIS THROUGH WHICH THEY ARE PASSING AND ON WHOM THEY CAN VENT THEIR FRUSTRATIONS. Homosexuals have been singled out for centuries and it is no different in the Argentina of 2003. Mr. XXXX will be in danger not only from the security forces, but also from the mobs in the street which have become increasingly larger and bolder.

67. Even should Mr. XXXX escape persecution (by some incredible miracle), he will still be living under a death sentence. There is very little medicine in Argentina, even for the very wealthy, and there are absolutely no drugs to treat HIV, let alone AIDS itself which requires a very complex and extraordinarily expensive combination of medicines, commonly known as the "AIDS COCKTAIL."

68. For thirty-six years I lived ten miles from the richest city in the Third World, Tijuana, México, and even citizens of that city are unable to buy the drugs they need. They must cross the border into San Diego, but they can only do that if they are extremely wealthy by Mexican standards because the cost of the medicine is prohibitive. In fact, there exists a large and very active organization in both San Diego and Tijuana which collects unused medicine from those who have died and sends it into the interior of Mexico. There is no such organization of import in Argentina.

69. Moreover, there are no AIDS facilities in Tijuana or really anywhere in Mexico, for that matter. My Mexican friends with AIDS have all come to San Diego for help. They range from the very poor to the quite wealthy. Money is of little use if there is nothing to "buy."

70. As is clear from the above, compared to Argentina, Mexico is an economic paradise with all the amenities and advantages of the First World. But if Mexicans are unable to

secure proper medical treatment for AIDS, one can only imagine the horror that exists in Argentina where the government has neither the will nor the monetary resources to deal with the increasingly serious problem.

71. If not death, then jail, without medicine, without adequate food or any degree of safety, is the most likely fate for Mr. XXXX. Moreover, if Mr. XXXX is deported from the United States, his arrival will be well known to all relevant government agencies. His name will be on the flight manifest and if he should enter by land, he will be logged in and his whereabouts known immediately.

72. Regarding the question of whether or not Mr. XXXX could simply move to another region of the country, thereby evading the vigilance of his/her enemy, my response is an unequivocal and unqualified "NO."

73. Argentina, like all other Latin American republics, has an elaborate system of national identity documents which must be carried on one's person at all times. Although the exact terminology might vary from country to country, they all use the following: military ID (for males), electoral identification, and tax identification. All of these must contain current address information under penalty of arrest and incarceration. Argentine citizens may be and are stopped by security forces, AT WILL, and they had better have up-to-date documents or they will be sent directly to jail. Thus, Mr. XXXX's whereabouts will always be known.

74. In sum, then, due to that fact that he is an admitted homosexual who exhibits homosexual mannerisms on the effeminate end of the "masculinity" spectrum, AND IS HIV+, Mr. XXXX is a high profile target who would clearly be in extreme danger if he were forced to return to Argentina. It is my considered, professional opinion that the Argentine military and police not only possess the desire to eliminate all criminals, gang members, undesirables and moral deviates (read homosexual) and thereby "cleanse" the polity, they have the power necessary to find and eliminate Mr. XXXX. Moreover, it is my judgment that they will indeed kill Mr. XXXX either in the short run or the long run, with a high degree of effectiveness.

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THE MEANING OF MACHO

Some years ago, the great Chicano writer and thinker, Rudolfo Anaya, wrote: "The word *macho* has one of the shortest definitions in the Spanish language dictionary, and yet the cult of macho behavior (machismo or the macho image) is as ambiguous and misunderstood as any aspect of Hispanic/Latino culture. To be macho is to be male, that's simple, but when the term is applied to Hispanic male behavior, then the particulars of the role are defined according to the particular culture. From Spain to Latin America, from Mexico to the Chicanos in the USA, one gets a slightly different definition of the macho image at every turn" (see Rudolfo Anaya, "'I'm the King:' The Macho Image," in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 59).

In Anglo-American culture (i.e., The United States), *machismo* is usually defined simply as male domination of females, or as Omar S. Castañeda noted, "reduced to self-aggrandizing male bravado that flirts with physical harm to be sexual, like some rutting for the right to pass on genes" (see Omar S. Castañeda, "Guatemalan Macho Oratory" in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 37).

In the end, the complexity of the word *macho* derives from the fact that it can be used in both a negative and a positive manner. In a brilliant book on the subject, Alfredo Mirandé offers two very contradictory lists of descriptors:

Bravado	Brave
Cowardly	Courageous
Irresponsible	Responsible
Disrespectful	Respectful
Selfish	Altruistic
Pretentious	Humble
Loud	Soft-Spoken
Abusive	Protective
Headstrong/Bullish	Intransigent
Conformist	Individualistic
Dishonorable	Honorable

Hombres y Machos: Masculinity and Latino Culture. Boulder: Westview Press, 1997, p. 78.

Stated simply, "historical" *machismo* is actually male dominance of other males in all aspects of life: bravery, fighting, drinking, gambling, domination of females, etc. This concept, however, is changing in the "cradle" of *machismo*—the nation of Mexico. See Matthew C. Gutmann, The Meaning of Macho: Being a Man in Mexico City. Berkeley: University of California Press, 1996. Still, as is often the reality in matters of ideology, the "taught" have lagged behind the "teacher."

Moreover, of tremendous importance for this case is the warped definition of *machismo*, often held by police and the military in Latin America, which holds that harassment, abuse, assault, even rape of homosexual males somehow makes a man even more *macho*. One must remember that these attacks also serve as "reassertions" of the absolute and unmitigated control over all people sought by security forces in Latin America. See Brian Loveman and Thomas M. Davies, Jr., The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997;

Use of *machismo* by Latino gangs in the United States is very similar, but even more exaggerated. Perhaps Rudolfo Anaya said it best: "As more Chicano families become single-parent families, the traditional role of the father and the extended-family males will not be as influential in shaping the behavior of boys. The boys are being conditioned instead by the behavior they see on TV, in movies and music videos. Boys loose in the hood are being shaped by the gang instead of the father. *La Ganga* shapes behavior, provides initiation, belonging, *la vida loca*, cruising, drinking, drugs, and guns" (see Rudolfo Anaya, "'I'm the King:' The Macho Image," in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 64).

HOMOSEXUALITY AND PSYCHIATRY

Latin American parents/families (like their counterparts in most of the world) have often sought to "cure" their gay/lesbian relatives by sending them to psychologists/psychiatrists for medical "treatment." Beginning in the 1930s, homosexuality was formally defined as a mental disorder, a type of psychopathic personality disorder. In 1952, in its first *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the American Psychiatric Association (APA) "included a category called sexual deviation as a subtype of sociopathic personality disturbance. Homosexuality was mentioned as one example of the sexual deviations. In the second edition (*DSM-II*), published in 1968, the reference to homosexuality continued to be included under the heading for personality disorders, a type of sociopathic personality disorder, and specifically as one of the sexual deviations."

Then, "the APA reviewed the findings from more recent research on gay men and lesbians. Following a period of intense political engagement and of considerable scientific evaluation, the Board of Trustees of the APA voted in December 1973 to remove homosexuality from its list of mental disorders. ... Remnants of the diagnosis of homosexuality as a type of disease were finally removed from the official list of diagnoses in 1986, and currently sexual orientation is not a consideration in defining mental health or illness in American psychiatry."

"Hostility toward homosexuality persisted among some psychiatrists after the nomenclature change and is maintained today by groups of psychiatrists and other mental health professionals who continue to advocate an illness model of homosexuality and offer treatment for it. These professionals do not represent the official view of American psychiatry regarding homosexuality and gay men and lesbians" (see Terry S. Stein, M.D., "Psychiatry and Homosexuality," in Bonnie Zimmerman and George E. Haggerty, The Encyclopedia of Lesbian and Gay Histories and Cultures, Volume II, George E. Haggerty, ed., Gay Histories and Cultures: An Encyclopedia, New York: Garland Publishing Inc., 2000, pp. 713-715). See also Dr. Stein's articles "Psychological and Psychoanalytic Perspectives on Homosexuality," and "Psychotherapy" in ibid, pp. 715-718.

Psychiatrists, psychologists and other health professionals in Latin America, however, continue to view homosexuality as a "treatable, curable illness," and families continue to seek medical treatment for their families and friends. I personally know of members of my extended family in Peru who have been sent to psychiatrists to "be cured." Moreover, just last year (2003) my Mexican-American son-in-law's mother wanted to send her younger son to a psychiatrist for that same reason.