

April 10, 2005

1. Attached to this declaration 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 for thirty-three years (1968-2001), and was Director of the Center for twenty-two years (1979-2001).

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.

4. I have traveled extensively all over Latin America and read on a daily/weekly/monthly basis a vast array of newspapers, magazines, journals, international human rights reports and myriad web sites on Central and South America. Special mention must be made of Mesoamerica, an internationally acclaimed publication on Central America published by the Institute for Central American Studies in Costa Rica. Published monthly, Mesoamerica provides individual coverage of each Central American republic.

5. Although I have traveled extensively in Mexico, Central America, and South America over the past 40 years, I have never been to El Salvador because both Professor Brian Loveman and I are on at least two death lists held by the El Salvadoran military and a particularly active and vicious Escuadrón de Muerte (Death Squad). We know this from several high-level

contacts we have in the El Salvadoran military and police (please see Paragraph #8 below).

6. For almost twenty-six (26) years, I was married to a Peruvian national, Eloísa Carmela Monzón Abate de Davies, the daughter of a Lieutenant General and *Director General* (Commander-in-Chief) of the *Guardia Civil del Perú*. 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 Latin American countries, as well.

7. 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 riding it of traitors and sexual deviates (two groups they believe to be identical). The truth is that officers of the Peruvian *Guardia Civil* and its Salvadoran counterpart, the National Civilian Police (PNC) were and are often 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 Latin America are imbued with virulent homophobia from their very first day of service.

8. 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 and Che Guevara on Guerrilla Warfare. Both contain extensive treatments of El Salvador and it is precisely what Professor Loveman and I have written about the military and guerrilla warfare in El Salvador that has made us *persona non grata* in El Salvador.

9. Since 1992, I have been asked to serve as an expert witness in over 200 political asylum cases in INS Court in 22 cities on every country in Latin America. In every case, in all

of the above named cities, I was recognized as an expert on Latin America by Judges of the Executive Office of Immigration Review.

10. I am also a recognized authority on Latin American culture, including Latin American views of sexuality, both heterosexual and homosexual. As noted above, since 1992 I have been asked to serve as an expert witness in over 200 political asylum cases and, while many of those cases dealt with death threats from the military or the guerrillas of a given nation, I have also testified for more than 100 homosexual/transsexual males and females, all from Latin America, 10 from El Salvador.

11. My testimony concerning the treatment of gay men with "female" sexual identities was discussed prominently by the United States Court of Appeals for the Ninth Circuit in the case of Hernández-Montiel v. INS 225 F.3d 1084 (9th Cir. 2000). (See Below)

12. For the past nine (9) 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 three new courses which contained extensive treatments of sexuality, family and religion (including two graduate seminars) and to prepare affidavits for the above mentioned 100 homosexual, males and females for use in INS Court.

13. I am equally conversant with the literature and available materials on LGBT (lesbian/gay/bisexual/transsexual) themes in Latin America, including all relevant publications and a number of internet sites, including the International Gay and Lesbian Human Rights Commission, the Lesbian and Gay Immigration Rights Task Force, the International Lesbian and Gay Association (particularly its incredibly important World Legal Survey), and the many sites of LGBT and AIDS support groups in the various Latin American nations the most important of which in El Salvador is *Entre Amigos* (Between Friends). Please see also my "Selected and Annotated Bibliography" which is appended to this declaration.

Of transcendental importance for this case is a recent publication by Andrew Reding, a researcher/employee of the

Resource Information Center of the Immigration and Naturalization Service: Sexual Orientation and Human Rights in the Americas (New York: World Policy Institute at New School University, December, 2003).

14. 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 in El Salvador as a gay male with full-blown AIDS to be well-founded.

15. 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.

16. 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.

17. 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* (the cult of extreme "manliness") Salvadoran society as having rejected the proper role of the male. This distinction is of paramount importance in Salvadoran 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.

18. 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.

19. 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).

20. Indeed, I have known many Salvadoran, Peruvian, Ecuadoran, Venezuelan, Mexican and other 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.

21. The view and treatment of the "female" partner (the receptor), however, could not be more diametrically opposed. The so-called "fem" (a homosexual who is sexually active ONLY with other men, rather than those males who have an affinity for both males and females, as noted above, is despised as the "lowest of the low" and strenuous, even violent persecution of them 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, particularly to the father and brothers of the individual. Mr. XXXX's father died early in his life and his uncle was killed in the civil war, but his grandfather followed this pattern in that he often beat Mr. XXXX for being effeminate. "Sometimes my grandfather would beat me with a rope when he caught me playing with dolls. My grandfather did this because he loved me and wanted to protect me. In El Salvador, boys who play with dolls get beaten and ridiculed. Because I loved my grandfather, I tried very, very hard to do as he wanted and tried to hide my 'feminine' side."

Trying to beat the "gayness" out of a child is not uncommon in El Salvador and the rest of Latin America. Still beating a child with a rope is really more torture than ordinary spanking. It is amazing that Mr. XXXX did not suffer severe external and internal injuries from those beatings.

22. Mr. XXXX's classmates also ridiculed him because of his feminine mannerisms: "No matter how hard I tried, however, everybody knew I was 'different.' By the time I was about 7 years old, other children in the neighborhood and at school would call me names like 'culero,' 'maricon' and 'afeminado,' which mean gay, faggot and feminine."

"In school, other boys would push me around and try to beat me. They would tell the teachers that I was bothering them and the teachers would believe them and not me and I would be sent home. My sister, Estela, was always by my side trying to protect me from the other children. The teachers would get angry with her and told her to leave me alone. They said that I needed to learn how to defend myself. I often ran home crying trying to get away from the other children."

23. When children are being harassed at school, it is up to the teachers and administrators to protect the child as best they can. In Mr. XXXX's case, however, those in authority failed in their duty, another tragically common pattern in El Salvador and Latin America.

It is no wonder, therefore, that Mr. XXXX's grandparents tried to protect him: "My grandparents started to keep me in the

house more and more often to protect me from the other children. When I left the house, either my grandmother or my sister would come with me-for protection. I had very few friends growing up and spent most of the time in the house."

There is no doubt that Mr. XXXX's family was extremely worried, even frightened about him. "For the most part, however, I have had to hide this 'feminine' side. When I was living in El Salvador, I only dressed in women's clothing when I was inside my grandparent's house and nobody else was around. I knew my family would not approve or understand. **They kept warning me over and over again about what would happen to homosexuals in El Salvador-they would be mutilated with machetes, sodomized and killed. They have also told me over and over again what it means to be a man and how a man should act.** I love my family, especially my grandparents, and I have always tried not to disappoint them." Emphasis Mine.

Simply stated, Mr. XXXX was not sufficiently *macho* for Salvadoran society, even in primary school. I can not imagine a worse childhood for a young boy, beaten by his grandfather and neighborhood children and classmates.

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

25. It should be noted here that there exists a vast array of vocabulary in Spanish to describe and denigrate LGBT peoples. Some words, such as *maricón* (queer), are used universally throughout the Spanish-speaking world. Others are country and/or region specific. Moreover, as with all slang, new terms come into and go out of usage with blinding speed. Whatever, the word, however, the message is the same, one of hate and fear. Please see Stephen O. Murray and Wayne R. Dynes, "Hispanic Homosexuals: A Spanish Lexicon," in Stephen O. Murray, Latin American Male Homosexualities (Albuquerque: University of New Mexico Press, 1995), pp. 180-192. See also Andrew Reding, Sexual Orientation and Human Rights in the Americas (New York: World Policy Institute, 2003), particularly pp. 91-93.

26. These attitudes and actions are consistent with everything I have read and seen in my more than forty years studying and traveling in Mexico, Central America and the Andean Republics.

27. In addition, the male "fem" is a threat to all the females of the family because the female is always responsible for the maintenance of family values, family morals and the image of the family 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.

28. A homosexual represents a total rejection of this cultural/religious norm, thereby constituting a direct, frontal attack on the Virgin Mary, the Virgin of Guadalupe and all that is sacred and holy in the Roman Catholic Faith.

Indeed, in recent years, the dangers for LGBT peoples emanating from one of the principal players in Salvadoran culture and society, i.e., the Roman Catholic Church, have increased enormously. The Catholic Church in El Salvador has long been one of the most conservative in Latin America, not far behind the Church in Colombia which is generally considered to be the most conservative and reactionary in Latin America. That conservatism and the concomitant homophobia, battle-hardened during the civil war of the 1970s and 1980s, have been strengthened and intensified over the past decade. Indeed, the Church's attack on homosexuality has increased exponentially in the past decade, not only in El Salvador, but in all of Latin America and the world as well.

29. For example, in October, 2004, a prominent member of the Mexican Church hierarchy, Cardinal Javier Lozano Barragán, denounced a Spanish proposal to legalize same-sex marriages, saying it would be like considering cats or cockroaches part of a family. "They even give cockroaches the rank of family now because they live under the same roof. If there's a cat, a dog, two lesbians and everything living there, it's a family" (*The Los Angeles Times*, October 13, 2004).

30. Moreover, as elsewhere in the world, the Roman Catholic Church in El Salvador has recently stepped up its attacks on homosexuality through both its own pronouncements and its public support of and adherence to a recent publication in Peru. At the request of the Cardinal of Lima, Archbishop Juan Luis Cipriani Thorne, the Pontifical Catholic University of Peru (*La Pontífica Universidad Católica del Perú*) published (2002) a pamphlet entitled *Identidad Sexual: ¿Es Posible Escoger?* ("Sexual Identity: Is It Possible to Choose?) which describes homosexuality as a curable illness: "There are innumerable psychological studies from the past 40 years that describe childhood problems that form part of the history of persons with homosexual inclinations: distorted maternal and paternal role models; peer group problems in childhood; sexual abuse in childhood, among others. ... Like any other behavioral problem, homosexuality can be reversed" (Centro de Asesoría Pastoral Universitaria de la Pontífica Universidad Católica del Perú, 2002).

The concept that homosexuality is "curable" is common in El Salvador. Please see my short description of "Homosexuality and Psychiatry" which is appended to this declaration.

31. As a consequence of these beliefs, families have been known to kill the male "fem" rather than risk the opprobrium called down upon them by their "fem" relative.

32. Unfortunately, the danger to male homosexuals is not confined to the family. In El Salvador, Guatemala, Honduras, Mexico, Ecuador, Chile and Argentina 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.

33. It should be noted here that the Salvadoran government and police treat crimes which result in the abuse, injury or death of a gay male as "common crimes," committed by "common criminals," never as hate crimes against homosexuals. This is particularly true, of course, when the police themselves are the perpetrators. These matters will simply be "dropped" and there will never be an official investigation, as there would be if homosexuals were not the target.

34. In addition to the police and other security forces in El Salvador, there are two other groups in the nation which pose true mortal threats to Mr. XXXX. These are the so-called *Esquadrones de Muerte* (Death Squads, see below) and the Salvadoran gangs which have been transplanted from Los Angeles, California, to the capital, San Salvador, and other major cities in the country.

35. Although he was not yet fully cognizant of the importance of *machismo* and police brutality, or the threat represented by the Death Squads or gangs, Mr. XXXX did learn very early in his life that it was both unpleasant and **dangerous** to be gay in El Salvador. "As a homosexual, transgender individual, I am afraid to return to El Salvador. El Salvador is a dangerous place for anybody-everybody seems to carry a machete or a firearm. But it is particularly dangerous for homosexuals. **I remember all the harassment I suffered even as a small child just because people thought that I acted 'too feminine.'** I remember repeated warnings from my family, stories in newspapers and on television and from conversations with others in the gay community about how homosexuals are treated in El Salvador-they are mutilated, raped, kidnapped and murdered." Emphasis Mine.

36. The plain truth is that El Salvador is one of the two most homophobic nations in Latin America, Guatemala being the other. As Andrew Reding stated so succinctly, "Consensual sexual activity between homosexuals is legal. But societal prejudice against sexual minorities runs very strong, endangering the safety of anyone known to be homosexual" (Andrew Reding, Sexual

Orientation and Human Rights in the Americas. New York: World Policy Institute at New School University, 2003), p. 46.

37. The United States Department of State recognized this reality in its 2002 Country Report on El Salvador: "The NGO Entre Amigos reported that members of the municipal and national Civilian Police regularly detained and harassed homosexuals and transvestites when they were out at night, although they were not engaged in criminal activity. ... A homosexual employee of Entre Amigos reported that in August four PNC officers detained him in a vacant lot, told him homosexuals should not exist, beat him, and threatened they would do him more severe harm if he reported the crime. **He reported the crime. However, in November, the Attorney General's office told him the case did not fall in its jurisdiction for investigation because it was a petty offense.** The law requires the Attorney General's office to prosecute petty offenses as well" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2002-El Salvador, March 31, 2003, p. 10). Hereafter cited as 2002 Country Report on El Salvador. Emphasis mine.

38. There are myriad other examples of extreme violence against homosexuals in El Salvador, assaults and murders which are never investigated by the police. For example, on June 29, 1999, unknown individuals shot and injured a gay male as he left the offices of Entre Amigos (International Gay and Lesbian and Human Rights Commission, December, 2000).

39. On November 19, 2000, a van drove up to a transvestite and a young man who was accompanying him. Someone fired five rounds at the transvestite, killing him instantly. His companion was shot three times, but survived. The International Gay and Lesbian Human Rights Commission reported that: "The method in this crime was the same as in the murders of Nestor Adonai Marengo (December 1999) and Jose Armando Rivera (October, 1999). Seven similar killings were reported in 1999 and twelve in 1998. None of those cases has been solved, or even seriously investigated by the police. Activists point to the general impunity enjoyed by many offenders in El Salvador, and to a record of indifference on the part of the criminal justice system toward violence or abuse against members of the homosexual community, with only cursory or perfunctory investigations being

undertaken" (International Gay and Lesbian Human Rights Commission, December 1, 2000). See also the newspaper articles which are appended as Documentation in Support of Request of Asylum and/or Withholding of Deportation by respondent's attorney.

40. What happened to these people were but a few cases in a horribly long list of abuse and torture of LGBT (lesbian, gay, bisexual, transsexual) people by the Salvadoran 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 El Salvador 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 are viewed as constituting a threat to *La Patria* and must be eliminated so that *La Patria* will be "clean."

41. That the situation hardly improved in 2003 can be seen in the United States Department of State's 2003 Country Report on El Salvador, which noted that "There were some instances of violence against homosexuals."

In June, before a Sexual Diversity Celebration, which commemorated people who had died from attacks associated with their sexual orientation or from HIV/AIDS, members of the municipal and National Civilian Police detained and harassed homosexuals and transvestites when they were out at night, although they were not engaged in criminal activity. The police countered that they monitored transvestites out at night because they had repeatedly been involved in crimes including prostitution, public nudity, and robbery. No formal charges were filed either against the homosexuals and transvestites or the police."

"Entre Amigos reported that in July, unknown persons killed three transvestites, Jose Cornado Galdamez, Reyes Armando Aguilar, and Jose Roberto de Paz, as they walked on the principal street in Santa Tecla, La Libertad department. Entre Amigos presented a petition before the AG's office; investigations were ongoing at year's end."

"In October, an unknown assailant killed Douglas Ademir Vasquez, a Soyapango transvestite known as 'Giselle.' Vasquez died from two gunshots to the head at close range. The PNC suspected that Vasquez was the victim of gang violence."

"At year's end, Entre Amigos was preparing to present a formal complaint before the Ministry of Education on behalf of a 17-year-old student at a private academy who alleged she suffered discrimination from school authorities because of her sexual orientation" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2003-El Salvador, February 25, 2004, p. 10). Hereafter cited as 2003 Country Report on El Salvador. Emphasis mine.

42. Nor could 2004 be considered any better than previous years. As the Department of State noted in its 2004 Country Report on El Salvador, there were numerous attacks on and incidents involving LGBT peoples in the country.

"In April, sex workers charged that the January criminal reforms on sexual exploitation were misunderstood by PNC officers and the Municipal Police (CAM). According to the workers, PNC agents arrested transvestites working as prostitutes, although prostitution per se is not a crime in the country."

"On March 23, the body of transvestite Jose Natividad Duran was found next to the Catholic church in Cerro Grande, San Vicente; Flores apparently died after having been hit with stones. The same night, unknown persons killed David Antonio Andrade Castellano in a similar fashion in the El Santuario neighborhood, near San Vicente cemetery."

"In October, the Ministry of Governance denied legal status to 'En Nombre de la Rosa,' a homosexual and transvestite association."

In 2003, the human rights NGO named Entre Amigos reported that unknown persons killed three transvestites, Jose Cornado Galdamez, Reyes Armando Aguilar, and Jose Roberto de Paz, as they walked down the main street of Santa Tecla, La Libertad."

"Entre Amigos presented a petition before the AG's office; investigations were ongoing at year's end" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country

Reports on Human Rights Practices, 2004-El Salvador, February 28, 2005, p. 12). Hereafter cited as 2004 Country Report on El Salvador.

43. In his outstanding work, Sexual Orientation and Human Rights in the Americas, Andrew Reding includes a long testimonial from a gay Salvadoran who was granted asylum in the United States. Please see this testimonial which is appended to this declaration.

44. 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 El Salvador. There is no doubt that if Mr. XXXX is forced to return to El Salvador that he will suffer this kind of abuse again and again. Please see the last five to ten years of reports by Amnesty International, World Watch, the International Gay and Lesbian Human Rights Commission, Salvadoran human rights NGO's, and the U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices-El Salvador.

45. This indifference to abuse 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. The fact remains, however, that HIV+ or AIDS patients are lumped together with all homosexuals into one horrific abomination, *maricones* (queers), whose existence is a threat to every individual, every family, yes, to the nation (*La Patria*) itself. According to this way of thinking, therefore, abuse of these people is deemed to be deserved.

46. 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).

47. 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.

48. This becomes an even more dangerous situation when one looks at the increasing prevalence of HIV/AIDS in El Salvador. In 2001, the rate was 0.6 percent of adults aged 15-49, equal to the rate in the United States, and, it is growing. At the end of 2001, UNAIDS estimated that there were more than 24,000 persons infected with HIV out of a total population of 6.4 million (United Nations Development Programme, Human Development Report 2003. New York: Oxford University Press, 2003, p. 260). See also, UNAIDS, Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections: El Salvador, 2002 Update.

49. In many ways, the most terrifying aspect of this crisis is the Salvadoran Government's HIV/AIDS policy:

"As of May 2002, the Salvadoran Social Security Institute (*Instituto Salvadoreña del Seguro*), which insures less than one in six Salvadorans, was providing antiretroviral medications to less than 300 persons. Of another 2,000 persons diagnosed with HIV, less than 50 were receiving antiretroviral therapy in the national hospital system. With almost half the population earning less than \$730 a year, and the cost of antiretroviral

medications well above that level, most Salvadorans living with HIV/AIDS have been denied effective treatment" (Andrew Reding, Sexual Orientation and Human Rights in the Americas. New York: World Policy Institute at New School University, 2003), p. 47.

50. To make things even worse, doctors, nurses, dentists and other health providers in El Salvador very frequently refuse to treat persons with HIV/AIDS. They are frightened of contracting the virus themselves so those who are infected are unable to secure even minimal medical care. In addition, the test for CD4 is very difficult to obtain and also prohibitive expensive.

As Mr. XXXX states so cogently: "People in El Salvador are also very afraid of individuals with AIDS. During my last visit to El Salvador in 2003, one of my grandmother's old neighbors told me that people in the village are talking about me. They are spreading rumors that I am gay and have AIDS because I am so skinny."

In short, HIV/AIDS patients are denied medicine and medical care and allowed to die, in or out of a hospital setting. Returning Mr. XXXX to El Salvador is tantamount to a death sentence.

51. Not only is Mr. XXXX HIV+, he has full-blown AIDS. Moreover, he is a gay male which is the same to Salvadorans, i.e., all homosexuals are HIV+ (which is not true) and all those infected with the HIV virus are homosexual (which is likewise untrue). Thus, Mr. XXXX will suffer this double stigma **and** be denied medical treatment if he is forced to return to El Salvador.

52. Gay males and transvestites are subject to regular and brutal persecution in El Salvador. Not only are they targets because they starkly offend the Salvadoran ideal of *machismo*, but they are also viewed by the police as easy targets because they are presumed to be prostitutes. It is quite common for policemen to demand both money and sexual favors from gay males and transvestites and then threaten them with jail if they do not comply. This is a very effective threat because a gay male or transvestite placed in jail can expect to be repeatedly raped or even gang-raped by other inmates. Gay males and transvestites

who do not comply are also beaten, raped, jailed or murdered. Policemen can subject gay males and transvestites to such abuse, including extrajudicial execution, with impunity, because of the total failure of law enforcement to investigate crimes against gay males or transvestites.

53. It is absolutely vital here to make clear that police who harass and sexually abuse gays and transsexuals are acting not out of homosexuality, but rather enhancing their *macho* image by dominating a "queer." It is horrific, but not unusual in El Salvador. In fact, it is consistent with everything I have read, heard or seen in my more than forty years of experience in Mexico and Central and South America.

54. 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."

55. 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."

56. The situation in El Salvador in 2005 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 El Salvador 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 El Salvador.

57. It must be noted here that homophobia is particularly virulent in El Salvador where the military has a long history of extreme political views and of even more extreme violence against its people. For most of the twentieth century, El Salvador has been wracked by horrible civil war, political murders and massacres on a scale almost unimaginable to most human beings. Many people (including those who should know better) list the El Salvadoran civil war as being between 1980-1992, but it should be dated back at least to 1932 when the government/military massacred 30,000 peasants (known in El Salvador as *La Matanza*, The Massacre). Nevertheless, in the period 1980-1992, more than 110,000 persons were killed, with hundreds of thousands more tortured, raped and falsely imprisoned.

58. The Administration of President Ronald Reagan (1981-1989) viewed the Central American conflicts of the 1980s as an integral part of the Cold War and the result of Russian and Cuban aggression. As such the United States provided over \$7 billion in military and economic aid to El Salvador and sent hundreds of U.S. Special Forces into the nation as "advisers." Despite this massive aid, however, the United States and the El Salvadoran military were unable to defeat the guerrillas and were forced to negotiate a "peaceful solution." .

59. In addition to the horrendous loss of life, the El Salvadoran economy was left in ruins and its population absolutely devastated. Besides enduring over 110,000 dead during the 1980s, almost 25% of the total population was displaced from

their homes and villages. Moreover, since most of those killed in the civil war were male, and most of those who fled to the United States were adult females and children, it should be no surprise that approximately half of El Salvador's current population is under the age of 18, and, of those, 75% live in abject poverty. Indeed, according to UNICEF estimates, of the 800,000 adolescents between the ages of 13 and 18 who comprise 14% of the Salvadoran population, only 40% attend school and 29% work. What the remaining 31% (approximately 249,000 young people) do is unknown, but the gangs of El Salvador have been gaining strength quickly over the past five to seven years, with gang population estimates ranging as high as 65,000 young people, many of whom were forcibly deported from the United States.

60. The decade of the 1980s in California and the United States was characterized by a booming economy and a plethora of jobs, even for the largely unskilled women of El Salvador. Nevertheless, even in the so-called "good times" of the 1980s, the vast majority of Salvadoran parents had to work long hours, thereby making their children into "latchkey" kids. Left to drift in the afternoons and on weekends, many of these latchkey kids joined gangs, both out of sense of protection and a longing for "family."

61. In the early 1990s, however, the entire socio-economic picture underwent a drastic overhaul. At the urging of the United States (which had substantially altered its foreign policy) the El Salvadoran Government and the guerrillas (who had united under the banner of the Farabundo Martí National Liberation Front--FMLN) began peace talks which resulted in the 1992 Peace Accords. Although the United States touted the Peace Accords as a solution to all of El Salvador's ills, serious political and economic issues remained. For one thing, the United States did not follow through with promised economic aid and the shattered economy declined even further after 1992. Unemployment was furthered exacerbated by refugees abroad who returned to their native land in hopes of beginning anew.

62. Added to those refugees who returned to El Salvador after the signing of the peace accords, were thousands of Salvadoran young people who were deported by the Immigration and Naturalization Service (INS) for gang affiliation and/or crimes committed in the United States. In 1992, INS agents in Los

Angeles deported over 1,000 Salvadoran youth as a result of the Rodney King Riots, followed in that same year by the launching of its Violent Gang Task Force. That task force had the full support of California Governor Pete Wilson, Los Angeles Mayor Richard Riordan and Los Angeles Chief of Police Bernard Parks. Indeed, Mayor Riordan and Chief Parks requested \$18 million from the State of California to fight gangs.

63. In the mid-1990s, the Violent Gang Task Force was renamed TRASH (Total Resources Against Street Hoodlums) and then renamed again to the politically more acceptable CRASH (Community Resources Against Street Hoodlums). CRASH, which included a number of officers from the now disgraced Rampart Division of the Los Angeles Police Department, routinely worked up felonies by issuing tickets for jaywalking, loitering, riding a bicycle through a stop sign and other petty citations that the Salvadoran youth could not afford. From there, it was a simple process of arresting them for outstanding citations and warrants and sending them to jail and then turning them over to the INS. State laws were also passed which made it a crime to associate with gang members, e.g., persons defined as having tattoos, or using hand signs or "dressing like a gangbanger." For a study of INS and Los Angeles Police Department "cooperation," see United States General Accounting Office, Report to the Honorable Lucille Roybal-Allard, House of Representatives. Illegal Aliens: INS Participation in Antigang Task Forces in Los Angeles. GAO-01-78, October, 2000, pp. 1-68.

64. Thus, the anti-gang initiatives of the Los Angeles Police Department and the INS push coincided with a new political agenda which was hostile to immigrants. The upshot was that thousands and thousands of Salvadoran young people were deported from the United States back to El Salvador, over 4,000 in the years 1993-1997, 6,700 in two years alone (1500 in 1997, 5200 in 1998). Former California State Senator Tom Hayden is a leading expert on southern California gangs and the deportation of those gang members to Central America. Please see his recently-published, Street Wars: Gangs and the Future of Violence (New York: New Press, 2004), a 400-page book of tremendous importance. See particularly Chapter 7: "Fruits of War: Homies Unidos and the Globalization of Gangs," pp. 199-256. In addition to Hayden's work, there is superb coverage of gangs in Central America in Mesoamerica, Volume 18, Nos. 1-12 (1999). See also the home page of Homies Unidos' web site.

65. Most of these young deportees faced a grim future. Many had no one to stay with as most of their immediate family members were either killed in the civil war or lived in the U.S. If the deportees did have relatives living in El Salvador, most of them had lost touch with them over the years. In many cases, their relatives in El Salvador did not want anything to do with them because of their criminal past and supposed criminal future. Moreover, most of these young people did not speak correct, even comprehensible Spanish. They spoke some version of "Spanglish" which is not understood by Salvadorans.

66. The only place where they were welcome was within the relatively new San Salvadoran gangs which had been transplanted from Los Angeles. The two largest are Mara Salvatrucha and the 18th Street Gang or Mara 18, but there are numerous smaller gangs such as Mara Temple Street [Salvadorans call all gangs "maras," most of whom use tear drop tattoos].. As Nicole Poland noted: "Too often, new arrivals must join one gang simply to protect themselves from another gang who perceives them as an enemy because of their gang affiliations in the United States. Gang membership is a lifetime commitment" ("Case Study: Youth Gangs in El Salvador," in "U.S. Gangs: Their Changing History and Contemporary Solutions," Youth Advocate Program International Resource Paper (August, 2001), p. 1.

67. There are also myriad Salvadoran gangs which emerged largely during the civil war 1980-1992 and its aftermath (see above). The most famous are Mara Gallo, La Chancleta and Mara Mao Mao. The influx of gang members from California, however, changed the gang structure of El Salvador. As Homies Unidos said: "repatriated gang members looked and acted differently. They brought back attitudes and styles of gang-making which substantially altered the pre-established notion of gangs" (Homies Unidos home page).

68. Of transcendental importance for this case are these Salvadoran gangs' attitudes on homosexuality. Not only were the Los Angeles gang members responsible for murder, theft and mayhem in Los Angeles, they were notoriously homophobic. Once deported back to El Salvador, these gang members' homophobia was reinforced and fortified by Salvadoran homophobia. In the past fifteen years, attacks on homosexuals have increased

exponentially as the gang members flowed back. Even more than robbing liquor stores, "gay-bashing" became a favorite gang pastime.

As noted above, the police will do nothing either to investigate attacks on gays or to help Mr. XXXX in such an attack, a pattern which will continue well into the future.

69. I have no doubt whatsoever that the gangs in El Salvador will assault, rape, probably even kill Mr. XXXX should he be forced to return to El Salvador. There are a number of factors which lead me to this conclusion. First, these gang members are having a "good time" harassing, attacking, raping and in general making life impossible for gays and lesbians. Yes, this fits the usual pattern of gay bashing, but it goes beyond that to a constant source of entertainment.

Second, many gangs have forced gay males to become their *haida* or gang bitch. They initiate them just as if they were female and then treat them as a sexual plaything. Although one does not find this behavior in U.S. gangs, it is common in male prisons where one or two inmates become the "mistresses" of the others in the same cell block. In fact, it is so pandemic that the U.S. Congress was moved to pass the Prison Rape Elimination Act in July, 2003 (Lara Temple, Wendy Patten and Benjamin Jealous, "Doing Something About Prison Rape," *The San Diego Union*, September 26, 2003). There is also the infamous case of Roderick Johnson who was designated a sexual slave and repeatedly raped over a period of 18 months at the James Alfred Unit in Iowa Park Prison in Texas. Texas prison officials were aware of what was occurring, and, in September, 2004, the U.S. Court of Appeals for the 5th Circuit Court held that Texas prison officials could indeed be held accountable for their role in the sexual abuse of Mr. Johnson (see Bruce Chines, "Prison Sex Slave," *OUT* magazine, September, 2004, pp. 112-122; 90-92; and Ann Rostov, "Gay Man Can Sue Over Prison Abuse Ordeal," PlanetOut Network, September 10, 2004).

Moreover, rape of a gay male is eminently consistent with historical and contemporary culture patterns in El Salvador and the rest of Latin America. Please see my discussion of these matters above in **#17, #19, #20, #35, #52, #53, #69.**

70. In addition to the military, the national police, local and transplanted gangs, individuals such as Mr. XXXX are in extreme danger from the *Esquadrones de Muerte* (Death Squads), both new ones and old ones which have been reconstituted from the era of the civil war in the 1980s and 1990s. These Death Squads are composed of active-duty and recently-retired police and military personnel. The most infamous of the paramilitary Death Squads currently targeting Salvadoran homosexuals and gang members deported from the United States is *La Sombra Negra*, (The Black Shadow). With close ties to the death squads and terror networks of the 1970s, 1980s, and 1990s, the Black Shadow has claimed responsibility for the deaths of hundreds of Salvadoran homosexuals and gang members in the period 1994-2005. The members of these Death Squads sincerely believe that they are the last bulwark of defense against traitors, criminals, gangs and "social deviates" (read homosexuals). If they do not take action, their beloved Fatherland will be overrun and destroyed. In their opinion, theirs is a fight to the death. El Salvador must be saved from Armageddon, the end of Western Christian Civilization.

71. As noted above, El Salvador is the very epitome of a war-torn country. In the period 1980-1992, well over 110,000 people died in the bloody civil war and tens of thousands more were driven into exile (primarily to the United States). The economy shattered by the extreme violence has not only not recovered, it has perceptibly worsened. Despite the fact that Salvadorans in the United States send over \$2.1 billion back to their native country (Inter-American Development Bank, cited in T. Christian Miller, "Emigrants Send a Lifeline to Salvadoran Hometown," *The Los Angeles Times*, August 9, 2002). Moreover, "Real G.P. growth has been sluggish for years and has grown steadily worse, declining from 2.1% in 1997 to 1.4% in 1998, 1.3% in 1999, and 0.5% in 2000" (Robert T. Beckman, Latin America, 2001: The World Today Series, Harpers Ferry, WV: Striker-Post Publications, 2001, p. 131).

72. While the civil war and the subsequent violence is primarily responsible for this economic catastrophe, El Salvador has also been ravaged by the forces of nature. In October, 1998, Hurricane Mitch struck with incredible fury. About 75% of the country's harvests were damaged or lost including: "70,000 tons of sugar, which is 10% of overall production; 3 million quintals (1 quintal=46 kg) of the country's basic grain production, equal

to about three month's national consumption; and 10% of the coffee harvest, resulting in \$24 million in losses. The Democratic Compassion Alliance (ADC), estimates that 350,000 producers in the agrarian sector lost all or part of their crops or animals, and the government puts recovery time at 30 years."

"Because 60% of the country's infrastructure was damaged, priority will also be given to the rebuilding of highways and local roads in order to facilitate the transportation of what remains of this season's harvests" (Mesoamerica, Vol. 17, No. 12, December, 1998).

73. Next on the list of horrors was a terribly serious outbreak of Dengue Fever (both Classic Dengue and Hemorrhagic Dengue) which taxed the nation's health care system, thereby creating even more political and economic unrest in the nation, and increasing crime such as kidnaping for ransom (see Mesoamerica, Vol. 19, No. 8, August, 2000).

74. A few short months later, Central America, most particularly El Salvador was devastated by massive earthquakes: January 13, 2001 (7.6 on the Richter Scale) and February 13 (6.6 on the Richter Scale) followed by over 100 smaller quakes in March, April and May. More than 1,400 people were killed (many by the more than 600 landslides), 8000 injured, about 200,000 homes either destroyed or damaged and the already weak economy all but destroyed with over \$1.9 billion in damages. "Overall, those living in poverty increased from 47.3% of the total population to 49.7%. Almost half the nation's population of 6.3 million people are suffering from some form of poverty and, of those who recently dropped below the poverty line due to the loss of jobs and property as a result of the earthquakes, about 125,000 are now living in 'extreme poverty' and about 20,000 in 'relative poverty'" (Mesoamerica, Vol. 20, No. 5, May, 2001, p. 2).

75. Moreover, "the earthquakes caused \$1.9 billion in total monetary damages. Considering that El Salvador's entire Gross Domestic Product (G.P.) for 2000 was only \$13.2 billion, this estimate places the damage at about 10% of the G.P., or a loss equal to all of the country's agricultural production last year" (Mesoamerica, Vol. 20, No. 4, April 2001, p. 5).

76. Finally, a severe drought hit El Salvador in the summer of 2001, a drought which has lasted until the present. Particularly hard hit were basic food crops, 75-100% of the corn, rice and beans. Various international relief agencies have again been forced to send massive aid to El Salvador. The impact on poverty, crime and desperation is almost incalculable. Prices for staple food items, e.g., beans and rice, are at U.S. levels, yet, according to U.S. Department of State reports, the minimum wage with benefits does not provide a decent standard of living. Even the best paying jobs in the growing *maquila* industry are about \$4.00 per day, hardly enough to maintain bare subsistence. See U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports in Human Rights Practices, 1999, 2000, 2001, 2002, 2003 and 2004-El Salvador, March, 2000, March 2001, March 2002, March 2003, February 2004, February 2005. Hereafter cited as the [year] Country Report on El Salvador.

77. The United States Department of State 2002 Country Report on El Salvador states that: "Although agriculture accounts for only 9 percent of the gross domestic product (G.P.), it is the largest source of employment, engaging 20 percent of the work force, estimated at over 2.6 million persons. Coffee and sugar are the principal export crops and used to be the main sources of foreign exchange. **The sustained decline in coffee prices has depressed activity in this sector, and the largest sources of foreign exchange are now family remittances and maquila exports. According to the Salvadoran Coffee Council, the decline in coffee prices reduced employment in the end of year harvest by approximately 40,000 jobs as of the end of December.** ... The rate of real economic growth was estimated to reach 2 percent during the year. Inflation was expected to reach 2.5 percent. The official unemployment rate averaged 6.5 percent in the first 10 months of the year; however, the rate of underemployment (less than full-time work or total income below the minimum wage) during the years was estimated at about 29 percent. ...

According to the Ministry of Economy's statistics and census office, during the first 10 months of the year approximately 37 percent of the population lived below the poverty level" (2002 Country Report on El Salvador, p. 1). Emphasis mine.

78. That there was no appreciable improvement during 2003 is clearly evident in the United States Department 2003 Country Report on El Salvador, which repeats the 2002 Country Report on

El Salvador almost verbatim. "Although agriculture accounts for only 8.7 percent of the gross domestic product (GDP), it is the largest source of employment, engaging 20 percent of the country's total work force (which is estimated at over 2.5 million persons). Coffee and sugar are the principal export crops, and were formerly the main sources of foreign exchange.

The sustained decline in coffee prices has depressed activity in this sector, and the largest sources of foreign exchange are now family remittances and maquila exports. According to the Salvadoran Coffee Council, as of the 2003-2004 coffee season, the decline in coffee prices since the 1999-2000 harvest has reduced employment by approximately 135,790 jobs. The manufacturing sector, which contributes 24 percent of G.P., employs 18 percent of the work force. The textile sector, particularly the maquila (in-bond assembly or processing) plants in free trade zones (EGIS.), represents about 20 percent of manufacturing sector employment and is the main source of new jobs. The rate of real economic growth reached 2 percent during the year, with inflation at 2.5 percent. The official unemployment rate averaged 6.3 percent for the year; however, the rate of underemployment (less than full-time work, or total income below the minimum wage) was estimated at about 36.6 percent. In January and February of 2001, 2 earthquakes killed over 1,100 persons, left more than 1.2 million homeless, and caused over \$1.9 billion in damage.

According to the Ministry of Economy's statistics and census office, during the year approximately 36.1 percent of the population lived below the poverty level, compared to 38.8 percent in 2002" (2003 Country Report on El Salvador),

p. 1. Emphasis Mine.

79. The U.S. Department of State could find little better in its 2004 Country Report on El Salvador. "Remittances from abroad are the largest single source of foreign income, equivalent to approximately 15 percent of GDP, and they continue to grow in value. ... The rate of real economic growth changed little during the year and was estimated at 1.8 percent, with inflation at 5.4 percent. According to the Ministry of Economy's statistics and census office, in 2003 approximately 36.1 percent of the population lived below the poverty level, compared with 38.8 percent in 2002" (2004 Country Report on El Salvador, p. 1).

Moreover the State Department added that: "The minimum wage with benefits did not provide a decent standard of living for a worker and family" (2004 Country Report on El Salvador, p. 14).

80. For its part, the United States Central Intelligence Agency stated that: "In recent years, this Central American economy has been suffering from a weak tax collection system, factory closings, the aftermaths of Hurricane Mitch of 1998 and the devastating earthquakes of early 2001" (CIA, The World FACT BOOK-El Salvador, p. 6).

The CIA also points to the horrible disparity in income distribution with the lowest 10 percent of the population receiving only 1.4 percent of the national income while the highest 10 percent receives over 39 percent.

81. Since December, 2004, the economic situation has continued to decline precipitately. Latin America and particularly El Salvador has slipped into massive depression (a situation which has worsened demonstrably since the horrific events of September 11 in New York and Washington, D.C. See report of the World Bank, October 3, 2001). Most scholars and analysts now believe that the standard of living is so low that, in real terms, the vast majority of the population not only lives in poverty, but many are starving to death, either slowly or rapidly depending upon the individual case.

82. Mr. XXXX's economic situation is far graver. The vast majority of Salvadoran-owned large and medium firms and businesses, as well as most foreign companies and the maquilas in El Salvador, will simply not hire obviously gay males. Moreover, they force all new applicants to be tested for the HIV virus. Thus, Mr. XXXX faces double jeopardy, i.e., he has AIDS and he exhibits homosexual mannerisms. Given these prejudices, AND, the horrendous economic situation in El Salvador, there is no way that Mr. XXXX could earn enough money to feed himself adequately, let alone obtain any medical treatment he will desperately need to treat his AIDS.

83. While it is true that in 2002 the Legislative Assembly removed from the 2001 Law on Prevention and Control of Infection, the requirement that all job applicants be tested for HIV, the Salvadoran Congress passed a bill in 2003 that authorizes employers to require HIV testing of prospective employees, thereby rendering the 2002 action null and void (see Reding, Sexual Orientation and Human Rights in the Americas, p. 47, and the 2003 Country Report on El Salvador, p. 10).

84. The natural result of such economic collapse 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*. On page one (1) of the U.S. State Department's 2002 Country Report on El Salvador is this statement: "Some police officers committed killings. Some police officers used excessive force and mistreated detainees. Prison conditions remained poor, and overcrowding was a continuing problem. At times police arbitrarily arrested and detained persons. ... The judiciary remained inefficient and hampered by widespread corruption. ... **Violence and discrimination against women remained a serious problem. Discrimination against disabled persons also remained a problem. Abuse of children, child labor, and forced child prostitution were also problems.** The Government did not protect adequately workers' rights to organize and bargain collectively. Trafficking in women and children was a problem" (2002 Country Report on El Salvador, p. 1). Emphasis mine.

85. The State Department analysis in its 2003 Country Report on El Salvador is almost verbatim that of 2002, a clear indication of poor or non-existent progress in the area of human rights. "Some alleged politically motivated killings were under investigation at year's end. There were no reports of politically motivated disappearances. **Some police officers used excessive force and mistreated detainees; at times police arbitrarily arrested and detained persons without adequate cause.** Prison conditions remained poor, and overcrowding was a continuing problem. Lengthy pretrial detention remained a problem. The judiciary remained generally inefficient and hampered by corruption although the Supreme Court and the Attorney General's office took some steps during the year to address inefficiency and corruption in the judiciary. The Court dismissed 39 judges who had not fulfilled the requirements for their degrees. Some of the dismissed judges alleged that some of their colleagues had retained their positions in the judicial branch due to their political, economic, and other ties. Impunity for the rich and powerful remained a problem. **Violence and discrimination against women remained a serious problem. Discrimination against disabled persons also remained a problem. Abuse of children, child labor, and forced child prostitution were also problems.** The Government did not adequately protect workers rights to organize and bargain collectively. Trafficking in women and children was a problem" (2003 Country Report on El Salvador), p. 1. Emphasis Mine.

86. Clearly conditions did not improve in 2004 because the Department of State description of human rights in El Salvador is almost the same as the previous two years. "There were no politically motivated killings during the year; however, courts dropped charges from some 2003 cases. **Some police officers used excessive force and mistreated detainees; at times police arbitrarily arrested and detained persons without adequate cause. Prison conditions remained poor, and overcrowding was a continuing problem.** During the year, the Government took steps to improve prison conditions [however, see the report's description of prisons cited below]. **Lengthy pretrial detention remained a problem. The judiciary remained generally inefficient and hampered by corruption, although the Supreme Court and the Attorney General's office (AG) took some steps during the year to address both inefficiency and corruption. Impunity for the rich and powerful remained a problem, as did violence and discrimination against women. Abuse of children, child labor, forced child prostitution, and trafficking in women and children remained problems, as did discrimination against disabled persons"** (2004 Country Report on El Salvador, p. 1). Emphasis Mine.

87. Violence levels in El Salvador, particularly in San Salvador, have reached unbelievable highs. According to the Pan American Health Organization, the per capita homicide rate in El Salvador is 150 per 100,000, the highest in the Western Hemisphere, **(EVEN HIGHER THAN COLOMBIA**, generally considered to be the most violent nation in the hemisphere) and one of the highest in the world. Indeed, the current homicide rate is higher today than it was in the 1980s at the height of the civil war. Much of that violence and many of the homicides are perpetrated by gang members on other gang members, by the police on gang members and by the police, the gangs and the Death Squads on LGBT peoples. This figure has grown exponentially since the early 1990s and continues to increase today.

For example, according to the PNC, 2,754 people were murdered in 2004. In January, 2005, alone, there were 285 homicides and 189 in the first three weeks of February, 2005 (see *La Voz Del Norte*, 24 de Febrero-2 de Marzo del 2005).

88. Regarding prison conditions, the Department of State's analysis could not be more damning. "Prison conditions remained poor. Overcrowding constituted a serious threat to prisoners'

health and lives. ... In September, 65 prisoners in the Metapan Penitentiary, in the country's northwestern zone, suffered food poisoning. Overcrowding in individual facilities continued as the prison population increased for the fourth consecutive year. At year's end, 12,073 prisoners were held in 24 prison facilities with a combined design capacity of 7,312, and there were 31 men and 9 women in 2 secure hospital wards with a combined design of 75 persons."

On August 18, a riot between gang members and nongang members at the La Esperanza Penitentiary, better known as 'Mariona' prison, left 31 prisoners dead and 28 injured. In September, Director of Prisons Rodolfo Garay Pineda transferred all Mara Salvatrucha gang members to the Quetzaltepeque and Ciudad Barrios prisons and all Mara 18 gang members to Chalatenango and Cojutepeque" (2004 Country Report on El Salvador, p. 3).

89. As noted above, prisons 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 SALVADORAN PRISONS**, a gruesome prospect for Mr. XXXX.

90. Given this scenario of life in El Salvador, 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 HIV/AIDS? The answer is that they will not and they will harass, physical abuse, and, over the long run, very likely kill Mr. XXXX very soon after his arrival in El Salvador.

91. As noted above, Mr. XXXX's homosexuality 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 El Salvador 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.

92. 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 El Salvador 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.

93. Even should Mr. XXXX escape persecution (by some incredible miracle), he will still be living under a death sentence. As noted above, there is very little medicine in El Salvador, 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."

94. 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 El Salvador.

95. 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."

96. As is clear from the above, compared to El Salvador, 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 El Salvador where the government has neither the will nor the monetary resources to deal with the increasingly serious problem.

97. If not death, then jail, 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.

98. 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."

99. El Salvador, 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 a photo and current address information under penalty of arrest and incarceration. Salvadoran 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.

Moreover, relocation to a rural region in El Salvador would only increase the danger to Mr. XXXX. In rural areas, everyone knows everyone, particularly the police who are always aware of and immediately suspicious of any new person in their area. In addition, rural peoples in El Salvador (as in most of the world as well) are much more conservative in their views of traditional

sexual roles. Indeed, they tend to be even more homophobic than those who live in cities.

100. In sum, then, due to that fact that he is an admitted homosexual who exhibits definite feminine mannerisms **and** has full-blown AIDS, Mr. XXXX is a high profile target who would clearly be in extreme danger if he were forced to return to El Salvador. It is my considered, professional opinion that the Salvadoran military and police, the gangs and the death squads 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.

I hereby certify, under penalty of perjury, that the above is true and correct, to the best of my knowledge, information and belief.

Thomas M. Davies, Jr.
Professor Emeritus of Latin American History
Director Emeritus, Center for Latin American Studies
Former Chair, Latin American Studies

Date

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There are over one and a half million sites on the Internet. Most are, of course, duplicates, while others are personal websites. Nevertheless, patience and an investment of time will prove profitable to the researcher.

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.

Then in July, 2004, in a complete and final reversal of the American Psychiatric Association's 1952 position, the American

Psychological Association announced at its annual convention that it would take a leadership role to help repeal laws that make marriage for gay couples illegal. The group said the fact that gay couples can't marry could psychologically harm the individuals, as well as their relationships. "Discrimination of all kinds takes a toll on people's health and psychological well-being" (Jen Christensen, "U.S. Psychologists Favor Marriage Equality," PlanetOut Network, July 29, 2004).

In another landmark step, the American Counseling Association elected an openly gay male, Mark Pope, as the Association's 2004 President. See The Advocate, December 9, 2003.

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 and psychologists to "be cured." Moreover, just two years ago (2003), my Mexican-American son-in-law's mother wanted to send her younger son to a psychiatrist for that same reason.

INTERVIEW WITH ELMER VALLADARES OF EL SALVADOR

My name is Elmer Valladares... I was born on October 20, 1969 in El Salvador... Growing up can be a very hard experience over there if you are gay. People in that environment don't think there are gay people at all! And when they find out one's gay then, his or her life becomes hell...

Oh, school was so hard because everybody laughed at me. They did it because I looked different. I was always a little feminine and walked like a girl. But I didn't realize that! My schoolmates would tell me I was like a lady, a sissy... They laughed, they pushed me, they grabbed me in the ass... It was very, very hard! My torments didn't stop even when I got a girlfriend in order to try and disguise my sexual orientation... I didn't want to have a girlfriend but my family pushed me to that because in my country there is a lot of machismo. You have to date someone of the opposite sex. It is not a matter of choice... There are a lot of gay people that have to hide, because people don't want gay people in there. So, yeah, I had a girlfriend in school to prevent people from making fun of me. I'd suffer even more once I was dating someone I didn't want to and people would still make fun of me sometimes!...

Being harassed is part of gay life in El Salvador... However, nothing, but really nothing compares to what happened in February, 2000... That was not harassment anymore, but plain, actual, barbaric violence! I had this lesbian friend who had a kind of a restaurant or snack bar... I'd go there almost every single day in order to help her out once I had nothing to do in the evenings. I'd sometimes stay there till late at night and the way back home was dark, very dark and desert... One of these nights when I'd stayed till late there - like, 10 o'clock - I saw three guys walking towards me while I was going back home. When I first set eyes on them I thought: "*Oh, oh... I'm in for trouble!*" I recognized they were police officers because I knew police would always patrol that area. They stopped me and asked me what I was doing there at that time at night... I tried to explain to them that I was simply going home but they wouldn't listen to me. They briskly told me I was to follow them to the police station instead. When I tried to explain a second time that I was just going back home, they grabbed me by my neck and pushed me to the ground. I begged them not to hurt me but they started hitting me with their nightsticks... I thought wiser to stop protesting and let them take me to the police station. They could've killed me

right there in the middle of the street if I offered any resistance... Once at the police station they took off my clothes and put my head in a big water tank... They pushed my head under the water and held me down like that for a minute and then pulled me out. They kept doing that for a while...Up and down, up and down... It felt as if I were going to suffocate. I was crying but that didn't touch them a bit! When they got bored of doing that, they took me out of the tank and put me on a table... They told me to close my eyes; I did it... After a few seconds, they started to hit me, many, many, many, many times! It lasted an eternity... They hit me in the ears, eyes, the whole body. They broke my arm, hurt my ribcage real bad... They hit me with the nightsticks so many times that my eyes were bleeding! My ass became pitch black... The blood became black, and my butts got really swollen. It was horrible!

I was too afraid to go to the hospital by myself, so my lesbian friend Carmen had to go there with me. I stayed there for three days and remained in pain for nearly a month so badly they'd knocked me! In the hospital, I was not given much medication and the little medicine I took was not really good to me. It seems as if they didn't care much about me, you know... I was gay and besides that I'd been tortured by policemen. When my friend realized that the medication was doing me more harm than good she began to administer natural medicine and I healed after a few weeks of pain. It was a terrible time for me... I also owe a lot to that friend who helped me in those trying times...

Sometime during the one month I had to stay home I called a friend of mine in Toronto and told him what had happened to me. He advised me to leave the country as soon as possible, if not I might get killed. I had just contacted the Human Rights organization in San Salvador and was willing to go ahead and denounce the guys who had done that horrible thing to me. I made an appointment with the Human Rights representatives and told what had happened to me... On the day after the interview, I went to have pictures of the parts of my body they had hit... They took hundreds of pictures! But, in order to take the case ahead they would need me to testify against the police. They needed proof so they kept asking me for the police station and the names of the guys... I asked my friend Carmen to come with me because I was afraid to go out by myself! She told one of the guys who had assaulted me that I was going to the Human Rights. He told her to tell me that if I gave their names to the Human Rights they would kill me. They could lose their jobs and be prosecuted if I decided to go on with that case, so they threatened me... I

won't deny I was afraid... I was terrorized! After all the suffering and pain I had just gone through I didn't want to jeopardize my life even more! All I wanted to do was to run away from that damn place never to come back! So I didn't go back to the Human Rights... Just after that I asked my Canadian friend to help me get out of my country...

I don't really like my country and I don't want to go back there. There's NOTHING there that I miss! Being in my country when you're gay is like being in hell! Your life is under threat all the time and people think you don't deserve to live. There were a lot of gay people who got killed when I was there. Really, a lot of people... Gay people there suffer a lot. The government doesn't do nothing to protect us. They don't care...

Flavio Alves, Interview with Elmer Valladares, 29 September 2000. Reprinted in Andrew Reding, Sexual Orientation and Human Rights in The Americas. New York: World Policy Institute at New School University, 2003, pp. 46-49.

Mr. Valladares was granted asylum in the United States on the basis of sexual orientation.