

December 20, 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.

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 Mexico 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 Mexico, for the past ten years, CIA World Factbook 2001, CIA Regional Reports on the Caribbean, Central America and South America, and other Country Reports, Amnesty International Reports and Updates on Mexico and Latin America. World Watch and Americas Watch publications on Mexico and Latin America. World Refugee Survey 2002 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.

I am equally conversant with the literature and available materials on LGBT (lesbian/gay/bisexual/transsexual) themes in Latin America. In addition to the above named international human rights organizations I read on a daily/weekly/monthly basis two LGBT magazines, The Advocate and Out, and monitor 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, the Lesbian and Gay Refugee Advocacy Project, the Gay Men's Health Crisis, PlanetOut.com, Gay.com, GayToday.com and the many sites of LGBT and AIDS support groups in the various Latin American nations. Please see also my "Selected and Annotated Bibliography" which is appended to this declaration.

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 190 political asylum cases in San Diego, Los Angeles, Long Beach, San Francisco, Sacramento and El Centro, California; Portland, Oregon; Seattle and Tacoma, Washington; Eloy, Arizona; Oklahoma City, Oklahoma; Dallas, Texas; Omaha, Nebraska; Chicago, Illinois; Miami and Jacksonville, Florida; Washington, D.C.; Baltimore, Maryland; New York and Ithaca, New York; 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. Within the fields of Mexico, Central and South American and Latin American Studies, I have concentrated particularly on the role of the military and guerrilla movements in several Latin American countries. Exhibit A 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 (the first edition of which won The Hubert Herring Prize for the best book on Latin America in 1985). Wilmington, Del.: Scholarly Resources Press, 1997.

10. I also authored an internationally-recognized comprehensive, annotated bibliography of the military in the Andean Republics: "The Military in Bolivia, Ecuador, and Peru," in Errol D. Jones and David LaFrance, eds., Latin American Military History: An Annotated Bibliography. New York: Garland Publishing, Inc, 1992, pp. 277-341.

11. 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 190 political asylum cases and, while about half of those cases dealt with death threats from the military or the guerrillas of a given nation, I have also testified on behalf of 92 homosexual/transsexual males and females, all from Latin America, 25 from Mexico.

12. My testimony concerning the treatment of Mexican gay males 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 F.3d 1084 (9<sup>th</sup> Cir. 2000). See below.

13. Finally, I am very conversant with Mr. Andrew Reding's work on homosexuality in Mexico which he has prepared for the Resource Information Center of the Immigration and Naturalization Service. I read his November, 1997, report "Mexico: Treatment of Homosexuals," as well as the response to that report by the International Human Rights Law Clinic at the School of Law (Boalt Hall), University of California, Berkeley. Prepared at the request of the International Gay and Lesbian Human Rights Commission, the report is entitled "Treatment of Gays in Mexico:

An Analysis of the Reding Report" (July, 1999). I have also studied carefully Mr. Reding's subsequent (AND QUITE DIFFERENT) report of November, 1999: "Mexico: Update on Treatment of Homosexuals, Question & Answer Series." Moreover, I was asked to review a draft of Mr. Reding's as then yet unpublished "Conditions for Gay, Lesbian, Bisexual, and Transgendered Persons in Latin America and the Caribbean," which was published in December 2003 as Sexual Orientation and Human Rights in the Americas by the World Policy Institute at New School University. In fact, I spoke by telephone with Mr. Reding for over an hour in early June, 2003 and he has cited me in the final version.

14. For almost twenty-seven years, I was married to a Peruvian national, Eloísa Carmela Monzón Abate de Davies, who died of cancer ten years ago. As a result of that marriage, I became part of a very large, extended Peruvian family which contained several homosexuals (none of them "out" to the family because they were/are terrified of the family's reaction). Everyone knows about the incident of one of my aunts-in-law who was literally driven out of the country by the family. She currently lives in Guayaquil, Ecuador with her partner. Over the past thirty-five years, I have also developed friendships with dozens of male and female homosexuals in Peru, Ecuador, Bolivia, Brazil, Argentina, Central American nations, Mexico, and, particularly, along the U.S.-Mexico border.

15. Another 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. 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. My more than thirty years living on the U.S.-Mexico border has enabled me to know and interact with dozens of Mexican military and police personnel, as well. The fact that I was the son-in-law of a Peruvian general, of course, helped me a great deal.

16. All these 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 the Peruvian *Guardia Civil*, as well as officers from Mexico's various paramilitary police organizations 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 Mexico, Central America and South America, etc. are imbued with virulent homophobia from their very first day of service.

17. After my arrival in San Diego in 1968, I had 50-60 openly gay and lesbian students and many others who came to me confidentially (as have my Peruvian family members and most of my homosexual friends in Latin America). Over fifty percent of those students were Hispanics who were terrified to tell any of their family members or friends. Several have since died of AIDS, which, for me, was akin to losing my own child. Moreover, between 1979-2001, I had four gay or lesbian Graduate Assistants in the Center for Latin American Studies with whom I worked closely.

18. Moreover, my step-daughter (I remarried after my Peruvian wife's death) is lesbian and very active in promoting gay and lesbian rights and causes. I have worked with her on several occasions and I am now working with various LGBT groups here in Albuquerque, New Mexico.

19. 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 the courses listed below and to prepare affidavits for the above mentioned 92 homosexual/transsexual males and females for use in Immigration Court.

20. 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, and Afro-Andean cultures, as well as 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, Yoruba-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.

**21.** 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 provide expert testimony regarding the risks that he faces in Mexico.

**22.** 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 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.

**23.** 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. Indeed, this fact is of transcendental importance for male homosexuals, for it literally determines whether one or the other is partially acceptable or totally unacceptable in Latin American society as a whole.

**24.** Culturally speaking, Latin Americans are Spaniards and Spaniards are much 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 Western European and must be studied and treated differently.

25. From 711-1492, the Moors occupied the Iberian Peninsula (now Spain and Portugal), transferring to the Iberian population not only their architecture, building skills, etc., but their views of 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 and 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 to be 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).

26. For a Mexican 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.

27. 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. Please see my "Selected and Annotated Bibliography" on these subjects which is attached to this Declaration.



28. 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, not to mention a health hazard (homosexuality is very often viewed as "contagious" in Mexico, a disease which must be cured or it will destroy the society). For example, Mr. XXXX's father reacted violently to Mr. XXXX's obviously feminine mannerisms: "I remember that I used to put on my mother's shoes and clothing as a game. If my father arrived home and found me dressed as a woman, he beat me brutally. Ever since I can remember, my father was very rough with me because he perceived me as weak. My father had a very strong, rough character and resented my femininity. He always called me 'maricón,' or 'faggot,' and reproached my mother for her occasional indulgences of my feminine whims."

29. As noted above, a gay son, brother or relative casts aspersions on all the males in the family, particularly the father who has "sired" the homosexual. Therefore, Mr. XXXX's father reacted violently at a family gathering when, as Mr. XXXX notes: "During the party, I overheard my relatives making comments about my feminine mannerisms to my father. **My father was ashamed of me, and became enraged. He grabbed me and began beating me brutally in front of my entire family. I was on the ground screaming for him to stop, but he continued to beat me with his belt. While beating me, he told me that he was sick of my 'mariconadas,' or 'faggot behavior,' and that he was going to 'make a man out of me.'** None of my relatives tried to help me." Emphasis Mine.

Moreover, Mr. XXXX's father always made it "a point to berate me about my sexuality. He told me constantly that no one would ever like me if I did not change my homosexual attitude. **My father said that God excludes gays from heaven, and that unless I changed, I would go to hell.**" Emphasis Mine.

The fact that Mr. XXXX's father blamed the mother is also consistent with the general pattern: "My mother tried to defend me sometimes, but then my father would blame her for my homosexuality. **My father told her that her overprotective nature was the reason he had a 'faggot' son.** Sometimes, he even pushed her around if she tried to protect me against attacks."

Tragic, but certainly not unique, was the fact that Mr. XXXX's mother did not protect him from the father, but, then, given the father's violent nature, there really was nothing she could do.

30. Thus, it was hardly surprising that when Mr. XXXX told his father that he wanted to continue his education in Guadalajara, the father told him that he "'would never be able to make it' as a homosexual. ... He told me that if I left, the doors were closed to me and I could never return."

31. Mr. XXXX's brother reacted much the same way as had his father. "I not only had to face constant beatings and aggression from my father, but from my young brother Armando as well. **Armando, who is seven years younger than me, had problems with the other boys in the neighborhood because he was the brother of a 'faggot.'** He resented me very much, and called me horrible names. Armando told me that he was ashamed to be my brother. His disdain for me was so great that when I was thirteen years old, he hit me on the side of my forehead with a wooden baseball bat. I was taken to the hospital because I was bleeding so profusely. I was given snitches, and still have a bump on my forehead from this incident." Emphasis Mine.

32. Mr. XXXX also suffered at school. "When I started school a few months later, I was treated very badly by my peers. I was extremely feminine in my manner of dress, speech, and action, so my classmates called me names like '*maricón*' or '*faggot*.' During recess, I was always excluded from games with the other boys, and played more with the girls if I socialized at all. Other boys grabbed my buttocks or grabbed their crotches, saying things like, 'look what I have for you.' At least once a week, I got into physical fights because I was teased so relentlessly."

33. 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.

34. Tragically, Mr. XXXX could never count on any protection or support from any of his teachers. In fact, his

math teacher in secondary school was as bad or worse than the students. "She treated me and another feminine male student named Raul differently in class, and made many comments about the evils of homosexuality in front of the other students. One day, the teacher talked to Raul and me during recess. She told us that gay people go to hell, and that we would have to change our behavior. She told us about a neighbor of hers that was gay and died of AIDS. She said many strange things related to religion and sexuality in an effort to scare Raul and I out of being gay. I felt very confused, but thought that what she was saying was not logical because I felt normal being feminine."

**35.** The female teacher's attitude is also consistent with female Mexican attitudes on homosexuality. Indeed, the male "fem" is also 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.

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.

**36.** Moreover, as elsewhere in the world, the Roman Catholic Church, one of the principal players in Mexican culture and society, has recently increased its attacks on homosexuality, exponentially, through both its own pronouncements and its public support of anti-gay and lesbian groups and activities. Indeed, the attacks have become so strident that they represent a genuine danger to all LGBT peoples in Mexico.

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).

The Church has also publically announced its adherence to and support of 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 Mexico. Please see my short description of Homosexuality and Psychiatry which is appended to this declaration.

37. These are exactly the type of family, classmate and teacher and religious reactions I have heard and seen in Mexico 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 43 years.

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

39. 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. At the same time that families attack the "fem" relative, however, there will be some members of the family or neighbors who sexually abuse him. For example, when Mr. XXXX was only five years-old, one of the sons of a family who was close to his own tried to sexually abuse him. "Their son Jorge, who was in his early twenties, usually spent time with the other boys in the neighborhood and was a typical macho Mexican boy. One day, I was walking down our street and Jorge cornered me near a small alleyway. He pulled down his zipper, and said something like, 'I have a spider, come here and touch it.' I was scared and shocked and did not know what to do. **I did not want to touch his penis, so I pushed around him and ran away. Although he did not force me to touch**

him on this occasion, the incident scared me very much. I felt very vulnerable and became even more introverted than I had been before." Emphasis Mine.

40. Much more horrible, however, was the brutal gang-rape which Mr. XXXX suffered at the age of six. "A few months before school started, I was brutally raped by three older boys. My mother took classes at night at the primary school near our house, and she would take me with her. On that night, I was playing on the basketball court in the patio and the three boys were playing on the soccer field. When I went to the bathroom to relieve myself they followed me inside. They threatened me and pushed me around. The boys, who were seven or eight years older than me, touched their penises and touched me sexually. I escaped the bathroom and ran outside, where it was already dark. I ran around the school building in an attempt to hide and tried to climb the fence on the other side to get back in. The boys followed me, caught me when I was climbing the fence, and pushed me to the ground. There was a small garden on that side of the fence, and the garden was situated in a place where the few people in the school could not see us. **The boys pulled my pants off and took turns anally raping me. The boys also forced me to have oral sex with them. I screamed, but no one came to help me.**" Emphasis Mine. ...

"I did not tell my mother what had really happened because I did not think she could help me. Also, my mother was very traditional and spoke about the human body as a dirty and shameful thing. Because of this, I was scared that I had done something wrong and was terrified to explain what had happened. That night, I remember being on the patio of my house crying. **My parents had always taught me to talk to God if I had a problem, but I did not know what to say. At six years old, I did not really understand what had happened. All I knew was that I was in an immense amount of physical pain and profoundly traumatized.**" Emphasis Mine.

41. The simple truth is that Mr. XXXX has feminine mannerisms which are obvious. All the people around him immediately recognize those mannerisms. No one can or should have to change his/her mannerisms because we are what we are. Therefore, there is no escape for Mr. XXXX. The simple yet horrific fact is that Mr. XXXX faces aggravated opposition from every conceivable direction: his family, his religion, the government and the state security forces. His situation could not be more precarious. Moreover, he will suffer this abuse in every corner of the country if he is forced to return to Mexico (see below).

42. Unfortunately, the danger to male homosexuals is not confined to the family or classmates. In Mexico, Honduras, El Salvador, Panama, Ecuador, Peru, Chile and Argentina for example, it is common for the police, without provocation, to detain gay males and transvestites, beat them up, rape them, insert batons or other foreign objects in the anus, force them to perform oral sex and otherwise abuse them physically, always accompanied, of course, by verbal and psychological abuse. As a result of these beatings/rapes, many gay males and transsexuals have died in those countries, but the perpetrators are almost never prosecuted because such abuse is tacitly accepted and often encouraged.

43. Mr. XXXX has suffered truly despicable and inhuman treatment at the hands of the Mexican police, as have his friends and all LGBT peoples in the country. Mr. XXXX's first encounter with the police was in gay bars in Guadalajara. "On a regular basis, the police raided gay bars. Several police would come into the bars, stop the music, and turn on the lights. All the men would line up while the police searched the patrons for drugs. Some of the motive for the search was pure harassment and intimidation, as the police officers would use very vulgar language and get extremely physical with everyone. I experienced this several times, and was always terrified."

In that same year (1988), Mr. XXXX was walking with his friend Oscar toward the gay area of Guadalajara. "We were walking in the evening when a police car stopped next to us. Two uniformed policemen got out and approached us. Without telling us why, the policemen told us to get against the wall, empty our pockets, and take off our shoes. While we complied, they said things like, 'What are you two *maricones* doing here?' I had two condoms in my pocket, and did not take them out. One of the policemen patted me down, found the condoms, and started giving me a very hard time. In Mexico, only gay men carried condoms because 'real macho men' did not have sex with condoms. The policemen started making comments about what a big 'fag' I was. The policemen took money from our wallets, and threatened that if they saw us again, they would take us to jail. They left us there, and Oscar and I went home terrified. After that, I experienced a lot of verbal abuse from the police in my neighborhood. Policemen would yell things from their patrol cars like, 'Hey, faggot, what are you doing here? Go home!' I witnessed many gay men getting arrested or getting beaten by the police in the streets."

The police harassment of Mr. XXXX just continued. In 1995, he moved to downtown Guadalajara. "Our neighborhood contained several gay bars and clubs, so the police were always vigilant and harassed my roommates and me often. About two times per week, my friends and I were stopped by the police in the street. The policemen said things like, 'We don't want faggots around.'"

... The constant police harassment and vigilance was very stressful, and made me consider whether I should stay in Mexico. When I talked to my gay friends who had lived in other parts of the country, they told me that the situation was the same or worse."

**44.** Police harassment is one thing, sadistic attacks, however, are quite another. In 1997, Mr. XXXX was assaulted by Mexican police. "I went out for dinner and was walking home down an alley when a police car drove up and stopped beside me. Two uniformed policemen got out of the car and started physically searching me, asking me what I was doing and where I was going. They took my wallet and looked through it. They took my money and looked at my identification, one of which was a press badge from the newspaper where I worked at the time. One of the policemen said something to me like, 'What are you, a faggot?' and he pushed me against the wall. Both policemen started making jokes about my sexuality and both began to hit me with their fists. I told them that what they were doing was an injustice, and that I was going to write about it in the newspaper. **The policemen became enraged, and one sprayed my face with pepper spray. The policemen told me that if I said anything, it would be easy to find me and torture me. The policemen then, left, and I could not move because I was blinded by the spray and in incredible pain.**" Emphasis Mine.

**45.** Indeed, police and military abuse and torture of male and female homosexuals is so common that it is mentioned almost in passing in accounts of "gay-bashing" in Mexico. If Mr. XXXX is forced to return to Mexico, it is quite likely that, in time, he will encounter identical problems with the police and other security officials. If this happens, he risks police abuse and torture. Please see the last five to ten years of reports by Amnesty International, World Watch, Mexican human rights NGO's, the International Gay and Lesbian Human Rights Commission, the International Lesbian and Gay Association, and the United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices-Mexico, as well as the work by Andrew Reding (see above).

**46.** Moreover, Mr. XXXX knew very well that Latin American and particularly Mexican police never investigate charges of violence against homosexuals, nor do they ever prosecute those who have attacked homosexuals. In fact, gay males in Mexico can not count on protection from assault on the part of any civil or military official in local, state or national governments. Mr. XXXX's experience with his former lover Víctor was consistent

with this. "I knew that I could not get protection if I reported these incidents to the police because Víctor had a lot of money and power in our community. I knew from our relationship that Víctor had friends in the police squad, and that my being able to get justice and protection from him would therefore be impossible."

The ugly truth is that the police consider gay males to be threats to *La Patria* who must be eliminated so that *La Patria* will be "clean."

**47.** No better example of this is the June, 2003, murder of Jorge Armenta Peñuelas (president of the Lesbian and Gay Collective in Nogales, Sonora) and his partner Ramón Armando Gutiérrez Enríquez. Both men had been tortured before they were beaten to death with a hammer.

Jorge Cano Aguirre, regional officer from the Sonora Prosecutor Office said that the investigative line would be "the crime of passion" since Mr. Armenta "had trouble with several of his lovers." The obvious implication is that Armenta Peñuelas and Gutiérrez Enríquez were somehow responsible for their own murders.

This attitude was also present in the way authorities viewed the murders of three gay males in Mexico City in May, 2003. Asked about one of them by her brother, the Prosecutor responded: "Do you know your brother was Gay? Well, he died the way people do in those circles." See "Gay Leader and His Partner Murdered," International Gay and Lesbian Human Rights Commission, July 9, 2003.

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

**49.** Apart from the police and other security forces, there is another group in Mexico which represents a serious threat to Mr. XXXX's safety and well-being, gang members who have been deported from the United States and who have reconstituted their gangs in Mexico.



**50.** When the economic whirlwind of the 1970s, when petroleum discoveries led the Mexican government to embark upon a wild, unregimented spending spree, Mexico quickly overextended itself and was forced to devalue the peso twice in 1976, 60 percent in September and another 40 percent in October.

Even then, the Mexican Government continued to rely on petroleum revenues to maintain some semblance of economic stability, but the world oil glut of the early 1980s forced another massive devaluation. Indeed, Mexico came so close to defaulting on its international debt that the United States and the world credit agencies, such as the International Monetary Fund (IMF), the World Bank, and the Inter-American Development Bank had to move aggressively to stabilize the situation. The result was the imposition of the emergency, draconian economic measures for which the IMF is well known. The peso went through several massive devaluations and the Mexican economy entered into a crisis from which it still has not recovered.

**51.** This economic malaise led to a massive emigration to the United States. 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 men and women from Mexico. Nevertheless, even in the so-called "good times" of the 1980s, the vast majority of Mexican 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."

**52.** Moreover, during the 1980s, hundreds of thousands of Central Americans, primarily those fleeing from the horrible civil wars in Guatemala and El Salvador, flooded into California. At that time, there was wide-spread sympathy for these refugees, even to the extent that Californians were willing to pay taxes to support them.

**53.** 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 and Guatemalan governments began peace talks with their respective guerrilla armies, talks which resulted in the peace accords of the 1990s. Although the United States touted these peace accords as a solution to all of Central America's ills, and even stated that the Mexican economy would improve as well, serious political and economic issues remained. For one thing, the United States did not follow through with promised economic aid and the shattered economies declined even

further after 1992. Unemployment was furthered exacerbated by refugees abroad who returned to their native land in hopes of beginning anew.

Meanwhile, Mexican immigrants who had, in the past, emigrated to the United States for temporary periods, had now lost all hope of an economic recovery in their homeland. Not only did they bring their entire families, they clearly had no intention of returning to Mexico. This was further exacerbated by a 20 percent devaluation in 1994 and decision to let the peso float which resulted in an additional 30 percent decline in 1995.

**54.** Moreover, unlike the 1980s when there existed widespread sympathy for Honduran, Salvadoran and Guatemalan refugees, by the early 1990s, the political climate had altered significantly. California Governor Pete Wilson enjoyed tremendous political success in promoting anti-foreign sentiment, especially with regard to Mexicans and Latin Americans and Californians passed several Propositions which reflected this anti-foreign sentiment (187 in 1984 stands out for its virulence).

**55.** Then, in the early 1990s, the United States Immigration and Naturalization Service (INS) began to deport thousands of Mexican and Central American young people for gang affiliation and/or crimes committed in the United States. In 1992, INS agents in Los Angeles deported several thousand Mexican and Central American 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.

**56.** 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 issued tickets for jaywalking, loitering, riding a bicycle through a stop sign and other petty citations that the Mexican and Central American youth could not afford. When the young gang members did not pay the fines or appear in court, it was a simple process of arresting them for outstanding citations and warrants (which had now become felonies), 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.

**57.** 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 Mexican young people were deported from the United States back to Mexico.

Indeed, by the mid-1990s, the United States was deporting more than 40,000 young Mexicans back to Mexico each year.

**58.** Former California State Senator Tom Hayden is a leading expert on southern California gangs. 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. Particularly important for this case are his analyses of what happened to the young Mexicans and Central Americans who were deported.

**59.** 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 scattered or living in the U.S. If the deportees did have relatives living in Mexico, most of them had lost touch with them over the years. In many cases, their relatives in Mexico 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.

**60.** The only place where they were welcome was within the relatively new Mexican, Salvadoran, Guatemalan and Honduran gangs which had been transplanted from Los Angeles. The two largest are Mara Salvatrucha and the 18<sup>th</sup> Street Gang. 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. 11). For a superb account of transplanted Honduran gangs and the violence which they face, see T. Christian Miller, "Dying Young in Honduras," *The Los Angeles*

*Times*, November 15, 2002. See also for continuing gang violence, Mesoamérica, Volumes 16-23 (1997-2004). Mesoamerica, published by The Institute for Central American Studies in San Juan, Costa Rica, is one of the most respected sources in the world for facts and updates on events in all of the Central American republics.

**61.** Caught off guard and seeking to deal with the myriad of problems and conflicts entailed in restoring some semblance of order after the chaos of the 1970s and 1980s, the Central American governments reacted to the arrival of these young deportees with extreme measures, even murdering them.

**62.** Until recently most attention focused on gangs in Central America, but the problems were just as serious in Mexico, they just didn't receive the same press coverage. In November and December of 2004, however, the seriousness of the problem became evident. On November 26, Mexican State and Federal police detained at least 146 people in a massive sweep in the city of Tapachula near the border with Guatemala. More than 1,000 police participated in what was termed "Operation Chiapas Coast 2004," supported by helicopters, cars, dogs and rapid-attack equipment. The target of the sweep were members of the Mara Salvatrucha gang (*The Albuquerque Journal*, November 27, 2004).

Then on December 2, 2004, the Mexican Interior Secretary Santiago Creel announced that federal and local law enforcement personnel had arrested 224 alleged members of Mara Salvatrucha in a massive nation-wide sweep across 28 states. Secretary Creel was quoted as saying that the gang situation "is a phenomenon affecting public security and a phenomenon that potentially puts national security at risk, essentially because of issues linked to our borders" (*The Albuquerque Journal*, December 3, 2004).

**63.** Of transcendental importance for this case are these gangs' attitudes on homosexuality. Not only were they responsible for murder, theft and mayhem in Los Angeles, they were notoriously homophobic. Once deported back to Mexico, these gang members' homophobia was reinforced and fortified by Mexican 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.

**64.** These same attitudes are 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+/AIDS patients and homosexuals (infected or not) are lumped together into one horrific abomination, *maricones* (queers) and *jotos* (faggots) whose existence is a threat to every individual, every family, yes, even to the nation (*La Patria*) itself.

**65.** 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).

**66.** In this 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.

**67.** Equally dangerous is the fact that most health providers, including doctors and nurses, are extremely reluctant to treat patients who are HIV+, often flatly refusing. When Mr. XXXX worked in a health clinic he saw this first hand. "I saw how terribly those with HIV and AIDS were treated. For example, I saw a dentist refuse to treat a woman who was HIV positive; the woman was suffering terribly, but the doctor refused to help her. On another occasion, I heard a doctor yelling at a very sick AIDS patient. The doctor called the patient a 'faggot,' and told him

deserved to die from AIDS for being gay. I felt impotent because there was nothing I could do to help these patients. When working with files, I saw files marked clearly with red marker as 'homosexual.' I was frightened by the unprofessional and brusque way the doctors dealt with homosexual patients, even those who were HIV negative. There was one doctor who was very feminine, and all of our coworkers made fun of him and prevented him from succeeding."

Since Mr. XXXX is not only homosexual, but HIV+ as well, such attitudes are terrifying indeed because the health care available to him in Mexico is limited indeed.

**68.** As noted above, homosexuals are subject to regular and brutal persecution in Mexico. Not only are they ridiculed and assaulted (even murdered) because they starkly offend the Mexican 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 then threaten them with jail if they do not comply. This is a very effective threat because a homosexual (male or female) placed in jail can expect to be repeatedly raped or even gang-raped by other inmates. Homosexuals who do not comply are also beaten, raped, jailed or murdered. Policemen can subject homosexuals to such abuse, including extrajudicial execution, with impunity, because of the total failure of law enforcement to investigate crimes against homosexuals, transvestites and transsexuals.

**69.** There is no doubt that homosexuals and transvestites 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."

**70.** 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. Hernandez-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. Hernandez-Montiel is therefore entitled to asylum and withholding of deportation based on his well-founded fear of persecution should he be returned to Mexico."

I want to add here that internal conditions in Mexico are much worse in December, 2004, than they were when the Hernández-Montiel case was heard.

71. As noted above, Mr. XXXX's homosexuality makes him a particularly high profile target. Both the military and the police 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. If Mr. XXXX is deported by the United States, he will shortly be targeted by the police because of his obviously, "feminine" mannerisms. The police will also assume that he is HIV positive (which he is). Tragically, most Mexicans and Latin Americans believe that all homosexuals are HIV positive (which is not true) and that all people who are HIV positive are homosexuals (which is likewise false).

72. Finally, Mr. XXXX's own family will most definitely shun him as "unclean," as a disease-carrying, despicable, homosexual monster. They may not touch him; they may not allow him into their homes; they may attack him verbally, as a *sidoso* or one who is infected with AIDS and they may attack him physically. Indeed, it is even conceivable that Mr. XXXX's own family may be responsible for his death. His presence constitutes a terrible stain on the family *apellido* or last name, something which has been the most important thing to an Hispanic family since the days of the *Reconquista* (711-1492) in Spain. I have personally seen families react to the news that one of theirs is homosexual and/or infected with HIV/AIDS and it is a terrible, heart-wrenching sight indeed.

73. Mexico is the very epitome of a country which has been devastated by neo-liberal economic policies. The exchange rate of peso and dollar is extremely precarious with most experts

predicting a series of disastrous devaluations in the near future. Moreover, according the United States Department of State, "Income distribution remains skewed: in 2000, the top 10 percent of the population received approximately 37.8 percent of total income, while the bottom 20 percent earned an estimated 3.6 percent" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2002-Mexico, March, 2003, p. 1. Hereafter cited as 2002 Country Report on Mexico).

That those figures have not changed at all is proven by the fact that the Department of State repeated them in its 2003 Country Report on Mexico. See: Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2003-Mexico, February 25, 2004, p. 1. Hereafter cited as 2003 Country Report on Mexico.

**74.** Since the horrific events of September 11, 2001 in New York and Washington, D.C., the economic situation in Mexico has declined precipitately (see report of the World Bank, October 3, 2001). Today (July, 2004), the economy is in ruins because of the hundreds of thousands of Mexicans who have lost their menial jobs in restaurants, hotels, as building custodians, and in gardening, and face financial disaster. This situation has been horribly impacted by the fact that hundreds of thousands additional Mexicans have lost their relatively well-paying jobs in the *Maquiladoras* (twin plant, assembly factories) along the U.S.-Mexican border, thereby pushing many into the already devastated job market in central and southern Mexico.

**75.** Moreover, the flood of Mexicans back to the interior of the country has had a horrific impact on Mexican culture in general. Those Mexicans who return bring with them new values, attitudes and belief systems which they have learned in the United States. When they attempt to reintegrate into Mexican society, there are immediate cultural conflicts, a type of cultural meltdown. The gay male deportee is certainly no exception. On the contrary, when one factors in the fact that the individual is homosexual, the conflict will increase exponentially. In short, these individuals represent a cultural time bomb poised to detonate.

**76.** 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. According to the 2002 Country Report on Mexico: "Federal and State law enforcement officials and one member of the military were accused of committing unlawful killings. There were reports of vigilante killings. There were



documented reports of disappearances. **The police sometimes tortured persons to obtain information. Prosecutors used this evidence in courts, and the courts continued to admit as evidence confessions extracted under torture.** There were cases of police torture of suspects in custody that resulted in deaths. Impunity remained a problem among the security forces, although the Government continued to sanction public officials, police officers, and members of the military. Widespread police corruption and alleged police involvement in narcotics-related crime continued, and police abuse and inefficiency hampered investigations. Narcotics-related killings and violence increased, particularly in the northern states and Mexico City. Prison conditions were poor. **The police continued to arrest and detain citizens arbitrarily.** Lengthy pretrial detention, lack of due process, and judicial inefficiency and corruption persisted" (2002 Country Report on Mexico, p. 1). Emphasis Mine.

77. Disappointedly, those horrific conditions not only did not improve in 2003, they worsened to such a degree that Mexico began to challenge El Salvador, Guatemala and Colombia as the greatest human rights violator in the Western Hemisphere. The Department of State put it this way:

"The Government generally respected many of the human rights of its citizens; however, serious problems remained in several areas, and some states, especially Guerrero, Chiapas and Oaxaca, a poor climate of respect for human rights presented special concern. **State law enforcement officials were accused of committing unlawful killings.** There were reports of vigilante killings. There were documented reports of disappearances. **The police sometimes tortured persons to obtain information.** Prosecutors used this evidence in courts, and the courts continued to admit as evidence confessions extracted under torture. **There were cases of police torture of suspects in custody that resulted in deaths.** Impunity remained a problem among the security forces, although the Government continued to sanction public officials, police officers, and members of the military. Alleged police involvement, especially at the state level, in narcotics-related crime, continued and police abuse and inefficiency hampered investigations."

"Narcotics-related killings and violence increased, particularly in the northern states and Mexico City. Prison conditions were poor. **The police continued to arrest and detain citizens arbitrarily.** During the year, judicial reforms began to take effect; however, lengthy pretrial detention, lack of due process, and judicial inefficiency and corruption persisted. Indigenous people's access to the justice system continued to be inadequate. **The authorities on occasion violated citizens' privacy.** Human rights groups reported that armed civilian groups

in the state of Chiapas continued to commit human rights abuses. Zapatista National Liberation Army (EZLN) sympathizers continued to denounce increased military presence in Chiapas as well as the increasing activity of armed civilian groups. Journalists, particularly in the northern states, practiced self-censorship in response to threats from narcotics traffickers. Corrupt members of the police sometimes violated the rights of illegal immigrants. Human rights workers continued to be subjected to attacks and harassment; however, reports of such attacks diminished. **Violence and discrimination against women, indigenous people, religious minorities, homosexuals, and individuals with HIV/AIDS persisted. Sexual exploitation of children continued to be a problem.** There were credible reports of limits on freedom of association and worker rights. There was extensive child labor in agriculture and the informal economy. **Trafficking in persons, including children, remained a problem, and there were credible reports that police and other officials were involved in trafficking."**

**"The Government appeared to stall in its attempt to improve the domestic human rights situation, with a few exceptions"** (2003 Country Report on Mexico, pp. 1-2). Emphasis Mine.

78. The ubiquitous and routine use of torture by state security forces in Mexico (Federal, State, and Municipal Police forces and the Mexican Army) has been reported and cited for the entire Twentieth Century, particularly in the past forty years, by international human rights groups such as Amnesty International, World Watch and several Mexican human rights groups. In April, 2003, however, the 1997 Nobel Peace Prize-winning NGO, Physicians for Human Rights, published the results of its 2002 survey of all federal forensic physicians (115) and a "convenience sample of state forensic physicians" (99) in Mexico. 93 (81%) of the federal forensic physicians and 91 (92%) of the State forensic physicians contacted responded to the survey which was designed to assess correspondence of physician practices and attitudes with international standards on forensic investigation and documentation of torture."

Entitled "Assessment of Torture and Ill Treatment of Detainees in Mexico," the survey was conducted with the support of the Mexican Office of the Federal Attorney General and published in the extremely prestigious *Journal of the American Medical Association* (Vol. 289, No. 16, April 23, 2003, pp. 2135-2143).

The results are sobering indeed. "Forty-nine percent of federal physicians and 58% of state physicians reported that torture is a severe problem for detainees in Mexico. Federal physicians estimated that they had conducted 26,445 to 30,650 or

more medical evaluations of the 13,000 federal detainees in the past year and that between 1658 and 4850 of these had alleged torture; these physicians also estimated that they had documented evidence of torture in a range of 285 to 1090 cases."

Even more disturbing were the factors the physicians cited as interfering with the documentation of torture and ill treatment of detainees: "lack of photographic equipment and services (58%), inadequate monitoring and accuracy of medical examinations (36%), inadequate documentation of torture (29%), limitations in their training (28%), **fear of reprisals for documenting torture (23%), and fear of coercion by police officers (18%).**" Emphasis Mine.

79. Of tremendous importance for this case are the U.S. Department of State's Country Reports on Mexico, particularly the past three years. For example, "Amnesty International has reported that homosexual men and women frequently are victims of abuse and violence. **In its 1999 annual report, the NGO Citizen's Commission Against Homophobic Crimes reported that on average three persons per month are killed because of their sexual orientation, and that there were 217 such killings between 1995 and 2000.** Of these, 103 killings occurred in Mexico City, with another 29 in Mexico State and Veracruz. The consensus among gay rights groups is that the police fail to investigate these crimes seriously."

"Gay rights groups claim that the police in Monterrey demonstrated a pattern of abuse of gay men, lesbians and transvestites. For example, on April 24 [2000], police arrested an undetermined number of transvestites in Monterrey" (2001 Country Report on Mexico, p. 25). Emphasis Mine.

80. If anything, the situation for gay and lesbian people worsened in 2003. The Department of State is certainly clear on that: "In June, the Citizens Committee Against Homophobic Hate Crimes reported that at least two killings of homosexuals in homophobic hate crimes occurred during the year; however, the figure may be as high as six. On June 1, the bodies of Jorge Armenta Penuelas, director of the Nogales, Sonora Gay-Lesbian Collective, and his partner Ramon Armando Gutierrez Enriquez were found showing signs of torture [see # 47 above]. **On June 13, the press reported that unknown persons attacked 12 gay children who congregated at Bosque de Aragon in Mexico City. One of the children was thrown from a height of 18 feet and sustained serious injuries. Local authorities said they could not intervene because the park is federal property.**"

According to press reports in January, various schools in Yucatan state expelled five children whose parents were HIV positive allegedly because the schools feared that the children could infect others with the virus" (2002 Country Report on Mexico, p. 17). Emphasis Mine.

81. "In the most recent National Security on Political Culture and Citizen Practices, the National Center for the Prevention and Control of AIDS (CENSIDA) announced that the rejection rates of homosexuals by both those who classified themselves liberal and those who classified themselves as conservatives were almost the same: 37 and 39 percent respectfully. **The same survey found 66 percent of respondents would not share a home with a homosexual**" (2002 Country Report on Mexico, p. 21. Emphasis Mine.

82. Moreover, prison conditions in Mexico are dismal: "Prison conditions remained poor. Many prisons are staffed by undertrained and corrupt guards. **Prisoners complain that they must purchase food, medicine, and other necessities from guards or bribe guards to allow the goods to be brought in from outside.** In many prisons inmates exercise authority, displacing prison officials. Influence peddling, drug and arms trafficking, coercion, violence, sexual abuse and protection payoffs are the chief methods of control used by prisoners against their fellow inmates. Prisons vary widely in their ability to meet basic needs of life, keep prisoners safe and healthy, and provide opportunities for work and education; however, almost all fall short in some of these areas" 2003 Country Report on Mexico, p. 6). Emphasis Mine.

83. "Health and sanitary conditions are poor. In 2000, doctors at a prison in Nuevo Laredo resigned, citing unhealthy conditions such as inadequate food and water as the reason for their resignations. They stated that conditions such as mange, HIV/AIDS, and tuberculous are known to authorities who fail to take any action to treat and segregate sick inmates" (2002 Country Report on Mexico, pp. 9-10).

"Often prisoners must pay for their own prescription medicine. According to the CNDH, most prisons do not have any facilities for treating those requiring psychiatric care" (2003 Country Report on Mexico, p. 6).

"On March 8, La Loma 1 prison in Nuevo Laredo placed 160 prisoners in a 2-room area (13 by 16 feet) for processing. Severe overcrowding, along with an almost total lack of sanitation facilities and limited windows to allow for

ventilation, caused several inmates to become unconscious and one to died from asphyxiation" (2003 Country Report on Mexico, p. 6).

**84.** Recently, many have suggested that there is no longer discrimination against LGBT peoples in Mexico and they offer several points to bolster their arguments. First, in 1997, Patria Jiménez, the head of The Closet of Sister Juana, a lesbian rights organization in Mexico, was elected to the Mexican House of Deputies on the leftist PRD (Partido Revolucionario Democrático) slate. Ms. Jiménez was the first openly homosexual member of the Mexican Congress. Nevertheless, her election does not represent the radical change some would argue.

In the first place, the PRD was seeking to broaden its liberal-leftist base in anticipation of the presidential election of 2000. The PRD leader is Cuauhtémoc Cárdenas, son of one of the most revered Mexican presidents, Lázaro Cárdenas (1934-1940). Cárdenas was elected Mayor of Mexico City in a landslide in that same 1997 election. He carried Ms. Jiménez with him. Moreover, there were new electoral rules in 1997 which dictated that of the 500 deputies in the lower house, 300 were elected directly while 200 were allocated by proportional representation. Ms. Jiménez was one of the latter and was NOT elected by direct, popular vote. Moreover, she had a large contingent of body guards with her twenty-four hours a day.

Second, on April 29, 2003, the Mexican Congress passed *La Ley Federal Para Prevenir y Eliminar la Discriminación* (Federal Law to Prevent and Eliminate Discrimination) which included "sexual preferences" as a protected category.

Then on June 15, 2004, the City Council of Mexico City approved amendments to the Mexico City Civil Code which forbids discrimination based on "sexual preferences" and also on "appearance, mannerism, and expression of one's sexual preference or gender." It further allowed transsexual people to change the sex and name recorded in their birth certificates.

There is no doubt that these two laws represent important steps in ending the discrimination and persecution of LGBT peoples, but that does not mean that the discrimination is over. First, the Federal Law to Prevent and Eliminate Discrimination created a National Council to Prevent Discrimination (*Consejo Nacional Para Prevenir la Discriminación*), but that Council has not yet been placed inside the administrative framework of a Ministry. Moreover, it does not have any funding which will render its actions irrelevant since it has no power of enforcement.

In addition, there is the whole question of the security forces actually enforcing the law. A superb analogy of a similar situation is in the south of the United States in the 1960s and 1970s. I was in Mississippi, Alabama, East St. Louis, Kansas City, Missouri, etc. in the mid-1960s BEFORE AND AFTER the passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act and I know for a fact that the police did not obey the law and had no intention of doing so. It takes years for anti-discrimination laws to be accepted by both the public and the security forces. Yes, Mexico will ultimately arrive at a point where gays and lesbians are accepted and are not harassed by the police, but it will take years, far too long for the respondent in this case.

As Andrew Reding states so cogently: **"It should be kept in mind, however, that there is often a breach between law and practice in Mexico.** Though the government of the Federal District has been relatively diligent in enforcing its anti-discrimination statute, a different pattern has emerged in the state of Aguascalientes. On the weekend of April 6-7, 2002, city and state police raided gay bars in the city of Aguascalientes, arresting 38 persons. All were charged with 'prostitution in public areas,' which is prohibited under the city's Police and Good Government Ordinance (*Bando de Policía y Buen Gobierno*). According to the Aguascalientes Gay Lesbian Bisexual Transgender Pride Committee (*Comité Orgullo Gay Lesbico Bisexual Transgenero Aguascalientes*), police used excessive force, and failed to substantiate the charges. **When the defendants were brought before a judge, the judge said he {was fed up with so many faggots' ('hasta la madre de tanto joto'). He ruled that homosexuals should not be allowed to gather in public, and that they could be arrested as needed.** Emphasis Mine.

Finally, the Mexican economy is in terrible straits. In fact, remittances from Mexicans living in the United States (many if not most of them working here illegally) is now the second most important source of foreign exchange (\$6.3 billion in 2003), surpassing direct foreign investment (\$5.2 billion) and tourism (\$4.9 billion). Only petroleum sales were higher (\$8 billion). See Robert T. Buckman, Latin America 2004. 38<sup>th</sup> Edition. Harpers Ferry, WV: Stryker-Post Publications, 2004, p. 243. According to the 1994 CIA World Factbook, Mexico has a foreign debt of almost \$160 billion, a sum she simply can not service without massive infusions of foreign capital.

One of the principal problems facing Mexico, however, is that the nation has had an atrocious human rights record since independence, a record which has hardly improved (see #78 above regarding the continued ubiquitous use of torture by state security forces). Now, in December, 2004, however, that record constitutes a serious impediment to foreign investment,

particularly from the European Union where the human and civil rights of LGBT peoples are absolutely guaranteed and same-sex marriage will be legalized with the next year. The other principal contributor will be the other member nations of NAFTA, Canada and the United States. The Canadian government and courts have been very pro-active in guaranteeing gay and lesbian human and civil rights and have legalized same-sex marriage. In the United States, particularly since the U.S. Supreme Court decision in the Texas sodomy case (Lawrence v. the State of Texas), attitudes towards LGBT peoples have vastly improved. Although there is still strenuous debate about same-sex marriage, there is no debate that LGBT peoples must have their civil rights and human rights protected the same as everyone else.

Thus, the laws mentioned above are an attempt on the part of the Fox Administration to improve Mexico's human rights image, and, as such, are intended for foreign consumption more than internal change. If Mexico is to recover economically and move forward in the 21<sup>st</sup> century, she needs a new image, to wit, anti-discrimination laws.

**85.** No better proof of the above analysis is that the fact that the Mexico City Police were continuing to arrest gay males in the upscale Zona Rosa section of Mexico City. The police claimed that the men were sex workers, but they had absolutely no evidence of that and were forced to release them after holding them for hours and requiring them to pay hefty fines. See The International Gay and Lesbian Human Rights Commission, "Mexico City: Protest Arbitrary Arrests of Young Gay Men in Zona Rosa, Cuauhtémoc District," August 13, 2004.

**86.** Given the scenario of life in Mexico described above, 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, indigenous people and religious minorities, and single-out homosexual men and women for abuse and violence, how could anyone expect them to respect Mr. XXXX's rights as a male homosexual who has been deported from the United States. The answer is that they will not and they will harass, physically abuse, torture, and, perhaps even kill him soon after his arrival in Mexico.

**87.** In addition to the above, people in all cultures begin to look for SCAPEGOATS TO EXPLAIN THE CRISIS THROUGH WHICH THEY ARE PASSING AND UPON WHOM THEY CAN VENT THEIR FRUSTRATIONS. Homosexuals have been singled out for centuries and it is no different in the Mexico of 2004. As the local and national

economies continue to decline, Mr. XXXX will be in danger not only from the Mexican security forces, but also from the mobs in the street which have become increasingly larger and bolder in recent years. Indeed, in the past two years, it has been increasingly more difficult for the Mexican military and police to maintain internal order.

**88.** 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 Mexico to treat HIV, even for the very wealthy, let alone AIDS itself which requires a very complex and extraordinarily expensive combination of medicines, commonly known as the "AIDS COCKTAIL."

**89.** For thirty-six (36) 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, but that, of course, represents but a tiny percentage of what is needed.

**90.** 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."

**91.** Compared to the rest of Mexico Tijuana 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 the rest of Mexico.

**92.** According to the United Nations Development Programme, the prevalence rate of HIV/AIDS in Mexico is only 0.28 percent of adults aged 15-49, about half of the rate in the United States. At the end of 2001 there were approximately 150,000 persons infected with HIV out of a population of 100.4 million (United Nations Development Programme, Human Development Report 2002. New York: Oxford University Press, 2002, p. 259.



93. There is no doubt that Mexico has made greater progress in HIV/AIDS than any other country in Latin America. Nevertheless, according to Andrew Reding, there are thousands of persons who are still untreated. Since Mr. XXXX would not be covered by the national social security system and would probably not qualify for treatment by the Health Ministry or the individual State Health Services, his prospects for obtaining the antiretroviral medications he so desperately needs are slim indeed. See Reding, Sexual Orientation and Human Rights in the Americas, pp. 61-62.

94. Moreover, since there is such a terrible stigma attached to being HIV+, those who test positive are summarily fired abandoned by their friends and families, denied simple medical attention in clinics or hospitals, even denied the right to be buried in cemeteries. Mr. XXXX's future could not be worse.

95. I would add here that Mr. XXXX's health would prevent him from engaging in some kind of "hide and seek" with the Mexican authorities, thereby facilitating his immediate capture if he had indeed found some way to escape in the first place.

96. Regarding the general question of whether or not the respondent 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."

97. Mexico, like all other Latin American republics, has an elaborate system of identification 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. Mexican 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. Mr. XXXX's are not up to date and he will therefore have to apply in person to various government agencies and ministries. Thus, Mr. XXXX's whereabouts will always be known.

98. In sum, then, due to that fact that he is a homosexual with obvious feminine mannerisms, Mr. XXXX is a high profile target who clearly would be in extreme danger if he were forced to return to Mexico. It is my considered, professional opinion

that the Mexican military and police not only possess the desire to eliminate all criminals, gang members, undesirables and moral deviates (read homosexual/transvestite/transsexual) 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 harass Mr. XXXX, beat him, torture him, even kill him, either in the short run or the long run.

I declare under Penalty of perjury that the foregoing is true and correct.

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Professor Emeritus of Latin American History  
Former Chair, Latin American Studies  
Director Emeritus, Center for Latin American Studies

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Date

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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 is finally changing slowly 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 believed 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;



## 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 couples and their relationships. "Discrimination of all kinds takes a toll on people's health and psychological well-being" (Jen

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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.