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Introduction

Mexico is a country of emigration and immigration but the Mexican government's policy toward Mexicans who have emigrated, particularly those in the United States, stands in stark contrast to how the government treats immigrants on Mexican territory. While Mexican policymakers demand openness from the United States, the Mexican government not only limits the rights of foreigners but immigrants are often subject to human rights violations by the Mexican police and immigration officials, as well as fall victim to violent criminals— as dramatically highlighted by the August 2010 murder of 72 Central American migrants by drug cartels in the state of Tamaulipas and the December 2010 disappearance of 50 Central American migrants in the state of Oaxaca.

The 1974 General Law of Population lays out the rules governing migration to, from, and through Mexico. This report examines contemporary Mexican immigration

policy through a review of the General Law of Population, an examination of amendments to this law, and proposals for a new migration law. As a case in point, until reforms in 2008, the General Law of Population included provisions that levied criminal penalties on those who entered or stayed in Mexico without authorization. Although rarely enforced, these articles served as tools in the hands of corrupt immigration officials who could extort money from illegal migrants with threats of long prison terms. Such changes are significant, but they remain limited and unable to deal with the full complexity of Mexico's migration reality as a country of emigration, immigration, refuge, transit, and return migration. President Calderon's Administration took a much bolder step in the fall of 2010, by proposing a comprehensive migration law. On January 9, 2011, the Senate followed up with draft legislation for a new migration law plus amendments to the General Law of Population and other related laws and codes. The proposed migration law, an amended General Law of Population and a new Refugees and Complementary Protection Law (just approved in January 2011) would constitute Mexico's Migration policy for the 21st century (Gazeta No. 195, 2010). If the new migration law is adopted, it would not only address the country's present migration reality, but also help Mexico meet international treaty obligations, in accordance with Mexico's 1999 Supreme Court ruling on legal supremacy of international conventions.¹

¹According to the Mexican Supreme Court ruling, international conventions entered by the President and approved by the Senate now rank above the General Law of Population although below the Constitution of 1917, Mexico's supreme law. Mexico is part of various U.N. and International Labor Organization (ILO) accords and conventions, such as Convention 166 regarding repatriation of seafarers, which it ratified in October 1990. There are also international accords to which Mexico adheres, which impact the terms of entrance of foreigners to its territory. These accords address matters pertaining to the issuance of visas for regular, diplomatic, and official passports, as well as permits for business people within NAFTA and the General Accord on Commercial Services of the World Trade Organization (WTO). With respect to human rights Mexico is a signatory of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration of the Rights and Duties of Man, the American Convention on Human Rights and Obligations, the International Pact on Civil and Political Rights and, perhaps most notably, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

Comparisons and contrasts between U.S. and Mexican immigration policies became increasingly salient in U.S. immigration reform debates as members of the U.S. Congress have suggested that the United States adopt Mexican laws. This debate in the United States has also reverberated in changes of Mexico's own immigration laws. As will be explained below, even though criminal penalties were eliminated from the General Law of Population in 2008, they have been repeatedly referenced, inaccurately, by members of the U.S. Congress, other policymakers and participants in recent discussions of U.S. immigration reform. Mexico, not the United States, appears to be on the verge of enacting comprehensive immigration reforms but the final act has yet to come to a close.

The General Law of Population of 1974

Since Mexico's independence from Spain in 1821, immigration flows to Mexico have been relatively small but immigration policy has been a constant subject of Mexican legislation, most notably the General Law of Population (GLP) and its many amendments. On the one hand, the Mexican government's desire to modernize the country has been closely linked with the struggle to manage Mexico's population growth. Mexico's earliest population policies focused on importing foreigners to encourage population growth and modernization, from the early 19th century to the early 20th century. On the other hand, Mexico's immigration laws also reflect a series of restrictive measures intent on protecting Mexico's territorial sovereignty, a legacy of Mexico's revolutionary experience from 1910-1917. While Mexican immigration laws had been rather liberal up until the early 20th century, they gradually became more restrictive

especially after the 1970s. Beginning in the 1970s, Mexico experienced a population explosion and it quickly became apparent that population quantity was no longer an issue. Moreover, the government needed to shift its attention to dealing with the arrival of refugees from Guatemala and El Salvador, the growing number of Central Americans on their way to the United States, the influx of highly skilled individuals from the Western world and last, but not least, the growing number of Mexican nationals emigrating to the United States. The Mexican government increasingly came to see that the future of the country's demographic dynamics depended instead on its ability to provide employment, education, and healthcare to an ever-increasing population. In 1974, this changing government perception was expressed in revisions to the then General Law of Population of 1947, and with its approval, Mexico virtually closed its doors to immigrants. With the General Law of Population of 1974, "obtaining permanent work authorization in Mexico became more difficult than receiving a 'green card' in the United States" (Buchenau, 2001, p. 43).

Other laws that govern the rights and obligations of foreigners in Mexico are the Federal Constitution, the international conventions that Mexico has signed, the Law of Nationality and Naturalization, the new Refugees and Complementary Protection Law, and special decrees and codes. The General Law of Population of 1974 and its regulations, however, remain the most significant pieces of federal legislation applicable to immigration questions (Vargas, 2007a). The main objective of the General Law of Population is "to regulate phenomena affecting the population, regarding its volume, structure, dynamics, and distribution in the national territory, in order to achieve its just and equitable participation in the benefits of the social and economic development"

(Article 1, see Appendix). In essence, the General Law of Population promotes an immigrant population that demonstrates good mental and physical health, economic solvency, poses no threat to Mexican labor, and shows a desire to assimilate. Given this objective, the General Law of Population is categorized as an instrument of vigilance and control, focused on regulating the entry, stay, voluntary exit, and forced expulsion of foreigners from Mexico. The control and enforcement of these rules falls specifically to Mexico's National Institute of Migration (INM), an independent but surrogate entity of Mexico's Ministry of the Interior (SEGOB).

To achieve its objectives, the General Law of Population enumerates specific entrance categories, as well as various conditions and requirements, with which foreigners must comply to be admitted and permitted to remain in Mexico. The General Law of Population classifies individuals lawfully entering Mexico in two categories: non-immigrants (*no inmigrantes*) and immigrants (*inmigrantes*). A non-immigrant is a foreigner who, pursuant to a valid permit, is temporarily admitted to Mexico. An immigrant (*inmigrante*) is “a foreigner who enters Mexico lawfully with the purpose of establishing his or her [permanent] residence in the country, until he or she acquires the status of *inmigrado* [five years later]” (similar to a permanent resident in the United States) (Vargas, 2007a, pp. 29-30). Foreigners admitted to Mexico as immigrants and non-immigrants must register with the National Registry of Foreigners (*Registro Nacional de Extranjeros*), and, if there is a change in their status, civil, occupation, nationality, etc., they must also report such change.

Mexican authorities, whether federal, state, or local, are required to request proof of lawful immigration status from foreigners appearing before them. Foreigners can only

engage in activities expressly authorized and in accordance with the federal Constitution. They cannot, for example, serve as members of the military during peacetime (Constitutional article 32), be judges (Constitutional article 91), or be any type of government employee in which the status of citizenship is indispensable, such as a member of Congress (Constitutional article 55). Moreover, no Mexican company or individual may lawfully hire a foreigner unless the foreigner proves that his or her stay in the country is lawful and that he or she has authorization to work. Under equal circumstances, Mexicans will have employment preference over foreigners.

Pressures for Change

In addition to the millions of Mexicans living abroad, primarily in the United States, there are about half a million immigrants registered with the government as living in Mexico, the majority of whom are U.S. citizens. Mexico is also one of the world's principal countries of transit migration, especially for the hundreds of thousands of Central Americans who travel through Mexico intent on reaching the United States. Mexican policymakers and legislators are beginning to grapple with this changing migration reality of legal and illegal migrants, travelers, refugees and returning citizens.

Immigrants arrive in Mexico for many reasons. Most of the country's documented immigrants have arrived for economic and/or work-related reasons. Many, such as executives, professionals, scientists, artists, or athletes working either for Mexican or foreign companies, arrive with secure jobs. A common characteristic of this group is a limited stay but some also choose to remain in Mexico. Retirement is the main motivation for immigrants who tend to be more permanent. This is particularly true of

Americans and Canadians in pursuit of a lower cost of living and a milder climate. There are also immigrants in Mexico who have arrived for political reasons after being forced to leave their home countries as a result of severe political and ideological strife. Americans constitute Mexico's largest immigrant group and by 2009 there were an estimated 347,166 U.S. citizens living in Mexico. The largest recent immigrant flows to Mexico are from Central America with a total of 164,402 immigrants from Guatemala, Honduras, Belize, El Salvador and Nicaragua living in Mexico by 2009 (INM, 2010). In addition, Chinese, African, Indians, South Koreans, and Eastern Europeans are also crossing Mexico's southern border—often undocumented—on their way to the United States. As a result of tightening U.S. border controls, many of those who initially planned to stay in Mexico temporarily as they made their way to the United States have had to remain in Mexico permanently (Gonzalez-Murphy, 2009).

The Mexican government estimates a daily average of well over 1 million documented entries and exits through its northern border. An estimated average of 1.5 million people also cross the southern border every year. This adds up to almost 400 million territorial crossings per year. Mexico also hosts 40,000 Guatemalan temporary workers a year. There were over 200,000 deportations in 2004 and in 2005 but deportations have declined to 120,414 in 2007 (INM Comunicación Social, 2008a). As an outcome of the liberalization of the Mexican economic system—a process that started around 1986 when Mexico joined the GATT, became formalized with NAFTA in 1994, and has continued with various free trade agreements Mexico has signed with other countries—the number of business visitors and international tourists has grown. According to data from INM's website, 4,937,532 tourists visited Mexico in 1989 and

two decades later that number nearly doubled to 9,207,009. There were 30,442 business travelers in 1994, the first year that NAFTA went into effect, and, in 2009, this number increased over 10 times to 334,889.

The end of 71 years of one-party rule by the *Partido Revolucionario Institucional* (PRI) has also enabled a series of significant political reforms and opened a political space for migration policy reforms. Mexico held free democratic elections in 2000, resulting in the election of Vicente Fox of the *Partido Acción Nacional* (PAN) to the Presidency. From the outset of Fox's administration (2000-2006), emigration seemed to be promoted as an escape valve for the country's economic problems. As the Mexican economy could not generate opportunities for its own people, Mexico increasingly became dependent on emigrant remittances for its own economic stability. President Fox heralded emigrants as "heroes" for the economic contributions they made towards Mexico's development (Martin, Marti & Weil, 2006, p. 37). As soon as Fox took office, he called for bi-national negotiations with the United States to address immigration reform. In Fox's own words, "the Mexican government began promoting the establishment of a new system that regulates the movement across our border in a manner which is legal, safe and orderly" (as cited in Gonzalez-Murphy, 2009). In 2001 the United States and Mexico intensified the dialogue that set in motion a process of bilateral negotiations with the intent of finding ways to face the multiple challenges and opportunities associated with trans-border migration. On September 7, Presidents Bush and Fox announced an agreement on such a framework for migration policy reforms but the tragic events of September 11, 2001 stalled movement on immigration reform in both countries. Nevertheless, various Mexican state and local governments, academics, and

members of civil society continued to meet in an attempt to develop proposals for migration reform, and in 2005, INM gathered such proposals and compiled a report entitled *Towards a Migration Policy for the Mexican State* (INM, 2006). In turn, this effort inspired a series of guiding principles set forth in an unprecedented document entitled “Mexico and the Migration Phenomenon,” which was adopted by the Senate and the Chamber of Deputies of Mexico’s federal Congress as a concurrent resolution on February 16, 2006.

Along with Mexico’s democratic transformation came a greater awareness of the complex and contentious nature of Mexico’s migration reality. This awareness has expressed itself in a series of incremental reforms to Mexican immigration policy, a process that inadvertently brought to light the policy’s degree of restrictiveness in contrast to demands Mexico was making for reform of restrictive U.S. immigration policies.

External Political Pressures for Change

As the Mexican government began calling attention to the protection of the human rights of Mexicans in the United States, calling for the U.S. government to issue more visas to Mexicans and to establish a guest worker program for Mexicans, the Mexican government found itself being accused of failing to grant foreigners in Mexico the same civil rights and workplace protections it demanded for Mexican nationals abroad. This contradiction has been noted by many U.S. organizations calling for policies to reduce, if not stop, legal immigration to the United States, such as the Federation for American Immigration Reform (FAIR) and the Colorado Alliance for

Immigration Reform. Policy analysts have similarly noted this incongruity, which has influenced U.S. congressional debates on migration reform. For example, in 2002 George Grayson, professor at the College of William and Mary, in his article, “Mexico’s Forgotten Southern Border: Does Mexico Practice What it Preaches Abroad” highlighted the failure of President Fox’s plan (*Plan Sur*) to promote cooperation among Mexican security and police agencies in order to curb the extensive human rights abuses committed against Central American immigrants in the Mexico-Guatemala border region. Michael Waller of the Center for Security singles out Mexico’s restrictive laws in his 2006 analysis of the Mexican Constitution, “The Mexican Glass House: How the Mexican Constitution Treats Foreigners” and argues that “if American policymakers are looking for legal models on which to base new laws *restricting* immigration and expelling foreign lawbreakers, they have a handy guide in the Mexican Constitution.”²

During bilateral meetings, U.S. policymakers called attention to the inconsistencies of their Mexican counterparts’ demands, in some cases catching Mexican policymakers by surprise. As stated by then Committee Secretary and Coordinator for Migrant Issues for the PRI party, Congressman Ramírez Martínez, hearing these accusations from U.S. officials “was a slap in the face with a white glove,” a “slap” that motivated him to work harder to fight for reform in Mexico (Quoted in Gonzalez-Murphy, 2009).

Political tensions between the United States and Mexico intensified after the passage of Arizona’s new law, SB1070/HB2162. This law requires police to ascertain

² Waller’s article appeared during the middle of the U.S. House of Representatives’ debate on comprehensive immigration reform in 2007. In 2010 Congressman Ted Poe referenced the source for his arguments as “some really interesting research on Mexican immigration laws” recently published by the writer Michele Malkin (2010), whose article had, in turn, referenced Michael Waller’s 2006 article.

the immigration status of those individuals the police comes into contact with, for example, through traffic stops, detain them until their legal status is verified, and hand over illegal aliens identified to federal immigration authorities. The Mexican government's condemnation of the Arizona law motivated responses by U.S. representatives that zeroed in on the restrictiveness of Mexico's immigration laws. For example, in a May 18, 2010, speech to the U.S. Congress on the eve of Mexican President Felipe Calderon's visit to the United States, Rep. Ted Poe suggested that President Calderon was hypocritical in criticizing legislation passed in Arizona that would require Arizona police to check the immigration status of those detained, while Mexico's laws require such action by the police. Moreover, he argued that Mexico's General Law of Population, was much more restrictive than U.S. immigration law. Rep. Poe argued:

The Mexican Government bars any foreigner from immigrating to Mexico if they upset "the equilibrium of the national demographic." I wonder if President Calderon thinks that's racial or ethnic profiling. Mexican law further bars immigration unless a person enhances Mexico's "economic or national interests." Immigrants are not welcome in Mexico if they're not "physically or mentally healthy" or if they show "contempt against Mexico's national sovereignty or security." Imagine that. Immigrants to Mexico must have squeaky clean criminal histories. And to apply for Mexican citizenship, immigrants have to show a birth certificate, and they have to provide a bank statement that proves that they are economically independent. In other words, you can't go to Mexico and live off the Mexican government. And they also have to prove they can pay for their own

private healthcare. What are the penalties for failure to comply with Mexican immigration laws? Illegal entry into the country is equivalent to a felony punishable by two years' imprisonment. Document fraud is subject to fine and imprisonment; so is alien marriage fraud. Evading deportation is a serious crime in Mexico. Illegal reentry into Mexico after deportation is punishable by 10 years' imprisonment in a Mexican jail. Foreigners may be kicked out of the country without due process; that means without even being given a hearing. Mexico kicks out illegals without a deportation trial.³

One can get an even greater sense of the negative image that Mexico's General Law of Population has on U.S. immigration discourse with a quick look at the first 10 results of a Google search of "Mexican immigration laws," which includes recent newspaper articles, letters to the editor and blog entries with titles like "Mexico's illegal laws tougher than Arizona's" (September 2010), "Mexico vs. The United States: Mexican Immigration Laws are Tougher" and "Why not consider adopting Mexican immigration laws?" How this image will influence U.S. federal migration laws remains uncertain given that, U.S. migration policy reform on a national level remains stalled. Nevertheless, the Mexican government's desire to positively influence future U.S. discourse is helping shape the process of immigration reform in Mexico.

³ See <http://poe.house.gov/News/DocumentSingle.aspx?DocumentID=186323>

Revisions to the General Law of Population of 1974

Individual reforms to specific articles of the General Law of Population of 1974 have taken place in response to national and international pressures. In April 2008, the Mexican Congress unanimously approved legislation eliminating the felony criminal penalty for entering Mexico without proper travel documents or remaining in the country after one's visa expired. Illegal migration had been punishable by up to 10 years in prison but the 2008 amendment demoted the felony offense to an administrative infraction with a fine of up to 5,000 pesos (\$400).

Commenting on the revisions, Mexican Congressman Ramírez Martínez noted in 2008 that “with the reforms to the articles in the Law...Mexico is in a better position to demand better treatment of its nationals abroad” (Quoted in Gonzalez-Murphy, 2009, p.5). Moreover, during the voting process, Jose Nicolas Morales Ramos of the National Action Party (PAN) and Jose Jacques y Medina of the Democratic Revolution Party (PDR) argued “not only should we look for the rights of Mexicans to be protected in the United States ... but it is also necessary to establish the legislative basis by which the human rights of immigrants entering our country are guaranteed” (Torres, 2008, translation by Gonzalez-Murphy). According to Congressman Jacques y Medina, Mexico had been a “light on the street but darkness at home”—a popular Mexican saying (Gazeta No. 2495-I, 2008).

There have been various other attempts to reform individual articles of the General Law of Population, but none with similar success and impact on human rights. For example, in September 2010, the Mexican Senate approved a reform to Article 67 of

the General Law of Population whereby documented and undocumented migrants are guaranteed the right to report cases of human rights violations without fear of persecution and to receive medical treatment. If a member of the government is found guilty of violating this law, he/she will be subject to 30 days' suspension or termination of employment. The necessary measures to finance this reform are also incorporated into the proposal (Michelle & Gomez, 2010) giving it the tools for effective implementation.

Administrative Reforms

Mexican immigration policy is to be implemented by INM officials in accordance with rules laid out in Mexico's Immigration Procedures Manual. On January 29th 2010, INM published its new administrative manual (the Migratory Procedures and Criteria Manual of 2010) as part of an Institutional Transformation Plan. When this manual went into effect on April 29, 2010, it mandated the implementation of simplified immigration forms and on-line application procedures. The new immigration procedures were paired with a simultaneous deployment of a new centralized information system (SETRAM) that replaces the many stand-alone systems in INM's offices throughout Mexico and offers a web-based application process. Mexico also initiated a new biometric visa program for agricultural guest workers from Guatemala and Belize in 2008. This program includes work permits for agricultural workers valid for up to a year in borderline states such as Campeche, Chiapas, Tabasco and Quintana Roo. This program also offers certain visas for other sectors of the economy, not just agriculture and is available to visitors from border regions in Guatemala—*Forma Migratoria de Visitante Local* (FMVL)—allowing them to travel within the border region for up to three days.

With these administrative changes, the INM hopes to limit the ability of their officers to request bribes in exchange for an expedited process as it removes officers' broad scope of discretionary decision-making, a problem that results in part from the deficiencies of the General Law of Population⁴ and the Mexican Constitution. Articles 11 and 33 of the Constitution and 125 of the General Law of Population grant Mexican authorities significant discretionary power when it comes to determining who enters the country or not, even if the foreigner has the necessary documents to do so. Many deficiencies still remain. For example, even though SETRAM increases trustworthy data, the INM lacks the legal authority to request that carriers submit passenger data to INM prior to the arrival of passengers and enforce the collection of biographical passport data from those exiting Mexico. This is the case, despite the fact that accounting for this information is a requirement established in Article 7 of Mexico's Customs Law⁵ (Gazeta No. 108). As result, INM's own data can be unreliable, something that has strong security implications for Mexico and its neighbors.

Mexican legislators have recognized the need to change the General Law of Population so as to provide INM with the capabilities necessary to enhance the security and control of cross-border flows, improve the country's registry procedures, and provide foreigners with more efficient and fair service—especially to limit the practice of corruption and extortion, to which documented and undocumented immigrants are too often subject. To this effect, in March 2010, Senator Francisco Herrera submitted a proposal to reform Articles 24 and 132 of the General Law of Population, articles that

⁴ See the Appendix below for description of articles

⁵ Article 7 of the Customs Law states that international passenger companies must transmit electronically to the Tax Department information relating to its passengers, staff and means of transportation, according to the terms and conditions designated by the Tax Department's regulations (author's translation)

regulate the issuance of passenger data by maritime and airline carriers. According to Senator Herrera:

“It is evident that today the world is entering a new migration era, associated with the current impulse of globalization, all while the advances in communication, reduced transportation costs, and travel times, make migration flows more numerous, complex, and heterogeneous ... In my opinion, this proposal will update the migration legislation and strengthen the abilities of the National Institute on Migration, providing it with the appropriate technical programs for the efficient performance of its duties. In addition, this proposal will provide a faster and improved service to those individuals that enter or exit the country while enhancing the security of the Mexican state through the use of efficient information systems that speed this process, as is done in other countries (Gazeta No. 108, author’s translation).

Senator Herrera’s proposal remains in deliberation as migration reform has come on to the legislative agenda.

A New Migration Law

In 2005, the Mexican government released “A Message From Mexico on Migration” directed to the U.S. community, stating that the Mexican government “*does not promote undocumented migration and is eager to participate in finding solutions that will help us face the migration phenomenon*” (emphasis in original). The message expressed the Mexican government’s view that the current debate in the United States is an “opportunity for Mexico” to revise its migration policies within a timeframe of 15 to

20 years. In addition, the Message outlined the government's intent to achieve a policy that recognizes Mexico's new regional and international realities while "reflecting a commitment to facilitating the safe, orderly and legal flow of people" ("Message from Mexico", n/d). These principles had the support of members of the legislature, academia, and civil society organizations. However, despite such expressed consensus on the need for a comprehensive national migration policy for the 21st century, disagreement over how Mexico's laws should be revised helps explain the failure to produce a comprehensive migration policy. While some officials preferred to pursue isolated reforms, others have been in favor of enacting a separate legal framework in addition to a revised General Law of Population (Gonzalez- Murphy, 2009). Over the past several months, previous individual reform proposals have not moved forward, but have been given consideration as the new law was being drafted (Gazeta No. 195, 2010)

Since taking office in 2006, President Calderón and his administration have acknowledged that the General Law of Population is outdated and that the individual amendments made to specific articles are not enough. At the Global Forum on Migration and Development, held in Puerto Vallarta, Mexico, in November 2010, President Calderón emphasized the various policy reform measures his administration has so far undertaken to improve the rights of migrants in Mexico and concluded by saying that Mexico cannot ask of the United States what it cannot do for its own immigrants. Within this framework, Calderón's administration moved towards developing a law that stands separate from the General Law of Population, addresses the aforementioned issues and strikes a balance with the various international conventions Mexico is now a signatory of.

In September 2010, INM officials publicly depicted the General Law of Population as “obsolete” and announced submission of a migration law bill to the Mexican Congress (Mejía 2010). Congressional support for updating Mexico’s migration policy increased, especially given a September 2010 statement made by Senator Rubén Velázquez of the Democratic Revolutionary Party (*Partido de la Revolución Democrática*) (PRD) requesting that his colleagues consider approving a new law of migration “which would become Mexico’s voice to the world on how migrants should be treated” (Michele & Gomez, 2010). Soon after, on December 9, 2010, the Senate introduced a proposal to establish such a new Migration Law, as well as reform, amend, and repeal provisions of the General Law of Population, the Customs Law, the Tourism Law and several other pertinent legal statutes (Gazeta, No. 195, 2010). This Senate initiative was a result of meetings held during the previous month of October, with members of Calderon’s administration and other parliamentary representatives.

The Senate’s initiative assigns the regulatory framework of Mexico’s migration policy as follows: a) the Law of Migration regulates the international mobility of people in its broadest sense, the legal entrance, stay and transit of foreigners in Mexico and some emigration and return issues of Mexican nationals; b) the General Law of Population, after the derogation of over 70 articles, focuses on regulating demographic issues, internal migration and also some emigration concerns; and c) the Refugee and Complementary Protection Law regulates the international obligations that Mexico has with regard to refugees and human rights protections (Gazeta No. 195).

The Senate’s proposed Migration Law actually fulfills the commitments expressed in the aforementioned “Message from Mexico,” as it grapples with practically

every dimension of the migration process, while coordinating its new principles with those of the international conventions that Mexico has signed. Some of its most significant new principles deal with the rights of migrants. For example, the new migration law guarantees that foreigners and Mexican nationals will receive equal treatment under Mexican law. Under this principle all immigrants, regardless of status, are granted the right to access education and health services. Migrants are also granted judicial rights that they previously lacked, such as the right to due process. In addition, it creates an Office of the Prosecutor within the Solicitor General's Office (*Procuraduria General de la Republica*), which will focus on investigating crimes against migrants and protection of their human rights. If the violators are immigration officials, the law stipulates a series of sanctions, such as fines from about \$100 to \$5,000.

With the Mexican government's intent to control migration flows and attract those foreigners who can contribute to economic development, the new migration law simplifies foreigners' entrance and residence requirements. First of all, it replaces the two large immigration categories—immigrant and non-immigrant—with the categories of “visitor” and “temporary resident.” However, the status of “permanent resident” is kept. In the existing law, the major categories incorporate over 30 different types of foreigners—i.e. distinguished visitor, religious minister, etc.—each with its own stipulations and requirements needed in order to qualify for entry and stay. Under the new law, the requirements are simplified, basically differentiating those foreigners who are allowed to work and those who are not. The law also expedites the permanent resident application process for retirees and other foreigners. For instantly granting permanent residency, the law proposes using a point system based on factors such as level of

education, employment experience, scientific and technological knowledge, etc. As of this writing, the new migration law is being deliberated by the Senate. At the Global Forum on Migration and Development in Puerto Vallarta, Senator Jaime Rafael Diaz Ochoa, of the National Action Party (*Partido Accion Nacional*) (PAN) stated that mirror legislation will follow in the lower house.

The Need for Comprehensive Reform

Mexican policymakers have recognized that Mexico needs a comprehensive migration policy. As far back as a 2004 consultative document titled “*México Como País de Destino*” [Mexico as a Country of Destination], Mexican officials have declared that Mexican migration policy remains “restrictive, discretionary, excessively regulated, and with little flexibility.” Despite this line of self-criticism, Mexican government officials and legislators opted for a Band-Aid approach that produced a series of isolated administrative changes and regulatory reforms, so far. As a result, even the individual reforms have failed to translate into significant changes on the ground.

Mexico’s migration statutes—specifically the Constitution, the General Law of Population, and the International Conventions that Mexico has ratified—remain inherently uncoordinated. For example, Article 125 of the General Law of Population and Article 33 of the Mexican Constitution do not guarantee due process to a foreigner facing deportation and, as such, they contradict the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Even though Mexican legislators have emphasized the importance of achieving coordination between Mexico’s migration laws and such treaties, this inconsistency remains an issue. This

inconsistency and lack of adequate legal coordination also presents a serious obstacle to Mexico's ability to implement strategies and programs of action and to enforce the law itself. Mexican legislators are aware that the fact that these issues remain unaddressed has negative implications for Mexico's ability to institutionalize respect for the law, a key element of its democratization. Moreover, addressing issues of coordination is unfortunately hindered by the country's culture of corruption, distrust toward government officials and the prevalent attitude of "*está pero no está*" (it is there, but it is not) toward the law. The law in Mexico is not particularly well-enforced, and, therefore, many of its migration provisions, inclusive of the new reforms, have in some cases been ignored. For example, according to Articles 74 and 140 of the GLP, those who hire undocumented workers can be subject to a fine of 4,434 pesos or prison time of up to 36 days. It is difficult to implement such articles because 40 percent of businesses and 70 percent of professionals and small businesses evade taxes and approximately 27 percent of the population works in the informal sector (Hawley, 2008). Even when authorities suspect businesses of employing illegal migrants, employers are not arrested. Nevertheless, immigration laws, even if unenforced, are frequently used by the police and corrupt officials to extort bribes from undocumented immigrants. According to reports from civil society organizations in 2005, there were 4,000 cases of violations of the human rights of Central Americans in Mexico's southern border region. As Jose Miguel Vivanco, of Human Rights Watch stated in reference to the reform of the General Law of Population, decriminalizing illegal entry, "Arizona has approved a law that opens the doors to racial discrimination, while Mexico has approved one that battles against it, but that does not do anything to put a stop to the abuses that undocumented immigrants suffer at the hand of

the police” (Oppenheimer, 2010). Central American migrants are apparently just as unaware as U.S. congressmen of 2008 changes decriminalizing illegal entry and, unfortunately, corrupt Mexican officials continue to take advantage of migrants’ misunderstandings of current Mexican immigration laws.

To achieve an effective migration policy, a more comprehensive approach to migration policy reform is necessary. At long last, it appears that the Calderon Administration and the Mexican Congress have taken the next step by introducing a bill for comprehensive migration reform.

Conclusion

Mexico’s 1974 General Law of Population reflected a belief that restricting immigration was the only way to protect Mexican sovereignty and further its economic development. The General Law of Population, therefore, focused on welcoming only those foreigners that were “useful” contributors to Mexico’s overall growth. Mexico’s economic and political circumstances had changed over the following 30 years. Mexico was no longer under the rule of an authoritarian regime and it became increasingly linked demographically, politically, and economically to the rest of the world, and to the United States, in particular. The 1974 General Law of Population does not reflect this new reality. In the early 2000s, Mexican government officials acknowledged this. They have responded with reforms but, so far, change has been incremental and small. Over the past year, however, the Calderon administration and the Mexican Congress have pushed forward on the immigration reform agenda. The introduction of a proposal for a new migration law was a significant step towards this goal. Will the Mexican Congress pass a

new migration law this year? Will Mexico have a new migration law before the U.S. Congress takes up immigration reform legislation? Given that the Obama administration and the U.S. Congress have repeatedly delayed restarting comprehensive immigration reform, Mexican policymakers still have an opportunity to beat their counterparts to the punch line. If they do not, Mexico's General Law of Population will continue to be used as an example of a truly restrictive migration law and be thrown back in the face of any Mexican government official who calls on the U.S. government to reform U.S. immigration policies and calls for better treatment of Mexican nationals in the United States.

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APPENDIX

GENERAL LAW OF POPULATION

CHAPTER 1

Objective and Attributes

Article No. 1 The provisions of this Act are public in nature and shall be observed throughout the Republic. Its objective is to regulate those phenomena that affect the populace with respect to the volume, structure, dynamics and distribution of same within the national territory, in order to ensure that the populace may share fairly and equally the benefits of economic and social development.

Article No. 2 The Federal Executive Branch by way of the Department of the Interior (*Secretaría de Gobernación*) shall issue, promote, and coordinate when applicable such measures as may be appropriate for purposes of solving domestic demographic problems.

Article 3. For purposes of this Act, the Department of the Interior shall issue and implement or promote before the corresponding agencies or entities when applicable, such measures as may be necessary in order to:

- I. Adjust economic and social development programs according to the needs indicated by the volume, structure, dynamics, and distribution of the populace;
- II. Carry out family planning programs through public health and educational services managed by the public sector, and ensure that said programs and those operated by private organizations are carried out with absolute respect for fundamental human rights and preserve family dignity, with the objective of rationally regulating and stabilizing population growth, as well as achieving the best use of the country's human and natural resources;
- III. Reduce mortality;
- IV. Influence population dynamics by way of educational systems, public health systems, professional and technical training systems, and child protection systems, and encourage the participation of the collective populace in solving the problems that affect it;
- V. Promote the complete integration of women into economic, educational, social, and cultural processes;
- VI. Promote the complete integration of disadvantaged groups into the nation's development;
- VII. Regulate the immigration of foreigners according to the modalities deemed appropriate, and ensure the best assimilation of same into the national environment as well as their proper distribution throughout the national territory;
- VIII. Restrict the emigration of Mexican citizens when national interests require;

- IX. Ensure the planning of urban population centers, in order to guarantee an effective rendering of those public services required;
- X. Stimulate the establishment of strong population cores of Mexican citizens in those border areas that are characterized by low population density;
- XI. Ensure mobilization of the populace among the different regions of the Republic, in order to bring its geographic distribution in line with regional development possibilities, based on special settlement programs;
- XII. Promote the creation of population centers for purposes of bringing together core groups that are geographically isolated from each other;
- XIII. Coordinate the activities of federal, state, and municipal public-sector agencies, as well as those of private entities, in order to assist the populace in those areas where a disaster has been predicted or has occurred; and

Such other objectives as may be set forth in this Act or in other legal dispositions.

Article No. 4. For purposes of the preceding article, the agencies of the Federal Executive Branch (*Poder Ejecutivo*), as well as other public-sector entities, based on their attributes as set forth by law, shall be required to apply and implement such procedures as may be necessary to achieve each of the objectives of the domestic demographic policies. The Department of the Interior, however, shall be exclusively responsible for establishing norms, handling joint initiatives, and coordinating programs between said entities as relates to demographic matters.

Article No. 5. The National Population Council (*Consejo Nacional de Población*) is hereby created, with said entity to be responsible for the country's demographic planning, which shall be designed to include the populace in the economic and social development programs formulated by the governmental sector, and to link the objectives of such programs with the needs created by demographic phenomena.

Article No. 6. The National Population Council shall be comprised of a representative of the Department of the Interior, who shall be the department director and shall serve as President of the Council, along with one representative from each of the following departments: Foreign Affairs (*Secretaría de Relaciones Exteriores*); Treasury and Public Credit (*Secretaría de Hacienda y Crédito Público*); Planning and Budget (*Secretaría de Programación y Presupuesto*); Urban Development and Ecology (*Secretaría de Desarrollo Urbano y Ecología*); Public Education (*Secretaría de Educación Pública*); Health (*Secretaría de Salud*); Labor and Pensions (*Secretaría de Trabajo y Previsión Social*); Agrarian Reform (*Secretaría de Reforma Agraria*); Federal District (*Departamento del Distrito Federal*); as well from the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*), and the Mexican Institute of Public Employee Safety and Social Services (*Instituto Mexicano de Seguridad y Servicios Sociales de los Trabajadores del Estado*). Said representatives shall be the directors of said departments and institutes, or those assistant secretaries, general secretaries, or assistant general directors that may be assigned by their respective directors. An alternate shall be appointed for each regular representative, with said alternate pertaining to the same administrative level or a level immediately below that of the regular representative.

In the case of matters that affect the jurisdiction of other public sector agencies or organisms, the President of the Council may request that the director of same either attempt the corresponding council meetings(s) or name a representative for such purposes.

The Council may avail itself of assistance from specialists in development and demographic, in the form of technical consulting as well as the formation of such interdisciplinary advisory units as may be deemed appropriate.

CHAPTER II

Migration

Article No. 7. With respect to migratory matters, the Department of the Interior shall be responsible for:

- I. Organizing and coordinating the various immigration services;
 - II. Controlling the entry and exit of both national and foreign citizens, and reviewing the documentation carried by same;
 - III. Applying the provisions of this Act and the Regulations thereto;
 - IV. Exercising the powers conferred to the Department by this Act and the Regulations thereto, as well by other legal or regulatory provisions.
- In the exercise of said powers, the Department of the Interior shall observe respect for the human rights and especially for the family unity of those persons subject to this legislation

Article No. 8. Immigration services shall be:

- I. Internal and,
- II. Foreign.

Article No. 9. Internal immigration services shall be the responsibility of the offices established by the Department of the Interior, and external immigration services shall be the responsibility of the Departmental Delegates, members of the Mexican Foreign Service, and such other institutions as to which the Department of the Interior may assign auxiliary capacity.

Article No. 10. The Department of the Interior shall be exclusively empowered to determine those border crossings, airports, and sea ports where the transit of persons shall be allowed, and to regulate same, after requesting opinions from the Departments of Treasury and Public Credit, Communications and Transportation, Health and Welfare, Foreign Affairs, and Agriculture and Livestock, as well as from the Navy when applicable. The Department shall also consult such other agencies and organizations as may be deemed appropriate.

The aforementioned agencies and organizations shall be required to provide the necessary elements for rendering the services implied by their respective jurisdiction.

Article No. 11. The international transit of persons by way of sea ports, airports, and border crossings may occur only at those places designated for such purposes, within the established time periods and with the intervention of immigration officials.

Article No. 12. The Department of the Interior may temporarily suspend international transit through airports, seaports, and border crossings when public interests so require.

Article No. 13. In order to enter or leave the country, both Mexican and foreign citizens must comply with the requisites set forth in this Act, the regulations thereto, and other applicable legal provisions.

Article No. 14. The Department of the Interior shall enforce compliance with those provisions concerning national statistics, as relates to migration services. For such purposes, the persons referred to in Articles 18 and 19 shall be required to provide the necessary data upon entering the country.

Article No. 15. Mexican citizens who enter the country shall be required to verify their nationality, submit to a medical examination when deemed necessary, and provide such statistical data as may be required. In the case of a person infected with a contagious illness, the immigration officials shall expedite the standard procedures in the event said person must be allowed to enter the country in order to receive medical attention at such place as the public health offices shall indicate.

Article No. 16. Migration services personnel pertaining to the Department of the Interior and the Federal Preventive Police Force shall have priority, except in health related cases, to inspect the entry and exit of persons, regardless of the form of transit, be it via domestic or foreign carriers, be it by way of sea, air, or ground transport, and be it by way of the Republic's coastlines, ports, border crossings, or airports.

Article No. 17. With the exception of health related cases, within national territory the Federal Preventive Police shall be responsible for all effects related to the inspection of persons in international transit, be it by air, sea, or land.

Article No. 18. The inspection set forth in Article 16 shall not be required in the case of representatives of foreign governments who enter the country in official capacity, as well as their family members and employees. This exception shall also apply to those persons who are exempt from territorial jurisdiction, based on international legislation, treaties, or customary practices, provided there exists reciprocity.

Article No. 19. Foreign government officials who enter the country in official capacity shall be given the necessary facilities, in accordance with international custom and the rules of reciprocity.

Article No. 20. The Secretary of the Interior shall, in accordance with the particular characteristics of each region, establish regulations applicable to those foreigners who

visit maritime population centers, border towns, and airports that receive international traffic. The same shall apply with respect to daily traffic between border towns and their neighboring towns across the border, in all cases respecting the applicable international treaties and conventions.

Article No. 21. The representatives and employees of ground, sea, and air transport carriers shall be required to verify that the foreign citizens they bring into the country are duly documented.

Article No. 23. Foreign crew members of air, ground, or sea transport carriers may only remain within national territory for the authorized period of time. Any expenses incurred due to their deportation or exit from the country shall be covered by the owners or representatives of said carriers, be they companies, corporate entities of any kind, or individuals.

Article No. 24. Air transport pilots, ship captains, and ground transport drivers must present to the immigration officials, at the time the entry or exit inspection is performed, a list of passenger and crew members, as well as the data necessary for their identification.

Article No. 25. Those foreigners who do not comply with these requisites established in the Regulations hereto shall not be authorized to disembark, except for that foreseen in Article 42, Section X herein.

Article No. 26. In the case of foreigners in transit who disembark with authorization from the Migration Service (*Servicio de Migración*) in a domestic port, and subsequently remain on land without legal authorization due to forces beyond their control after the ship or aircraft they were traveling on has left port, such persons must immediately present themselves to the corresponding Migration Office. In such cases, said office shall take such measures as may be necessary relating to the immediate exit of such persons.

Article No. 27. Those foreigners who are denied entry by the Migration Service, due either to insufficient documentation or lack of documentation, as well as stowaways, shall be required to leave the country at the expense of the transport company that brought them into the country, without prejudice to the penalties that may apply in accordance herewith.

Article No. 28. No maritime transport vessel may sail from domestic ports until the immigration officials have performed the exit inspection and issued the sailing authorization, except in cases of force majeure, as determined by the Secretary of the Navy and the applicable authorities.

Article No. 30. Visitors shall not be allowed to board any maritime carrier in international transit without prior authorization from immigration and health officials.

Article No. 31. Transport companies shall be liable for economic penalties relating to violations of this Act and Regulations thereto committed by their employees, agents, or representative, without prejudice to any direct liability so incurred by said persons.

CHAPTER III Immigration

Article No. 32. Based on the corresponding demographic studies, the Department of the Interior shall determine the number of foreigners to be allowed in to the country, either by activity category or by area of residence, and shall subject the immigration of foreigners to such modalities as may be deemed appropriate, according to their possibilities to contribute to national progress.

Article No. 33. In conformance with that set forth in the preceding article, granted entry permits shall be granted preferentially to Scientists and Technicians who are or have been devoted to research or teaching in those areas of study insufficiently covered or not covered by Mexican nationals, as well as to those investors referred to in Article 48, section II herein. Tourists shall be granted procedures for entering the country.

Article No. 34. The Department of the Interior shall be able to impose conditions upon those foreigners who enter the country, with respect to the activities they shall be allowed to pursue, as well as the areas where they shall be allowed to reside. The Department shall also ensure that the Immigrants represent useful elements to the country, and that they may receive sufficient income to support themselves and, if applicable, such persons as may depend on them economically.

Article No. 35. Those foreigners who suffer political persecution or who have fled from their country of origin in the situations anticipated in Article 42, Section VI, shall be temporarily admitted by the immigration officials while the Department of the Interior resolves each case, with such resolution to be performed in the most expedited manner possible.

Article No. 36. The Department of the Interior shall establish such measures as may be necessary to offer conditions that facilitate the settlement and assimilation in Mexico of foreign researchers, Scientists, and Technicians.

Article No. 37. The Department of the Interior shall be able to deny foreigners entry into the country or a change in their immigration category or status in any of the following cases:

- I. International reciprocity does not exist;
- II. Domestic demographic equilibrium so requires;
- III. The quotas referred to in Article 32 herein do not allow such entry or status change;
- IV. It is deemed that such entry or status change would be harmful to the economic interest of Mexican citizens;

- V. The foreigner in question has violated domestic laws or has negative references from abroad
- VI. The foreigner in question has violated this Act, the Regulations thereto, or other applicable administrative provisions, or does not comply with the requisites set forth in same;
- VII. The foreigner in question is not deemed physically or mentally sound, in the opinion of the public health authorities; or
- VIII. Other statutory provisions so stipulate.

Article No. 38. The Department of the Interior shall have the authority to suspend or prohibit the admission of foreigners when national interests so require.

Article No. 39. When a foreign citizen marries a Mexican citizen or has a child born in Mexico, the Department of the Interior may authorize his/her entry into or legal stay in the country.

In the event the marital bond is dissolved or the foreign spouse fails to comply with the obligations established by civil family support legislation, the foreign citizen's immigration status may be revoked and a time period set for him/her to leave the country (unless the foreigner has attained Immigrant status), his/her stay may be reconfirmed, or he/she may be assigned another immigration statuses, at the discretion of the Department of the Interior.

Article No. 40. Those Mexican citizens who for any reason whatsoever have lost their nationality shall, in order to enter the country, be required to comply with the provisions of this Act that apply to foreigners.

Article No. 41. Foreign citizens may legally enter the country with an immigration status corresponding to either of the following categories:

- a) Non immigrant
- b) Immigrant

Article No. 42. A non immigrant is a foreign citizen who enters the country temporarily with permission from the Department of the Interior under one of the following categories:

Tourist. For purposes of recreation or health, for artistic, cultural, or athletic activities that are neither for profit or lucrative, for an maximum period of six months

Transmigrant. In transit to another country, able to remain within national territory for thirty days.

Visitor. For purposes of pursuing some lucrative or nonprofit activity, providing same is lawful and honest, with authorization to remain in the country for up to one year.

Up to four one year extensions, with multiple entries and exits allowed, may be granted to a foreign visitor who: a) during his/her stay supports him/herself with resources from abroad, with income produced by same, or with any form of income from abroad; b) enters the country for purposes of investing or investigating investment alternatives; c) is devoted to scientific, technical, consulting, artistic, athletic, or similar activities; or d) enters the country to be employed as a confidential employee, or to attend shareholder meetings or corporate board of director meetings.

Religious Minister or Associate. For purposes of exercising the ministry of any faith, or performing philanthropic or social welfare work that is in accord with the objectives of the religious association they belong to, provided said association has previously been registered with the Department of the Interior, and provided the foreigner's status as a Religious Minister or Associate has been previously recognized under the terms of the Religious Associations and Public Worship Act (*Ley de Asociaciones Religiosas y Culto Público*). The corresponding permit shall be granted for up to one year, with the possibility of up to four one-year extensions with multiple entries and exits.

Political Asylee. For purposes of protecting his/her life or liberty from political persecution in his/her country of origin, authorized for such time period as the Department of the Interior shall deem appropriate, depending on the specific circumstances of each case. In the event the Political Asylee violates domestic laws, and without prejudice to such sanctions as may be applicable due to such violation, the foreign citizen shall lose his/her immigration status, and the Department shall be able to grant to the former whatever status may be deemed appropriate in order for the person in question to remain legally in the country. Likewise, if the Political Asylee leaves the country he/she shall lose all rights to return with the same immigration status, unless he/she has left the country with permission from the Department.

Refugee. For purposes of protecting his/her life, safety, or liberty when same have been threatened by generalized violence, foreign aggression, internal conflicts, massive human rights violations, or other circumstances that have seriously disturbed public order in his/her country of origin and forced him/her to flee to another country. Those persons who have suffered political persecution as described in the preceding paragraph shall not be included under this category. The Department of the Interior shall renew their permission to stay in the country as many times as may be deemed necessary. In the event the Refugee violates domestic laws, and without prejudice to such sanctions as may be applicable due to such violation, the foreign citizen shall lose his/her immigration status, and the Department shall be able to grant to the former whatever status may be deemed appropriate in order for the person in question to remain legally in the country. Likewise, if a Refugee leaves the country he/she shall lose all right to return with the same immigration status, unless he/she has left the country with permission from the Department. A Refugee may not be returned to his/her country of origin, nor sent to any other country, where his/her life, liberty, or safety would be threatened.

When a foreign citizen is granted Refugee status, the Department of the Interior may waive any penalty the foreigner may have incurred by entering the country illegally, in view of the humanitarian and protective nature of such Refugee status.

Student. For purposes of initiating, completing, or perfecting studies in official education institutions or academies, or those established with valid official recognition, or for purposes of undertaking studies that do not require such recognition, with annual extensions allowable, with authorization to remain in the country for only so long as said studies shall last, and for as long thereafter as may be necessary to obtain the respective final academic documentation. Such Students may leave the country for up to a total of 120 days per year. In the event the studies are undertaken in a border town and the Student resides near the border, the aforementioned limit of absentee days per year shall not apply.

Distinguished Visitor. In special cases, courtesy permits may be granted in an exceptional manner to allow researchers, scientists, or humanists of international prestige, journalists, or other prominent persons to enter the country and reside for up to six months. The Department of the Interior may renew such permits when deemed appropriate.

Local Visitor. Migration officials may authorize foreigners to visit maritime ports or border towns for a maximum stay of three days.

Temporary Visitor. The Department of the Interior may authorize for up to 30 days, as an exception, the temporary disembarking of foreign citizens who arrive at sea ports or international airports with documentation lacking any secondary requirement. In such cases, such foreigners must put up a deposit or guaranty bond that guarantees their return to the country they have arrived from, their country of nationality, or their country of origin, in the event they fail to comply with the requisite within the time period allowed.

Correspondent. For purposes of carrying out activities pertaining to the profession of journalist, either temporarily or to cover a special event, provided his/her designation or professional status is accredited with the Department of the Interior under the terms established by the latter. The permit may be granted for up to one year, with subsequent one year extensions being allowed along with multiple entries and exits.

Any foreign citizen who enters the country as a Non-immigrant may apply for entry permits for his/her spouse and immediate family members, who may be granted the same immigration status and stay period as the sponsoring Non-immigrant under Economic Dependent modality (unless such persons have already been granted a different immigration status).

Article No. 43. Admission into the country granted to a foreigner shall obligate same to comply strictly with the conditions set forth in the entry permit as well as the provisions established by the respective legislation.

Article No. 44. An Immigrant is a foreign citizen who enters the country legally for purposes of residing therein while waiting to attain Permanent Resident (*Inmigrado*) status.

Article No. 45. Immigrants shall be accepted for up to five years, and shall be required to demonstrate to the satisfaction of the Department of the Interior that they are complying with the conditions established when their entry into the country was authorized, as well as with any other applicable immigration provisions, in order for their immigration documents to be renewed annually, when applicable.

Article No. 46. If during the stay period granted the underlying conditions of stay are not complied with, the Immigrant must notify the Department of the Interior of the situation within fifteen days, so that his/her immigration documents may be revoked and a time period set for him/her to either leave the country or normalize his/her status at the discretion of the Department.

Article No. 47. An Immigrant who remains outside the country for more than eighteen months either consecutively or intermittently shall not be allowed to apply for Permanent Resident status until the time period set forth in Article 53 has transpired in its entirety once again. An Immigrant who remains outside the country for more than two years shall lose his/her immigration status, except in those cases determined by the Department of the Interior to be exceptions.

Article No. 48. The various Immigrant categories are as follows:
Pensioner, Investor, Professional, Confidential Employee, Scientist, Technician, Family Member, Artist or Athlete, Assimilated Person.

Pensioner. For purposes of supporting him/herself either with resources from abroad, with interest income produced by capital invested in certificates, securities and bonds issued by the federal government or national credit institutions or such other entities as may be determined by the Department of the Interior, or with any other form of permanent income from abroad. The minimum amount shall be that indicated in the Regulations corresponding to this Act. The Department of the Interior may authorize Pensioners to offer services as professors, scientists, scientific researchers, or technicians, when it is deemed that such activities would be beneficial to the country.

Investor. For purposes of investing capital in industry, commerce, or services, in conformance with domestic legislation, provided such activity contributes to the country's economic and social development and is maintained during the foreigner's stay of residence at the minimum amount established in the Regulations to this Act.

In order to preserve this status, the Investor must show that the minimum investment amount referred to in the preceding paragraph is being maintained.

Professional. For purposes of practicing a profession. In the case of professions whose practice requires a title certification, the regulatory provisions of Article 5 of the Constitution concerning professions must be complied with.

Confidential Employee. For purposes of assuming a managerial position as sole administrator or other position of absolute confidence for a company or institution established within the Republic, provided that the Department of the Interior is of the opinion that there exists no duplication of positions and that the service to be rendered merits allowing entry into the country.

Scientist. For purposes of performing research applied to production, or performing technical or specialized functions that, in the opinion of the Department of the Interior cannot be performed by residents of the country.

Family member. For purposes of living as an economic dependent of an Immigrant, Permanent Resident, or Mexican citizen, being spouse or other immediate family member of same.

Immigrant Family Members may be authorized by the Department of the Interior to pursue those activities allowed by the Regulations to this Act.

The foreign children and siblings of Immigrants, Permanent Residents, and Mexican nationals may only be admitted under this category if they are under legal age, unless they have certifiable impediment that prevents them from working, or unless they are studying on a regular basis.

Artists or Athlete. For purposes of engaging in artistic, athletic, or similar activities provided that the Department determines that such activities are beneficial for the country.

Assimilated Person. For purposes of pursuing any lawful and honest activity, in the case of foreigners who have been assimilated into the domestic environment or have had or have a Mexican spouse or child, and who do not fall into any of the preceding categories, according to the terms stipulated in the Regulations of this Act.

Article No. 49. The entry into the country of foreign Scientists or Technicians for more than six months may be allowed on the condition that, shown to the satisfaction for the Department of the Interior, the services of such persons have been requested by institutions related to their specialty and they impart instruction to Mexican nationals in said institutions by way of conferences, courses, and lectures among other means.

Article No. 50. All foreigners who perform scientific or technical research or studies in Mexico shall deliver to the Department of the Interior a copy of such works, even when same are completed, perfected or printed abroad.

Article No. 51. In exceptional situations, the Department of the Interior may establish measures to provide maximum facilities for the temporary admission of foreigners.

Article No. 52. A permanent Resident is a foreigner who has acquired the definitive right to reside in the country.

Article No. 53. Immigrants who have legally resided in the country for five years may acquire Permanent Resident status, provided they have complied with the provisions of this Act and the Regulations thereto and their activities have been honest and positive for the community. The interested party shall retain his/her Immigrant status until such time as the Department of the Interior has resolved his/her application for Permanent Resident Status.

In the event the five year stay period allowed to an immigrant has expired and he/she has either not applied for Permanent Resident status, within the time periods established by the Regulations, or said status application has been denied, his/her immigration documents shall be revoked and a time period set for him/her to leave the country. In such cases, the foreign citizen may apply once again for Immigrant status in accordance herewith.

Article No. 54. Express declaration from the Department of the Interior shall be required in order to obtain Permanent Resident status.

Article No. 55. A Permanent Resident may pursue any lawful activity, under such limitations as may be imposed by the Department of the Interior, in accordance with the Regulations and other applicable provisions.

Article No. 56. A Permanent Resident may freely exit and enter the country, but shall lose his/her immigration status if he/she remains outside the country for more than three consecutive years, or for more than a total of five years during a ten year period. The ten year period shall commence as of the date the Permanent Resident status is granted, in the manner and under the terms set forth in the Regulations.

Article No. 57. Foreign diplomats and consular agents accredited in the country, as well as other officials who are in the Republic for purposes of officially representing their respective government, shall not acquire residence rights based solely on time periods. In the event such an official wishes to reside in the Republic upon the termination of his/her official representation capacity, the person in question shall be required to comply with all ordinary requisites. In such cases, the Department of the Interior shall be able to grant to such foreigners, for motives of reciprocity, such facilities as the corresponding foreign governments grant to those persons who have served as Mexican representatives.

Article No. 58. No foreigner may hold two types of immigration status nor pertain to two immigration categories simultaneously

Article No. 59. The immigration status or category described in Article 42, Section II, may not be varied. Variation of the other categories of immigration status shall remain at the discretion of the Department of the Interior, once the requisites established herein for the new immigration status requested have been fulfilled.

Article No. 60. Permission from the Department of the Interior shall be required in order for a foreigner to pursue activities other than those for which he/she has already been expressly authorized by the Department.

Article No. 61. Those persons who have foreigners as employees or economic dependents shall be required to notify the Department of the Interior within fifteen days of any circumstance that may alter or modify the immigration conditions said foreigners are subject to. The aforementioned persons shall also be required to cover the costs incurred due to the deportation of such foreigners in the event the Department of the Interior should order such deportation.

Article No. 62. In order to enter the country, foreigners must comply with the following requisites;

- I. Present an official certificate of good physical and mental health, issued by authorities from the country of origin, in those cases where the Department of Interior shall require;
- II. Be proved of based on such examination as the public health authorities may perform;
- III. Provide to the immigration officials, under oath, such information as may be requested of them
- IV. Identify themselves by way of proper and authentic documents and if applicable accredit their immigration status;
- V. Present an official certificate of their conduct, issued by the corresponding authority of their normal place of residence, in those cases where the Department of the Interior shall so require;
- VI. Comply with the requisites set forth in their entry permit.

Article No. 63. Those foreigners who enter the country under Immigrant status, and those Non-immigrants referred to in Article 42 herein, Sections III (as applies to Scientists), IV, V, VI, and VII, shall be required to register with the National Registry of Foreigners (*Registro Nacional de Extranjeros*) within thirty days following the date of their entry.

Article No. 64. Whenever required by the Department of the Interior, foreign citizens must verify that they have legally entered and stayed in the country, and must comply with such other requisites as may be set forth in this Act and the Regulations thereto.

Article No. 65. Registered foreigners shall be required to notify the National Registry of Foreigners of any changes in their immigration status or category, nationality, civil status, address, and activities, within thirty days following such changes.

Article No. 66. Regardless of their immigration status, foreigners may, either directly or by proxy, without the need for authorization from the Department of the Interior, acquire fixed or variable income securities and make bank deposits, as well as acquire urban real property and direct rights (*ius in re*) concerning the same, with the restrictions indicated in Article 27 of the Constitution, in the Mexican Investment Promotion and Foreign Investment Regulation Act (*Ley para Promover la Inversion Mexicanan y Regular la Inversión Extranjera*) and in other applicable legislation.

A foreigner in transit due to the nature of his/her immigration status shall under no circumstance be allowed to acquire the types of property referred to by this legal precept.

Article No. 67. The authorities of the Republic, whether federal, local or municipal as well as notaries public and those who substitute or take the place of same, and commercial brokers, shall be required to request those foreigners who deal with them to prove that they are staying in the country legally. In those cases set forth in the Regulations, such authorities, notary, and brokers shall be required to request that the foreigners they deal with accredit that their immigration status and category allows them to perform the act or enter into the contract in question or to the contrary, show that they have obtained special authorization from the Department of the Interior for such effects, In those cases indicated in the Regulations, such authorities, notaries, and brokers shall notify the Department within a period no longer than fifteen days following the act performed or contract entered into before them.

In all cases the verifications referred to in this article must be recorded, and the Department of the Interior must be given notice of the act performed.

Marriages and divorces between Mexican citizens and foreigners shall be recorded in the National Registry of Foreigners within thirty days following the date of same.

Article No. 69. No judicial nor administrative authority shall process any divorce or marriage annulment involving foreigners unless the petition for same is accompanied by a certification from the Department of the Interior accrediting their legal residence in the country, as well as certification that their immigration status and category permit such act to be performed.

Article No. 70. The Department, upon request from the interested parties and within a period no greater than thirty working days, shall issue certificates accrediting their lawful stay in the country.

Article No. 71. The Department of the Interior shall establish immigration detention centers in those places within the Republic deemed appropriate for purposes of holding as a security measure if considered necessary, those foreigners whose entry into the country has been provisionally authorized as well as those who are to be deported.

Article No. 72. The country's judicial authorities shall be required to notify the Department of the Interior concerning the particulars of those foreigners who are being prosecuted upon commencement of said process, along with information with respect to the crimes allegedly committed and any sentence entered.

Article No. 73. Those authorities who by law are responsible for federal, state, or municipal public enforcement agencies shall collaborate with immigration officials upon request from the latter, for purposes of enforcing the provisions of this Act.

Article No. 74. No one shall be able to employ foreigners who have not first verified their legal stay in the country and obtained the specific authorization to render the service in question.

Article No. 75. In the event a company, a foreigner, or their legal representative does not comply with the requisites set forth by the Department of the Interior for any immigration procedure within the time period established by the Department for such purposes, it shall be deemed that they have abandoned (desisted from pursuing) said procedure.

CHAPTER VIII

Sanctions

Article No. 113. Employees of the Department of the Interior shall be penalized with thirty days' suspension or dismissal in extreme cases, in the event they:

- I. Reveal matters of a confidential nature without being authorized to do so;
- II. Obstruct the normal processing of immigration matters, either maliciously or due to the gross negligence;
- III. Intervene in the handling of the matters referred to in this Act, or provide for or advise upon a way for interested parties to avoid immigration provision and procedures either directly or by way of third persons;
- IV. Fail to issue a Citizen Identity Card to a person who has submitted the required documents, or unduly retain said card once same has been issued; and
- V. Maliciously make improper use of immigration documents or provide same to third persons, without the authorization of the Department of the Interior.

Article No. 114. Those federal, state, or municipal authorities who violate the provisions of this Act or the Regulations thereto, when such violations do not constitute criminal offenses, shall be penalized by a fine of up to five thousand pesos, and dismissal in the event of repeat violations.

Article No. 115. A person who aids, abets, or advises any individual to violate the provisions of this Act and its Regulations thereto in a manner that does not constitute a

criminal offense, shall be punished by a fine of up to one hundred times the general minimum daily wage in effect in the Federal District at the time of the violation is committed or by detention for thirty-six hours if such fine is not paid.

Article No. 116. A person who submits or signs any document of petition with a signature that is false or different from the one normally used shall be subject to a fine of up to two hundred times the general minimum daily wage in effect in the Federal District at the time the violation is committed, or by detention for thirty six hours if such fine is not paid, without prejudice to any penalties that may be incurred when such violation constitutes a criminal offense.

Article No. 117. A fine of up to five thousand pesos shall be imposed on any foreigner whose immigration status has been revoked and who has not complied with orders from the Department of the Interior to leave the country within the time period set for said purpose.

Article No. 118 – A fine will be imposed from twenty to up to one hundred times the general minimum daily wage in effect in the Federal District to the foreigner that,

- I. After having been deported the foreigner re-enters Mexican territory without having granted permission to do so;
- II. The foreigner does not state or hides his/her deportation status when reapplying for permission to enter;
- III. Having at first legally obtained permission to enter the country, the foreigner finds him/herself in noncompliance or in violation of the administrative or legal requirements accorded him/her;
- IV. He/she is conducting activities without authorization accorded by this Act or by special permit from the Secretary of the Interior;
- V. Uses or claims to have a different migration status than that which the Secretary of the Interior determined;
- VI. Enters Mexican territory without the proper documentation;
- VII. Marries a Mexican according to the stated terms in Article 127;

The foreigner who uses a fraudulent document or provides false information when being questioned by an official in regards to his/her migration status will be subject to the sanctions imposed in the Penal Code, without prejudice for what has been established in Article 125.

The foreigner who falls under category III of this Article is eligible for regularization of his/her migration status.

Articles 119, 120, 121, 122, 123 and 124 have been repealed.

Article No. 125. Any foreigner who commits the violations described in Articles 115, 117, 118 and 138 of this Act shall have their immigration status revoked and shall be deported without prejudiced to the application of the penalties set forth in said articles.

Article No. 126. In those cases involving threats to national security or sovereignty, deportation shall be definitive. In all other cases, the Department of the Interior shall determine the time period during which the deported foreigner shall not be allowed to reenter the country. During such period, the person so barred may only be readmitted upon authorization expressly issued by the Secretary of the Interior or the respective assistant secretary.

Article No. 127. A fine from one hundred up to five hundred times the general minimum daily wage in effect in the Federal District at the time the violation is committed will be imposed on any Mexican citizen who contracts marriage with a foreigner for the sole purpose of allowing the latter to reside in the country.

For this sanction to be applied the nationality of the foreigner must be established beyond doubt by a competent judicial authority.

Article No. 128. The deportation of foreigners, as well as those measures established by the Department of the Interior for holding foreigners in immigration detention centers or in locations used for such purposes prior to their deportation, shall be of public order.

Article No. 129. Bond required of foreigners by judicial or administrative authorities shall not prevent the execution of deportation orders issued by the Department of the Interior against such foreigners.

Article No. 130. A fine of up to three thousand pesos shall be imposed on any maritime carrier that allows passengers or crew members to disembark on land before the immigration officials have granted the corresponding permit.

Article No. 131. Except in cases of force majeure, the disembarking of persons arriving from abroad at places and times not indicated for such purposes shall be punished by a fine of up to ten thousand pesos, to be imposed on the responsible individuals, the company involved, or its representatives or consignees.

Article No. 132. Maritime carriers or airline companies that bring into the country foreigners without valid immigration documents shall be penalized with a fine of up to five thousand pesos, without prejudice to the possibility of the foreigner in question being turned back and the company being required to return same to his/her place of departure at the company's expense.

Article No. 133. In the event a maritime carrier captain or person acting in such capacity disobeys an order to transport passengers who have been turned back, said captain or acting captain, the carrier company, or its representatives or consignees shall be punished with a fine of up to five thousand pesos. Airline companies shall be subject to the same

fine. In either case a document shall be drawn up for purposes of recording all the pertinent circumstances.

Article No. 134. A fine of up to one thousand pesos shall be imposed on any person who authorizes or orders a transport carrier to leave national territory without the necessary permit from the immigration officials.

Article No. 135. Foreigners who fail to comply with the obligation set forth in Article 26 herein shall be punished by a fine of up to one hundred times the general minimum daily wage in effect in the Federal District at the time the violation is committed, or by detention for thirty six hours if such fine is not paid.

Article No. 136. Violations of Article 28 herein shall be punished by a fine of up to five thousand pesos and, in the event of repeat offenses, Mexican consular offices shall be notified of the registration data corresponding to the vessel involved in the violation, so that authorization to enter Mexican ports will not be granted for said vessel in the future.

Article No. 137. Any person who visits a foreign maritime carrier without permission from the immigration officials shall be punished with a fine of up to five hundred pesos or detention for up to three days. The same penalty shall be imposed on any person who, without being authorized to do so allows a visit such as those referred to in the preceding paragraph.

Article No. 138. Imprisonment of between six and twelve years and a fine of between one hundred and ten thousand times the general minimum daily wage in effect in the Federal District at the time the violation is committed, shall be imposed on any person who, for purposes of trafficking, either directly or through an intermediary transports or attempts to transport Mexican citizens or foreigners into another country without the corresponding documentation.

The same penalty shall be imposed on any person who either directly or through one or more third persons brings one or more foreigners into Mexican territory without the corresponding documentation issued by an applicable authority, or any person who, for purposes of trafficking, shelters or transport foreigners within national territory in order to hide such persons and avoid immigration inspections.

Imprisonment of from one to five years and a fine of up to five thousand times the general minimum daily wage in effect in the Federal District at the time the violation is committed shall be imposed on any person who knowingly provides the means to, offers, to or helps to carry out the acts described in the preceding paragraphs.

The fines established in the preceding paragraphs shall be increased by up to fifty percent in the event the acts described therein involve underage persons, or under conditions or by the means that endanger the life, health, or integrity of the undocumented persons, or in the event the principal is a public servant.

Article No. 139. Any judicial or administrative official who processes any divorce or marriage annulment involving foreigners when the petition for same is not accompanied by a certification from the Department of the Interior accrediting their legal residence in the country, nor by a certification that their immigration status and category permit such act to be performed or by applying legislation other than that indicated in Article 50 of the Nationality and Naturalization Act (*Ley de Nacionalidad y Naturalización*) shall have his or her employment terminated, and shall be imprisoned for up to six months or be subject to a fine of up to then thousand pesos, or both, at the judge's discretion. Any such official shall be suspended from his/her functions upon the initiation of the prosecution of the offense

Article No. 139-B A Fine of up to one thousand times the general minimum daily wage in effect in the Federal District at the time the violation is committed shall be imposed on any person who takes custody of a foreigner, under the terms of Article 153, and then allows said foreigner to escape immigration controls, without prejudiced to such penalties as may be incurred in the event such action constitutes a criminal offense.

Article No. 140. Any administrative infraction of this Act or the Regulations thereto in immigration matters with respect to cases not foreseen in this chapter, shall be subject to a fine of up to one thousand times the general minimum daily wage in effect in the Federal District at the time the violation is committed, based on the seriousness of the violations committed, in the opinion of the Department of the Interior, or subject to detention for up to thirty six hours if such fine is not paid.

Article No. 141. The administrative penalties referred to herein shall be imposed by those administrative units indicated for such purposes in the Department of the Interior's Internal Regulations.

Article No. 142. Repealed

Article No. 143. In the event of crimes committed in violation of the provisions of this Act, the criminal proceeding pursued by the Federal Attorney General's Office (*Ministerio Público Federal*) shall be subject to the complaint submitted by the Department for the Interior in each case.

Article No. 144. Any proceeds effectively received by the Federation due to fines imposed for infractions against this Act shall be used to create funds for granting incentives and rewards to migration services personnel in recognition of productivity and compliance with objective.

Said funds shall only receive the amount of fines that have been definitively entered and actually paid unless such amounts are assigned otherwise by law. The funds shall be distributed under the terms established in the Regulations of this Act.

SOURCE:

Mellin, Marc W. & Spencer, David D., translators (2003) *The Immigration Law of Mexico: Statute, Regulations, and Procedures Manual*. First Edition. November, Latin American Translations, LLC

The articles underlined and in italics are the most recent amendments (2008) to the General Law of Population and have been translated by Laura Gonzalez-Murphy (Ley General de Población, Última Reforma DOF 02-07-2010

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