

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR : CA4-00826

Private Proceeding
Huis clos

Claimant(s)		Demandeur(e)s d'asile
Date(s) of Hearing	May 10, 2005	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Videoconferencing heard in	Calgary, Alberta	Fait par vidéoconférence à
Date of decision	July 4, 2005	Date de la décision
Panel	Gordon McKenzie	Tribunal
Claimant's Counsel	Daniel Ortiz Rojas	Conseil du demandeur d'asile
Refugee Protection Officer	Not Attending	Agent de la protection des réfugiés
Designated representative	NIL	Représentant désigné
Minister's Counsel	NIL	Conseil du ministre

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(the "claimant") is a citizen of Mexico who claims protection pursuant to Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*.

ALLEGATIONS

In her Personal Information Form ("PIF") narrative, the claimant makes the following material allegations respecting her fear of persecution in Mexico:

1. She is a bisexual woman, and when she was ten years old she realized that she had certain feelings towards other girls. While attending high school, she met another girl, with whom she had her first lesbian relationship that lasted for approximately six months. One day at school a classmate found her and kissing in a classroom, and he told everyone at her high school, causing her rejection, enormous pressure and verbal aggression at the hands of her classmates. Because her friend had moved to another city, she began to develop suicidal tendencies, but her parents helped her, and she had to tell them about her bisexuality. In the beginning, her parents rejected her because of her bisexuality, but now they accept her the way she is. She returned to the same high school, and to alleviate her stress, she began dating a boy named However, this boy's friends nicknamed her "
2. In 1994, she entered University in City, and began to frequent gay bars and clubs, and it was at one of these bars or clubs that she met She carried on a secret bisexual relationship with for approximately three months because met another girl with whom she fell in love. and this girl moved in together in Mexico City in 1994. During the first week of 1998, she became very depressed, and attempted to kill herself again by taking a large dose of sleeping pills. Her father found her lying on the floor and she was hospitalized for one week. After what happened with she had cycles of depression because she felt rejected by her society.

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3. At age 20, she met a male friend, _____, and he helped her overcome her depression. _____ lived in a city near her city, and they dated for a year and a half, until she ended the relationship. He used to visit her in her city every fifteen days. In the meantime, she used to go to '_____', a gay bar, where she met some girls, with whom she had fun for a night, but no formal relationship. During this same period, the police began to harass her by asking her for money or insulting her.
4. At age 23, she met _____, but her relationship with _____ only lasted six months because _____ did not want her to go out with men too. During this time, she also found her first job at a hotel, and she kept her sexual orientation secret because she was sick and tired of being rejected and insulted. She did not go to gay bars and did not see her friends much.
5. At age 25, while working at the _____ airport, she met _____ from Mexico City and she had a relationship with _____ for a year, but at the same time she was also dating a male, _____. Although her female co-workers at the airport were not aware of her bisexual relationship with _____, they would request a switch of shifts because they feared she would harass them if they worked with her. Her boss at the airport also began to sexually harass her and he used to ask her to have sex with him notwithstanding her lesbianism – otherwise he threatened to fire her or even tell other companies about her sexual orientation. Because of this strong pressure and rejection, she quit her job at the airport.
6. At age 26, she decided to open an _____ in partnership with her brother. She was without a bisexual partner until age 27 when she decided to go back to gay bars and clubs in her city. On _____ 2002, she met _____ and when they were leaving a gay bar and kissed, some police officers saw them and began insulting them, calling them lesbians and telling them that they would teach them how to be real women. A police patrol car parked in front of her car on the street, and one of the police officers pointed a gun at them through the windshield. When she and _____ got out of her

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car, police officers beat them and tried to rape her. However, they were able to escape from the police when two young men passed by and scared off the police officers that had attacked them. These two men drove her to a doctor because she was badly hurt and had a broken tooth. After this incident, she never saw her friend again. She attempted to denounce these police officers that had beat and attempted to rape her with the Public Prosecutor's office. However, a representative of the Public Prosecutor's office refused to accept her complaint because of her bisexuality, telling her she had no right to denounce the police, and he warned her not to do anything else if she wanted to keep alive. After this incident, she began to receive telephone death threats, and she believes that the police made these telephone death threats. Because of these threats, her father decided to send her to Canada to study. Her father wanted the police to forget about her, but things have not improved or changed since then.

DETERMINATION

I determine that the claimant is not a person in need of protection pursuant to Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*. My reasons are as follows.

ANALYSIS

Identity

I find that the claimant has established her identity as a national of Mexico by her testimony and the documentary evidence before me, namely her Mexican passport¹ issued by the government of Mexico.

Reason for Harm

For the claimant to be a Convention refugee, her fear of persecution in Mexico must be by reason of one of the five grounds enumerated in the Convention refugee definition. Based upon the claimant's testimony and the documentary evidence that she has submitted to the Board in support of her protection claim,² I find that the claimant's sexual orientation is that of a bisexual. Therefore, I find that the claimant's fear of persecution in Mexico is by reason of one of the five

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grounds enumerated in the Convention refugee definition, namely her membership in a particular social group, defined as her sexual orientation.

Harm Feared

If she were to return to Mexico, the claimant fears the general population of Mexico because they are homophobic and will continue to harass and abuse her because she is a bisexual woman. In addition, she fears the police in Mexico because they are also generally homophobic, and for this reason the police would be unwilling to provide her with any protection.

Risk of Harm and Internal Flight Alternative

On the evidence before me, I find that there is no serious possibility that the claimant would be subjected to persecution for a Convention ground if she were to return to Mexico. My reasons are as follows.

I considered the documentary evidence before me on the treatment of homosexuals and lesbians in Mexico. This documentary evidence provides the following information. The social environment in most of Mexico remains repressive, and often dangerous. *Machista* ideals of manly appearance and behaviour contribute to extreme prejudices against effeminate men, and often to violence against them. The Roman Catholic teaching that homosexuality is a sin further contributes to intolerance, and is seen by many to provide moral sanction for mistreatment. To live an undisturbed gay or lesbian lifestyle in most of Mexico, one has to hide it. Though reported killings of gay men by, or with the tacit approval, of local authorities, have declined sharply since the early 1990s, most of Mexico remains a hostile and potentially dangerous place for those who are public about their sexual orientation, especially effeminate men and transvestite prostitutes. The fact that reported killings of gay men (mostly transvestite prostitutes) by state and municipal police have dropped dramatically since 1995 does not mean that basic societal attitudes have changed, or that men or women can lead openly homosexual lives without fear of physical abuse and harassment.³

More recent documentary evidence before me provides the following information. In January 2001, police raided a bar in Monterrey, arresting and harassing 32 lesbians. Two weeks later in Monterrey, police raided two cantinas/bars, both of which were frequented by gay and transvestite men. In September 2001 three young men abducted a gay activist and dancer in Merida, Yucatan state, and they raped, beat him and cut his ear with a jackknife. The victim filed a police

complaint and underwent a medical examination. In the days that followed he received telephone death threats for having filed the complaint. With no progress in the police investigation, the victim moved to Mexico City. In October 2001, also in Merida, two assailants attacked another gay man. In May 2003, one or more assailants murdered a gay couple in their apartment in Nogales, Sonora state, one of them was running for election to the local legislature on the ticket of the Convergence Party. Both had been bludgeoned to death with a hammer, and showed signs of torture.⁴

Based upon the documentary evidence before me, I accept that in many areas of Mexico, gay or homosexual men and lesbian women are the victims of societal discrimination and harassment, and in some cases, criminal violence, because of their sexual orientation. However, the determinative issue for me in the claimant's refugee protection claim is whether the claimant has a viable internal flight alternative elsewhere in Mexico, as this issue was raised with the claimant before and at her refugee protection claim hearing. On the evidence before me, and for the following reasons, I find that there is no serious possibility that claimant would be subjected to serious harm amounting to persecution at the hands of homophobic police officers and homophobic segments of the Mexican population if she were to relocate to Mexico City or Cancun.

With respect to the availability of a viable internal flight alternative for her in Mexico City or Cancun, the claimant provided the following testimony. She would be unable to live peacefully as a bisexual female anywhere in Mexico because the prevalent Roman Catholic religion in Mexico regards gay people as immoral and because Mexico society in general is homophobic, including the police forces. She had a gay male friend that tried to live in Mexico City, but he suffered an assault in Mexico City as well. The newspapers have reported on homosexuals being murdered in Mexico City and that police authorities never investigate these murders because they regard such crimes as crimes of passion. She had another bisexual female friend that lived in Cancun, and she was also attacked in Cancun because she was gay.

I considered the documentary evidence before me on the viability of an internal flight alternative for gays in Mexico. This documentary evidence provides the following information. There are three groups of gay men for whom internal relocation in Mexico would be difficult, if not impossible. One is effeminate men, including transvestites. A second is HIV-positive persons who do not have access to insurance, and who do not have the means to pay for anti-HIV medicines, which typically cost well over ten times the minimum wage. The third would be political activists and whistle-blowers whose homosexuality would be used against them, either for blackmail, or

through mistreatment by the police, or by public exposure. In most other cases, the improving climate towards homosexuals in many big cities means that gays, lesbians, and bisexuals who live in the more tolerant rural areas and smaller urban areas do have internal relocation options. Mexico City has an increasingly vocal and visible gay subculture, which for the first time has gained representation in both the Legislative Assembly of the Federal District and the federal Chamber of Deputies. Conditions for homosexuals in Guadalajara have improved markedly. The same is true of other cities that have a high degree of exposure to foreign (especially American) tourists and influences, such as Tijuana (Baja California Norte), Cuernavaca (Morelos), Acapulco (Guerrero), Puerto Vallarta (Jalisco), and San Miguel Allende (Guanajuato). Veracruz and other cities in the state of Veracruz have always had a greater level of sexual tolerance, in part because of more relaxed attitudes towards sexuality by indigenous groups in the area. It should be noted, however, that in all cases the extent to which an individual can lead a fulfilling life as a homosexual depends heavily on that individual's socioeconomic status.⁵

Despite the generally unfavourable cultural environment in Mexico, gays and lesbians are making significant political and legal gains. Unlike the United States, where 19 states still have "sodomy" laws that penalize certain sexual acts between consenting adults in the privacy of their own home, Mexico has a legal structure inherited from the French Napoleonic Code, which considers such private behaviour to exempt from legal interference. Only where sexuality is expressed in a public way, or where it involves improper behaviour with minors, do legal sanctions kick in. Homosexual magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and homosexual pride parades, and allow homosexual service organizations and gay bars to operate relatively unhindered in larger cities. Homosexuals are invited to take part in educational programs and debates on television.⁶

Participation by homosexuals is widely accepted in two of Mexico's three principal political parties – very openly in the center-left Party of the Democratic Revolution (PRD), more discreetly in the long-governing Institutional Revolutionary Party (PRI). In 1998, then President Ernesto Zedillo (PRI) appointed Pedro Joaquin-Coldwell, who is openly bisexual, ambassador to Cuba. Joaquin-Coldwell formerly served as secretary of tourism and as governor of Quintana Roo (the state in which Cancun is located).⁷ Two gay-rights campaigners were elected to the Mexico City council in September 2000. Until recently, gay rights activists say, that police often wrote off

murders of homosexuals as crimes of passion. Now they have set up a unit specializing in dealing with homophobic crimes, and are to get sensitivity training. Dozens of homosexual support groups have popped up in the last five years, and gay bars have opened on main avenues. In June 2000, a gay-pride parade drew 30,000 members, by organizers' count. Just five years ago, such parades drew fewer than 1,000 people. During the 2002 presidential race in Mexico, contender Vicente Fox's socially conservative National Action Party published a newspaper ad defending itself to the gay community, the first time a major political party has done so.⁸

Other documentary evidence before me provides the following information. In recent years, there have been substantial political and legal gains for sexual minorities, particularly at the federal level, in major metropolitan areas such as Mexico City, and around top tourist destinations such as Acapulco and Cancun. Aided by the North American Free Trade Agreement, contact with the United States and Canadian culture is gradually attenuating the culture of *machismo*.⁹ According to anthropologist Eusebio Rubio:

The courtship patterns in the homosexual individuals have adopted an American pattern: organizing support groups, well-established spots in the cities, specialized bars, and gathering sites. An important number of homosexual and bisexual individuals, however, suffer from the restrictions of a society that is highly homophobic and undergo a long period of isolation before integrating themselves in the homosexual social network.¹⁰

In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination. It explicitly includes sexual orientation in its definition of discrimination. The law defines "discriminatory behaviour" as "impeding access to public or private education ... prohibiting free choice of employment, or restricting opportunities for access, job security, or promotion in employment ... denying or restricting information on reproductive rights ... denying or restricting medical services ... impeding equitable participation in civil, political or any other kind of organizations ... to offend, ridicule or promote violence towards groups referred to in Article 4 of this law through messages and images displayed in communications media ... limiting free expression of ideas ... impeding access to social security and its benefits ... impeding access to any public service or private institution providing services to the public, as well as limiting access and freedom of movement in public places ... to exploit or treat in an abusive or degrading way ... restricting participation in sports, recreation or cultural activities ... incitement to hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion ... carrying out or

promoting physical or psychological abuse based on physical appearance or manner of dress, speech, mannerisms or for openly acknowledging one's sexual preference.¹¹

A National Council Against Discrimination is charged with investigating discrimination, formulating policies to prevent discrimination, working to ensure compliance with international human rights treaties ratified by Mexico, and educating the public that discrimination is against the law. Individuals as well as organizations may file complaints of discrimination with the Council. Allegations of discrimination by public officers require mandatory responses within ten working days of the time an official is formally notified of a complaint. Otherwise, the allegations are assumed to be well-founded. The Council is empowered to punish public officers who are found to discriminate. In the case of discrimination by individuals or private institutions, the Council offers to mediate. If the accused declines mediation, the Council provides plaintiffs with assistance in filing a lawsuit.¹²

With respect to lesbians in Mexico, the documentary evidence before me provides the following information. Because machismo is by definition male-oriented, and is premised on male dominance in relations between the sexes, lesbian relationships are generally perceived as far less threatening to society. That is, to the extent that they are perceived at all, because to a great degree they remain invisible in a cultural context that gives little recognition to female sexuality in the first place.¹³ With respect to Mexico City, other documentary evidence before me indicates that there are five different lesbian support groups in Mexico City.¹⁴

I prefer the foregoing documentary evidence to the claimant's evidence because it comes from reliable and independent sources with no interest in the outcome of these proceedings. I find that this documentary evidence on gays in Mexico, particularly lesbians or bisexual females, does not corroborate the claimant's assertions that, as a bisexual woman, she would have no viable internal flight alternative in Mexico City or Cancun. I considered the claimant's profile as a bisexual or lesbian in Mexico prior to her departure for Canada in November 2002. In this respect, I had concerns with the claimant's credibility respecting her allegations of past mistreatment in Mexico because of her sexual orientation. At the hearing, the claimant provided the following testimony. While she was operating her) business with her brother in Leon, Guanajuato State, homophobic individuals broke the glass on her car and scratched her car on more than one occasion. People also painted graffiti on the outside of her house on the weekends. She was fired from her job at the Hotel in because of her bisexuality, and she and her brother

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had to shut down their [redacted] because of her bisexuality. The claimant was asked why she did not mention the foregoing allegations in her PIF narrative. In response to this information, the claimant provided the following testimony. She only provided general information in her PIF narrative, and that it was a mistake on her part not to be more specific because these details were important.

The claimant's allegations that she was subjected to societal discrimination and harassment because of her bisexuality is a significant element of her refugee protection claim. According to her PIF, the claimant is a reasonably well-educated person, and she had been residing in Canada for approximately six months before she completed and signed her PIF in June 2003. In her PIF, the claimant was instructed to: "Set out *all the significant events and reasons* that have caused you to claim refugee protection in Canada. Indicate the measures taken against you and members of your family, if any, and by whom." At the time she completed her PIF, the claimant was represented by counsel, a licensed immigration consultant, and was provided with the services of a Spanish interpreter. For these reasons, I find the claimant's explanation for not mentioning these allegations in her PIF narrative to be unreasonable. I find the claimant's failure to do so undermines the credibility of these allegations of experiencing acts of discrimination and harassment in Mexico because she is bisexual. I do not believe that these incidents occurred as is alleged by the claimant. I find these allegations to be an attempt by the claimant to embellish her protection claim.

To corroborate her physical mistreatment at the hands of the police in [redacted] the claimant submitted into evidence two medical certificates.¹⁵ The first of these certificates is dated [redacted] 2004 and in it the dentist refers to treating the claimant's tooth as a result of trauma to the mouth.¹⁶ The second medical certificate is dated [redacted] 2005 and in this certificate the physician states in part:

By this letter, I attest and certify that Ms. [redacted] was taken care of on [redacted] 2002 when the patient was 27 years old presenting multiple injuries at the lumbar region L3 L4, upper right side, left knee, being these the worst; multiple bruises all over her body, injuries that took place more than 15 days to heal leaving permanent scars. These injuries were caused by several individuals.¹⁷

Based upon the foregoing dental and medical certificates, I accept that the claimant suffered these alleged injuries and that she was physically attacked by a number of individuals on [redacted] 2002. Even if these assaults were perpetrated by homophobic police officers in the [redacted]

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city of _____ in Guanajuato State, I find on a balance of probabilities that these same homophobic police officers would have no interest in pursuing the claimant or having other homophobic police officers harass her if she were to relocate to Mexico City or Cancun where the society in general is more tolerant of gay lifestyles than in other parts of Mexico. In making this finding, I refer to the documentary evidence before me on the interaction between the various police forces in Mexico. This documentary evidence provides the following information. According to one specialist on police issues in Mexico, there is very little inter-agency coordination between police forces in Mexico (16 March 2004). According to another source based in Mexico City, inter-agency coordination between federal agencies such as the Federal Attorney General's Office and the Federal Preventative Police does not exist.¹⁸ In addition, the documentary evidence before me indicates that it is male homosexuals and transvestites, as opposed to lesbians or female bisexuals, who have been the targets of discrimination and harassment, and more serious harm. Had lesbians and female bisexuals been the target of systematic discrimination, harassment and physical attacks in such centers as Mexico City and Cancun, I find it implausible that such incidents were not being reported in the substantive documentary evidence before me on the treatment of gays in Mexico.

According to her testimony, the claimant was never involved with any gay organizations or groups in Mexico. The claimant has adduced no evidence that she has a particularly masculine demeanor, that she is also a transvestite or that she is HIV-positive. In addition, there is no evidence before me that claimant was ever a political activist or whistle-blower in Mexico such that her sexual orientation as a bisexual or lesbian could be used against her through blackmail, police mistreatment or public exposure. I find the claimant's lesbian or female bisexual profile in Mexico to be dissimilar from those gay men or women that would have difficulty in accessing a viable internal flight alternative in Mexico. Based upon the claimant's female bisexual profile in Mexico and the documentary evidence before me on internal flight alternatives for gays in Mexico, and her past problems in Mexico, I find that there is no serious possibility that the claimant would be subjected to discrimination and harassment amounting to persecution at the hands of homophobic police officers or other segments of Mexican society by reason of her sexual orientation if she were to relocate to Mexico City or Cancun.

Having found that there is no serious possibility of the claimant being subjected to persecution in the internal flight alternative locations, the issue then becomes whether it would be unreasonable for the claimant to seek refuge there. Having considered the conditions in the internal

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flight alternative locations and all the circumstances of the claimant's refugee protection claim, including the particular circumstances of the claimant, I find that it would not be unduly harsh for the claimant to relocate to Mexico City or Cancun. My reasons are as follows.

In her PIF, and the other documentary evidence before me,¹⁹ the claimant provides the following personal information. She is currently 30 years of age and she appears to be in good health. She obtained a university degree in _____ from _____ University in Mexico in 1998. She has the following employment experience in Mexico: one year working as a _____ at a hotel; one year working at an _____ airport and approximately two years experience in operating an _____ business. Based upon the claimant's age, health, education and employment experience, I find there are no serious social or economic barriers to the claimant relocating to Mexico City or Cancun that would render such a move for her to be unduly harsh. In addition, the documentary evidence before me on freedom of movement in Mexico indicates that the Mexican Constitution provides for freedom of movement within the country, and the government generally respected this right in practice.²⁰ Based upon the claimant's profile and the foregoing documentary evidence, I find that there are no legal impediments to the claimant relocating to Mexico City or Cancun.

Section 97(1)(b)(ii) of the *Immigration and Refugee Protection Act* speaks only of a risk faced by the person in every part of the country. It does not add a reasonableness element to the availability of a safe area in the country, an element that has been extensively interpreted by the Federal Court of Canada within the context of Convention refugee claims. In order to find, therefore, that the claimant has a viable internal flight alternative in Mexico, I must only be satisfied that the internal flight alternative is an area of the country (I) which is reasonably accessible to the claimant, and (II) where the claimant would not face a serious possibility of a risk to her life or a risk of cruel and unusual treatment or punishment. In the alternative, I refer to my earlier finding that based upon the claimant's personal circumstances and the documentary evidence before me, I find that it would not be unduly harsh for the claimant to relocate to Mexico City or Cancun.

I considered the Chairperson's Guidelines respecting *Women Refugee Claimants Fearing Gender-Related Persecution*. However, given my finding that the claimant has viable internal flight alternative in Mexico, I find that the Chairperson's Guidelines do not assist the claimant in her refugee protection claim.

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Based upon the foregoing analysis, I find that there is insufficient credible evidence before me to establish that the claimant has a well-founded fear of persecution for a Convention ground in Mexico. There is no serious possibility that the claimant's removal to Mexico would subject her to persecution. Given my finding that the claimant has a viable internal flight alternative in Mexico, I also find that the claimant's removal to Mexico would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment. For the same reasons, I find that it is more likely than not that the claimant's removal to Mexico would not subject her personally to a danger of torture.

CONCLUSION

Having considered all of the evidence before me, and for all of the foregoing reasons, I determine that _____ is not a Convention refugee or a person in need of protection, and therefore I reject her claim.

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"Gordon McKenzie"
Gordon McKenzie

DATED: July 4, 2005

¹ Exhibit R-1, pages 19 to 23

² Exhibit C-3

³ Exhibit R-3, Item 6.2, *Mexico: Update on Treatment of Homosexuals*, Question & Answer Series, United States Immigration and Naturalization Service (INS), May 2000, pages 1 and 5 of 34

⁴ Exhibit R-3, Item 6.1, *Sexual Orientation and Human Rights in the Americas*, Andrew Reding, December 2003, pages 60 and 61 of 104

⁵ Exhibit R-3, Item 6.2, *Mexico: Update on Treatment of Homosexuals*, Question & Answer Series, United States Immigration and Naturalization Service (INS), May 2000, page 30 of 34

⁶ *Ibid.*, pages 24 and 25 of 34

⁷ *Ibid.*, page 25 of 34

⁸ Exhibit R-3, Item 6.5, *Response to Information Request MEX38203.E*, IRB, 28 January 2002

⁹ Exhibit R-3, Item 6.1, *Sexual Orientation and Human Rights in the Americas*, Andrew Reding, December 2003, page 56 of 104

¹⁰ *Ibid.*

¹¹ *Ibid.*, pages 56 and 57 of 104

¹² *Ibid.*, page 57 of 104

¹³ Exhibit R-3, Item 6.2, *Mexico: Update on Treatment of Homosexuals*, Question & Answer Series, United States Immigration and Naturalization Service (INS), May 2000, page 16 of 34

¹⁴ Exhibit R-3, Item 6.6, *Response to Information Request MEX38251.E*, IRB, 21 January 2002

¹⁵ Exhibit C-2, pages 24, 25, 28 and 29

¹⁶ Exhibit C-2, pages 24 and 25

¹⁷ Exhibit C-2, pages 28 and 29

¹⁸ Exhibit R-3, Item 10.1, *Mexico: Police – May 2004*, IRB, page 11 of 23

¹⁹ Exhibit R-1, pages 6 to 36

²⁰ Exhibit R-3, Item 2.1, *Mexico: Country Reports on Human Rights Practices – 2004*, United States Department of State, February 28, 2005, page 15 of 31