

University of Richmond Law Review

Volume 42

Issue 4 *Allen Chair Symposium 2008: Immigration in the Twenty-First Century: Perspectives on Law and Policy*

Article 3

3-1-2008

Rights and Obligations of Americans in Mexico Under Immigration Law and Other Areas of Mexican Law

Jorge A. Vargas
University of San Diego School of Law

Follow this and additional works at: <https://scholarship.richmond.edu/lawreview>



Part of the [Constitutional Law Commons](#), [Immigration Law Commons](#), [International Law Commons](#), and the [Litigation Commons](#)

Recommended Citation

Jorge A. Vargas, *Rights and Obligations of Americans in Mexico Under Immigration Law and Other Areas of Mexican Law*, 42 U. Rich. L. Rev. 839 (2008).
Available at: <https://scholarship.richmond.edu/lawreview/vol42/iss4/3>

This Symposium Articles is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

ARTICLES

RIGHTS AND OBLIGATIONS OF AMERICANS IN MEXICO UNDER IMMIGRATION LAW AND OTHER AREAS OF MEXICAN LAW

Jorge A. Vargas *

I. INTRODUCTION

Different studies suggest that the presence of U.S. citizens (i.e., Americans¹) in Mexico is becoming greater, more varied, and more permanent. According to the latest information produced by United States Department of Commerce, nearly twenty million Americans visited Mexico as tourists in 2005.² Based on a recent report by Mexico's National Institute of Statistics, Geography and Information (*Instituto Nacional de Estadística, Geografía e Informática*) ("INEGI"), titled *Foreigners in Mexico (Los Extranjeros en México)*, a total of 492,617 foreigners live in Mexico today, out of which 69.7% (equivalent to 343,391) are Americans.³ Roughly

* Professor of Law, University of San Diego School of Law; J.D., 1964, National Autonomous University of Mexico; LL.M., 1970, Yale Law School.

1. Some Mexicans resent the use of the term "Americans," as appropriated by and applied to United States citizens, and they legitimately believe that any person who was born in the Western hemisphere—the Americas—is an "American."

2. Office of Travel & Tourism Indus., U.S. Dep't of Commerce, U.S. Resident Travel Abroad Historical Visitation Estimates for U.S. Outbound 1996–2006, <http://www.tinet.ita.doc.gov/view/f-2006-11-001/index.html> (last visited Feb. 21, 2008). The number of American tourists in Mexico is so large that they appear to be in that country on a year-round basis. Cf. Jorge A. Vargas, *Mexican Law and Personal Injury Cases: An Increasingly Prominent Area for U.S. Legal Practitioners and Judges*, 8 SAN DIEGO INT'L L.J. 475, 481–83 (2007) (discussing tourism in Mexico).

3. INSTITUTO NACIONAL DE ESTADÍSTICA, GEOGRAFÍA E INFORMÁTICA, LOS EXTRANJEROS EN MÉXICO 17 (2005), available at http://www.inegi.gob.mx/prod_serv/contenidos/espanol/bvinegi/productos/estudios/sociodemografico/ext_en_mex/extraen_mex.pdf (data

half of these Americans live in the Mexican states that share a border with the United States, namely Baja California (56,033); Chihuahua (42,120); Tamaulipas (33,921); Sonora (15,101); Coahuila (9,225); and Nuevo León (12,546).⁴ Significant populations of Americans can also be found in Jalisco (38,660), Michoacán (21,804), and Guanajuato (15,327).⁵

When traveling throughout the Republic of Mexico, one becomes aware that there are a few select cities where American retirees, for a number of reasons, have found it convenient to reside (on a permanent or semi-permanent basis), including the well-known San Miguel Allende, Guanajuato; Cuernavaca, Morelos; and Ajijic, Jalisco; and more recently Rosarito, Ensenada, and San Felipe in Baja California; Loreto, La Paz, and Los Cabos in Baja California Sur; and Puerto Angel, Oaxaca.

Unquestionably, these facts suggest there is a growing presence of Americans in Mexico today. In contrast, there were only a few hundred Americans residing in Mexico in the early twentieth century, most of whom quickly left the country as a consequence of the violent and prolonged revolutionary movement started in 1910.⁶ The trickle of Americans going south to Mexico as investors and tourists gradually started after the end of World War II. That presence has been growing and strengthening in the dawn of the twenty-first century.⁷

from 2000 census). The other highest percentages of foreign nationals include Guatemalans (4.8%), Spaniards (4.2%), Colombians (1.3%), and Canadians (1.2%). *Id.*

4. These statistics can be found using INEGI's interactive database of data from the 2000 census. See Instituto Nacional de Estadística Geografía e Informática, Población Total, <http://www.inegi.gob.mx/est/contenidos/espanol/proyectos/censos/cpv2000/bd/pv2000/ptl.asp?s=est&c=10261> (last visited Feb. 21, 2008) (to find the abovementioned statistics in the database, select "Entidad municipio y loc" and "Lugar de nacimiento," and click "Ver consulta." On the following screen, click "+ En otro país," and on the next screen, click "+ De América."). The Republic of Mexico is composed of thirty-one states and one Federal District (*Distrito Federal*) in accordance with Article 43 of Mexico's Federal Constitution. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 43, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

5. See Instituto Nacional de Estadística Geografía e Informática, *supra* note 4.

6. For background information on the political history of immigration in Mexico, see INSTITUTO NACIONAL DE ESTADÍSTICA, GEOGRAFÍA E INFORMÁTICA, *supra* note 3, at 3–5.

7. However, several countries—including the United States—have recently issued public warnings alerting their nationals not to visit Mexico as tourists, students, or investors because of violent acts associated with in-fighting among drug lords in certain border cities such as Tijuana, Ciudad Juárez, Reynosa, and Monterrey; protests in Oaxaca to remove the governor of that state; and activities associated with the transfer of political power as a result of the presidential election of July 2006. See, e.g., U.S. Dep't of State,

However, given the physical contiguity between the United States and Mexico, the overwhelming U.S. investment in that country, and the immigration flows from Mexico to the United States, the prognosis may be rather simple: in the years to come, the numbers of U.S. citizens in the Republic of Mexico—whether tourists, investors, students, or retirees—will continue to grow significantly. Considering that the flow of trade, business, and investments between Mexico and the United States is likely to increase in the years to come, it is to be expected that the presence of Americans and American companies in Mexico will become more permanent and more diversified.

Although traditionally the attraction of Mexico for Americans has been strongly associated with two major factors—wealth (i.e., trade, business, and investments) and benign weather (i.e., tourism and retirees)—it may not be surprising to see that over the next twenty-five years the American presence in Mexico is likely to intensify and diversify. As a result, it would be logical to anticipate that U.S. interests in Mexico will go beyond the traditional areas of wealth and weather, turning to embrace new and unprecedented areas, such as family, religion, education, well-being, and science and technology.

Accordingly, binational marriages and children, family reunification, and family contacts will grow greater and stronger across the U.S.-Mexico boundary; U.S. religious institutions will become more aggressive, familiar, and confident in their initiatives to proselytize and convert Mexicans, inducing them to change from Catholicism to Protestantism based on their sound and sustained economic power; the number of international students will grow considerably between both countries, although American students in Mexico may continue to surpass Mexican students in the United States; retirement homes, hospitals, and rehabilitation centers patterned after U.S. companies and designed for providing professional services to Americans and American retirees will proliferate throughout the Republic of Mexico; and U.S. private and academic institutions engaged in scientific and technological pursuits that target natural resources in Mexico and Mexican sci-

Mexico Travel Alert, http://travel.state.gov/travel/cis_pa_tw/pa/pa_3028.html (last visited Feb. 21, 2008); British Embassy, Mexico, Travel Advice British Embassy, Mexico, <http://www.britishembassy.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1067968021580> (last visited Feb. 21, 2008).

entists, engineers, and other specialists, will become popular in key areas of that country in the not-too-distant future.

The preceding considerations necessitate an objective and comprehensive articulation of the legal rights and obligations applicable to U.S. citizens while in Mexico, whether their presence in that neighboring country be transitory—as it is for tourists, journalists, athletes, and special visitors—or more prolonged and stable—as it happens with students, professionals, investors, and retirees. The benefits of such an endeavor will be beneficial not only to Americans, but also to Mexico and Mexicans—especially when one considers the growing degree of interdependence between both countries, which is likely to become more intertwined and more complex in the years to come.

Most American tourists visiting Mexico must comply with Mexico's immigration requirements, consisting of having a valid U.S. passport and a Mexican Tourist Permit (*Forma Migratoria de Turista, Transmigrante, Visitante persona de negocios o Visitante consejero*, also known as a *Tarjeta de Turista*), which is officially issued by the Secretariat of the Interior (*Secretaría de Gobernación*) ("*Gobernación*") and generally made available by airline companies or by the respective Mexican Consulate.⁸ This may be many tourists' only relative and sporadic contact with Mexican law. American students and retirees are in a similar position.

The extent of knowledge most Americans have about Mexican law can be condensed into three generalizations: (1) the Mexican legal system is based on codes (in particular the Napoleonic Code);⁹ (2) unlike the United States, there is no jury system in

8. See Instituto Nacional de Migración, Secretaría de Gobernación, http://www.inami.gob.mx/EN/index.php?page/not_need_visa (last visited Feb. 21, 2008). Until recently, Americans crossing to visit Mexican border towns, such as Tijuana, Ciudad Juárez, Nuevo Laredo, and Reynosa, by any means of transportation simply required identification. However, this policy recently has been changed, and as of 2007, all Americans visiting foreign countries (including border towns in neighboring countries Mexico and Canada) by air must be in possession of a valid U.S. passport. See Documents Required for Travelers Departing from or Arriving in the United States at Air Ports-of-Entry from Within the Western Hemisphere; Final Rule, 71 Fed. Reg. 68,412, 68,412–14, (Nov. 24, 2006) (codified at 8 C.F.R. pts. 212, 235; 22 C.F.R. pts. 41, 53); see also U.S. Dep't of State, Western Hemisphere Travel Initiative, http://travel.state.gov/travel/cbpmc/cbpmc_2223.html (last visited Feb. 21, 2008).

9. See Jorge A. Vargas, *An Introductory Lesson to Mexican Law: From Constitutions and Codes to Legal Culture and NAFTA*, 41 SAN DIEGO L. REV. 1337, 1342, 1346–50 (2004).

Mexico;¹⁰ and (3) the administration of justice in Mexico has been slow, and some judges and authorities are perceived as corrupt or dishonest.¹¹

It is only understandable, therefore, that Americans become surprised and even shocked when, for example, they are summarily deported by Mexican immigration authorities for becoming actively engaged in political demonstrations or in similar political activities in that country; put to lengthy criminal proceedings and severely sanctioned because they consumed drugs while in Mexico or carried concealed weapons on their persons or in their vehicles; sanctioned because they were teaching English or engaged in some other work activity while in Mexico without having obtained the proper visa or corresponding permit issued by the competent authority; prohibited from directly owning beachfront property or property on one of the many islands off the coast of Mexico; or banned from investing in a commercial gasoline, radio, or television station.

The purpose of this article is to provide an overview of the rights and obligations that govern the conduct of Americans or the execution of certain legal acts by Americans while in Mexico. These rights and obligations may apply to Americans as foreign individuals, or *extranjeros*, as these rights are guaranteed by Mexico's Federal Constitution of 1917 to protect both Mexican nationals and foreigners under the notion of "Individual Guarantees."¹² Alternatively, these rights and obligations may derive

10. See JAMES E. HERGET & JORGE CAMIL, AN INTRODUCTION TO THE MEXICAN LEGAL SYSTEM 74–76, 86 (1978).

11. See, e.g., AMNESTY INT'L, MEXICO: UNDER THE SHADOW OF IMPUNITY (1999), available at <http://www.amnesty.org/en/library/info/AMR41/002/1999>; CENTER FOR U.S.-MEXICAN STUDIES, UNIV. OF CAL-SAN DIEGO, REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO: GENERAL PROJECT DESCRIPTION 4–7 (2003), available at http://usmex.ucsd.edu/research/justice_pdfs/project_description_jan_03.pdf; JOEL SOLOMON, HUMAN RIGHTS WATCH, SYSTEMIC INJUSTICE: TORTURE, "DISAPPEARANCE," AND EXTRA-JUDICIAL EXECUTION IN MEXICO (1999), available at <http://www.hrw.org/reports/1999/mexico>; Miguel Sarre, *Seguridad Ciudadana y Justicia Penal Frente a la Democracia, La División de Poderes y el Federalismo*, in EL DESAFÍO DEMOCRÁTICO DE MÉXICO: SEGURIDAD Y ESTADO DE DERECHO 83, 84–95 (Arturo Alvarado & Sigrid Artz eds., 2001); Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 LAW & POL'Y INT'L BUS. 53 (1999); John Ward Anderson & Molly Moore, *Corruption in Mexican Courts Hinders War Against Drugs*, WASH. POST, Dec. 14, 1997, at A1.

12. The first twenty-nine articles of the Mexican Federal Constitution are collectively titled *De las Garantías Individuales*—"Of Individual Guarantees." Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, arts. 1–29, Diario Oficial de la Fed-

from the pertinent provisions of specific statutes, regulations, and codes, as these legislative enactments specifically govern the civil and immigration status, legal acts, and business activities of Americans during their temporary visits or lawful permanent residency in Mexico.

II. CONSTITUTIONAL RIGHTS AND OBLIGATIONS OF FOREIGNERS IN MEXICO

A. *A Panoply of Restrictions and Obligations Imposed on Foreigners*

Unlike the constitutions of most countries in the world today, the Federal Constitution of Mexico is, from a foreigner's point of view, quite atypical.

Enacted by the National Constitutional Assembly on February 5, 1917, Mexico's Federal Constitution contains numerous provisions prohibiting foreigners from becoming engaged in certain activities or explicitly imposing restrictions on foreign nationals in the execution of certain acts, including the exercise and enjoyment of certain constitutional rights known as "Individual Guarantees" (*Garantías Individuales*).¹³ Moreover, these prohibitive and restrictive constitutional provisions generally serve as the legal basis for the enactment of specific federal statutes in a number of areas—immigration, foreign investment, electoral and other political rights, trade and commerce, acquisition of real estate, negotiable instruments, companies, labor law, education, tourism, electricity, communications and transportation, mining, civil aviation, rendering of professional services, etc.—that further detail the prohibitions and restrictions imposed on foreigners.

Accordingly, to a foreigner who reads the Federal Constitution of Mexico for the first time, this important document appears somewhat paradoxical; it is the fundamental law that establishes

eración [D.O.], 5 de Febrero de 1917 (Mex.).

13. See 1 JORGE A. VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS § 2.5 (1998). See generally IGNACIO BURGOA, LAS GARANTÍAS INDIVIDUALES (38th ed. 2005); JORGE CARPIZO, LA CONSTITUCIÓN MEXICANA DE 1917 (8th ed. 1990).

individuals' constitutional rights, and the form and structure of the Mexican government—highly inspired, by the way, by the U.S. Constitution—but it also includes a long catalogue of prohibitions and restrictions imposed on foreigners. To explain or justify this Mexican constitutional peculiarity, one must bear in mind the long history of the sometimes prickly and contentious relations between Mexico and the United States, paying special attention to the U.S.-Mexico war of 1846–48, which had tragic and long lasting consequences that continue to be felt today.¹⁴

B. Legal Definition of “Foreigner”

Although Mexico has a Nationality Act¹⁵ and an Immigration Act,¹⁶ the definition of “foreigner” (*extranjero*) does not appear in these federal statutes. It is provided, *a contrario sensu*, in Article 33 of Mexico's Federal Constitution:

*Foreigners are those who do not possess the qualifications set forth in Article 30. They are entitled to the guarantees granted by Chapter I, Title I, of the present Constitution; but the Federal Executive shall have the exclusive power to compel any foreigner whose presence may be deemed inconvenient to abandon the national territory immediately and without the necessity of previous legal action. Foreigners may not in any way become involved in the political affairs of the country.*¹⁷

Article 30 of the Federal Constitution prescribes, in general, that Mexican nationals are those who have acquired Mexican nationality by birth or by naturalization,¹⁸ and Article 34 adds that

14. The history of the relationship between the United States and Mexico is beyond the scope of this article. For information on this history, see generally ORIGINS OF THE MEXICAN WAR: A DOCUMENTARY SOURCE BOOK (Ward McAfee & J. Cordell Robinson eds., 1982); JOSEFINA ZORAIDA VÁZQUEZ, LA INTERVENCIÓN NORTEAMERICANA 1846-1848 (2d ed. 1998); LUIS G. ZORRILLA, HISTORIA DE LAS RELACIONES ENTRE MÉXICO Y LOS ESTADOS UNIDOS DE AMÉRICA 1800-1958 (2d ed. 1977).

15. Ley de Nacionalidad [L.N.] [Nationality Act], *as amended*, Diario Oficial de la Federación [D.O.], 23 de Enero de 1998 (Mex.).

16. Ley General de Población [L.G.P.] [General Population Act], *as amended*, Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.).

17. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 33, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation) (emphasis added).

18. *Id.* art. 30.

"Mexican citizens of the Republic" must be Mexican nationals of eighteen years of age "with an honest means of livelihood."¹⁹

Therefore, under Mexican law, the rights and obligations of foreigners in the Republic of Mexico are not codified in a single federal act, code, or statute. Instead, those rights and obligations are found in numerous legislative enactments, including: the Federal Constitution of Mexico, found at the apex of Mexico's legal system;²⁰ specific federal statutes (and their regulations), most of which are derived from the Constitution;²¹ federal and state codes;²² and special decrees.²³

19. *Id.* art. 34 (author's translation).

20. *Id.* art. 133 (stating that the Constitution is the supreme law of Mexico); *cf. id.* arts. 1–29 (setting forth the Individual Guarantees—the functional equivalent to the Bill of Rights in the United States Constitution); *id.* art. 27(I) (restricting the rights of non-citizens to own certain property in Mexico); *id.* art. 32 (enabling restrictions on individuals with dual citizenship and prohibiting non-citizens from serving in the military during peacetime; creating preferences for citizens in employment and government benefits); *id.* art. 33 (limiting rights of foreigners to judicially challenge deportations or engage in political activities); *id.* art. 37 (describing circumstances in which an individual's Mexican citizenship may be lost); *id.* art. 123 (specifying labor and employment rights).

21. *E.g.*, Ley de Navegación y Comercio Marítimos [L.N.C.M.] [Navigation and Maritime Commerce Act], Diario Oficial de la Federación [D.O.], 1 de Junio de 2006 (Mex.); Ley Federal del Derecho de Autor [L.F.D.A.] [Federal Copyright Act], *as amended*, Diario Oficial de la Federación [D.O.], 24 de Diciembre de 1996 (Mex.); Ley de Aviación Civil [L.A.C.] [Civil Aviation Act], *as amended*, Diario Oficial de la Federación [D.O.], 12 de Mayo de 1995 (Mex.); Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Act], *as amended*, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.); Ley General de Educación [L.G.E.] [General Education Act], *as amended*, Diario Oficial de la Federación [D.O.], 13 de Julio de 1993 (Mex.); Ley Federal de Turismo [L.F.T.] [Federal Tourism Act], *as amended*, Diario Oficial de la Federación [D.O.], 31 de Diciembre de 1992 (Mex.); Ley de Aguas Nacionales [L.A.N.] [National Waters Act], *as amended*, Diario Oficial de la Federación [D.O.], 1 de Diciembre de 1992 (Mex.); Ley Minera [L.M.] [Mining Act], *as amended*, Diario Oficial de la Federación [D.O.], 26 de Junio de 1992 (Mex.); Ley de la Propiedad Industrial [L.P.I.] [Industrial Property Act], *as amended*, Diario Oficial de la Federación [D.O.], 27 de Junio de 1991 (Mex.); Ley General de Salud [L.G.S.] [General Health Act], *as amended*, Diario Oficial de la Federación [D.O.], 7 de Febrero de 1984 (Mex.); Ley del Servicio Público de Energía Eléctrica [L.P.E.E.] [Electrical Energy Service Act], *as amended*, Diario Oficial de la Federación [D.O.], 22 de Diciembre de 1975 (Mex.); Ley General de Población [L.G.P.] [General Population Act], *as amended*, Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.); Ley Federal del Trabajo [L.F.T.] [Federal Labor Act], *as amended*, Diario Oficial de la Federación [D.O.], 1 de Abril de 1970 (Mex.); Ley de Vías Generales de Comunicación [L.V.G.C.] [General Means of Communications Act], *as amended*, Diario Oficial de la Federación [D.O.], 19 de Febrero de 1940 (Mex.). The Spanish text of these federal statutes is available at the website of the Mexican Chamber of Deputies, Cámara de Diputados del Congreso de la Unión, Leyes Federales de México [*Federal Laws of Mexico*], <http://www.diputados.gob.mx/LeyesBiblio/in dex.htm> (last visited Feb. 21, 2008).

22. The primary federal codes are: Código Federal de Procedimientos Civiles [C.F.P.C.] [Federal Civil Procedure Code], *as amended*, Diario Oficial de la Federación [D.O.], 24 de Febrero de 1943 (Mex.); Código Penal Federal [C.P.F.] [Federal Criminal

C. *Constitutional Rights and Restrictions Pertaining to Foreigners in Mexico*

Probably because of the strong influence from the Constitution of the United States, the Federal Constitution of Mexico includes a long and robust catalogue of constitutional rights, the Individual Guarantees, that closely parallel those found in the American document. These constitutional rights, which are found in the first twenty-nine Articles of the Mexican Constitution, are fundamental, inalienable rights divided into three general categories: (1) equality rights; (2) liberty rights; and (3) legal security rights.²⁴

Interestingly, Article 1 of Mexico's Federal Constitution prescribes that, in principle, its Individual Guarantees apply to both Mexicans and foreigners, in the following terms: "Every person in the United Mexican States shall enjoy the guarantees granted by

Code], *as amended*, Diario Oficial de la Federación [D.O.], 14 de Agosto de 1931 (Mex.); Código Federal de Procedimientos Penales [C.F.P.P.] [Federal Criminal Procedure Code], *as amended*, Diario Oficial de la Federación [D.O.], 30 de Agosto de 1934 (Mex.); Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex.); Código de Comercio [CÓD.COM.] [Commercial Code], *as amended*, Diario Oficial de la Federación [D.O.], 7 de Octubre de 1889 (Mex.). The state codes are: the Civil Code, the Code of Civil Procedure, the Criminal Code and the Code of Criminal Procedure, individually enacted by each of the thirty-one states (in addition to the same four codes enacted by the Legislative Assembly for the Federal District). See STEPHEN ZAMORA ET AL., MEXICAN LAW 119–20 (2004).

23. *E.g.*, Ley de Extradición Internacional [L.E.I.] [International Extradition Act], *as amended*, Diario Oficial de la Federación [D.O.], 29 de Diciembre de 1975 (Mex.). In addition, Mexico is a party to numerous major international treaties and conventions on human rights, formulated under the aegis of the United Nations, including: Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination on All Forms of Discrimination Against Women, the Convention Against Torture, the Convention on the Rights of the Child, etc. Pursuant to Article 133 of Mexico's Federal Constitution, when such treaties and conventions are approved by the Mexican Senate, they become "the Supreme Law in the entire Union." Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 133, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation). In theory, these United Nations human rights treaties should apply to foreigners whose respective countries are also parties, like Mexico, to the conventions.

24. The first twenty-nine Articles of the Federal Constitution form the "axiological" part of this public document, and are said to contain "about eighty constitutional rights." See 2 INSTITUTO DE INVESTIGACIONES JURÍDICAS, UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO, NUEVO DICCIONARIO JURÍDICO MEXICANO 1797–99 (2000) [hereinafter NUEVO DICCIONARIO].

this Constitution, which cannot be restricted or suspended except in such cases and under such conditions as herein established."²⁵

However, it should be noted that in virtually every guarantee enunciated by the Constitution, the same fundamental law prescribes certain restrictions or limitations when the guarantees in question apply to foreigners, as indicated by the following illustrative examples.

1. Prohibition on Foreigners Exercising Certain Political Rights

Unquestionably, the ability to exercise political rights is a fundamental freedom necessary for the existence of a free and democratic society, characterized under Mexican law as "Guarantees of the Civic Person." Articles 9 and 6 of the Federal Constitution prescribe these rights.

Article 9 guarantees the right of peaceful association for any licit purpose,²⁶ and Article 6 assures freedom of expression.²⁷ However, these rights are only granted to Mexican citizens, and foreigners are expressly prohibited from getting involved in any political associations or activities.²⁸ Pursuant to Article 33 of the Federal Constitution, the Federal Executive is empowered with exclusive and absolute authority to deport from the Mexican territory, "immediately and without any previous legal action," any foreigner whom the Mexican immigration authorities or agents deem to be engaged in any political activity.²⁹

In recent years, the collective deportation of a large group of European Union foreign nationals belonging to non-governmental organizations ("NGOs") created political tensions between Mexico and certain European Union countries. The Europeans, from France and Spain, were members of NGOs who entered Mexico

25. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 1, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation) (emphasis added).

26. *Id.* art. 9.

27. *Id.* art. 6.

28. *See id.* art. 9; *id.* art. 33 (quoted and translated above in text accompanying note 16).

29. *Id.* art. 33 (author's translation). In immigration law matters, Mexico continues to strongly adhere to the outdated traditionalist policy (which was in vogue in the United States some 150 years ago) that recognizes an absolute and unlimited power in favor of the federal executive *vis à vis* foreign individuals.

with tourist visas³⁰ to document human rights abuses inflicted by Mexican authorities on indigenous groups in the state of Chiapas.³¹ Similar expulsion of Americans who attempted to document recent human rights violations in the states of Mexico, Chiapas, and Oaxaca, also have occurred.³²

It must be emphasized that Mexican authorities are extremely sensitive when foreign nationals, including members of human rights NGOs, such as Amnesty International, Human Rights Watch, and similar organizations, are found inside Mexico documenting human rights violations or arbitrary behavior on the part of Mexican authorities. Any of these foreign intrusions are routinely characterized as infringements on Mexico's sovereignty and as unwanted involvement by foreigners in political activities in violation of the provisions of Mexico's Federal Constitution. The result is often the immediate and summary expulsion of the foreigners in question.

2. Right to a Trial and Due Process (with an Exception for the Deportation of Foreigners)

Article 14 of the Federal Constitution guarantees the right to a trial and due process, known in Mexico as "*Garantía de Audiencia*"³³—which is legally similar to the U.S. notion of due process. This guarantee, associated with the Mexican concept "juridical certainty" (*juridical seguridad*), imposes the obligation upon state authorities, *vis à vis* an individual, of executing all of their official acts in full compliance with the requirements imposed by due process prior to implementing any deprivation or cancellation of rights affecting said individual.³⁴ It is reported that this constitu-

30. Foreign nationals are forced to use "tourist visas" as the only lawful nonimmigrant avenue to enter Mexico, knowing that if they declare their intention to document any human rights violations in that country, their entry will be summarily denied.

31. See Tracey Eaton, *Mexico Expulsions May Have Been Illegal: High Court Overturns Deportation*, DALLAS MORNING NEWS, Sept. 15, 1999, at A7; *Human Rights Observers to Visit Mexico Amid Reports of Refugees Being Abused*, PALM BEACH POST, Feb. 19, 1998, at A9; Human Rights Watch, Human Rights Watch Report 2001: Mexico: Human Rights Developments, <http://www.hrw.org/wr2k1/americas/mexico.html> (last visited Feb. 21, 2008).

32. See AMNESTY INT'L, MEXICO: THE ARBITRARY EXPULSION OF INTERNATIONAL HUMAN RIGHTS MONITORS (1997), available at <http://asiapacific.amnesty.org/library/Index/ENGAMR410291997?open&of=ENG-2M2>.

33. See Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 14, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

34. 1 NUEVO DICCIONARIO, *supra* note 24, at 316–17 (1998).

tional guarantee is comprised of four components: (1) the conduct of judicial proceedings (i.e., the trial) must take place prior to any deprivation of the rights of an individual by an authority (*mediante juicio previo*); (2) the proceedings in question must take place in duly established tribunals (judicial and administrative); (3) the proceeding must be in compliance with the required due process formalities (*formalidades esenciales del procedimiento*); and (4) applicable laws, enacted prior to the act in question, must be followed.³⁵

An explicit exception to the protection provided by this Individual Guarantee is the absolute and unlimited power exercised by the federal executive through the federal immigration agents to deport foreigners "immediately and without any previous legal action," which is found in Article 33 of the Federal Constitution.³⁶

3. No Right to Petition Authorities Regarding Political Issues

Article 8 of the Mexican Constitution imposes the obligation on public officials to respect the "Right of Petition" (*Derecho de Petición*) in favor of Mexican citizens "when the exercise of this right is made in writing, and in a peaceful and respectful manner."³⁷ In this case, the public officials or authorities have to provide an official answer within a reasonable period of time.³⁸ However, this Article expressly states that "regarding political questions, this right may only be exercised by the citizens of the Republic."³⁹

35. *Id.*

36. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 33, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (quoted and translated above in text accompanying note 16). Other exceptions to this Individual Guarantee include, for example, in expropriation matters, the declaration of expropriation of an immovable asset (i.e., real estate) due to reasons of public interest; in the tax area, the imposition of a specific tax; and in cases regarding the apprehension of a given individual, the apprehension orders issued by a competent judicial authority. In all of these specific instances, not even the writ of *amparo* may stop or suspend the authority's act. See 1 NUEVO DICCIONARIO, *supra* note 24, at 316–17 (1998).

37. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 8, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation).

38. *Id.*

39. *Id.* (author's translation).

4. No Right of Political Association for Foreigners

As indicated earlier,⁴⁰ Article 9 of the Federal Constitution grants Mexican citizens the right to freely associate for any licit purpose.⁴¹ However, this same provision explicitly deprives foreigners of this right.⁴²

5. Restrictions on Foreigners Entering, Exiting, and Traveling Throughout the Republic of Mexico

In rather antiquated language,⁴³ the opening paragraph of Article 11 of Mexico's Constitution reads: "Any man (sic) has the right to enter and to leave the Republic [of Mexico], travel throughout its territory and change his residency, without necessity of a letter of security, passport, safe-conduct or any other similar requirement."⁴⁴ However, the second part of this constitutional provision states:

The exercise of this right shall be subordinated to the powers of the judicial authority, in the cases of criminal or civil liability, and to those of the administrative authority insofar as it involves *the limitations imposed by the laws regarding emigration, immigration, and the public health of the Republic, or in regard to undesirable aliens who reside in the country.*⁴⁵

40. See *supra* text accompanying notes 26–28.

41. Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 9, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

42. *Id.*

43. The Federal Constitution, in Article 4, prescribes that "man and woman are equal before the law." *Id.* art. 4 (author's translation). In family law matters, the Federal Civil Code mandates that "[h]usband and wife shall enjoy equal authority and privileges regarding the household [including] the upbringing and education of the children and the management of the latter's assets." Código Civil Federal [C.C.F.] [Federal Civil Code], as amended, art. 168, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex.) (as translated in MEXICAN CIVIL CODE ANNOTATED: BILINGUAL EDITION 75 (Jorge A. Vargas trans., 2005) [hereinafter MEXICAN CIVIL CODE ANN.]). Recently, the Legislative Assembly of the Federal District (*Asamblea Legislativa del Distrito Federal*) passed special legislation establishing the legal equality of men and women. Ley de Igualdad Sustantiva Entre Mujeres y Hombres en el Distrito Federal [Act for Substantive Equality Between Men and Women in the Federal District], La Gaceta Oficial del Distrito Federal, 15 de Mayo de 2007 (Mex.).

44. Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 11, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation).

45. *Id.* (author's translation) (emphasis added).

When Article 11 is read in conjunction with Article 33, there is no doubt that Mexican authorities—in particular those in charge of immigration, public health, customs, and national security—are endowed with nearly absolute power and discretion to impose any limitations on foreigners in the exercise of Mexico's sovereignty and in compliance with the applicable laws. Furthermore, in accordance with this unrestricted power, a Mexican immigration authority, for example, may validly deny entry to the Republic of Mexico to any foreigner, even when the foreigner may be in possession of a valid tourist visa, passport, and health certificate, or any other documents required by Mexico. In other words, a foreign national's entry into Mexico (like entry into the United States or any other country) continues to be considered a "privilege" rather than a "right," in accordance with the current principles of international law and pertinent provisions of the applicable domestic immigration law.

6. Military and Public Service Restrictions

Article 32 of the Federal Constitution prohibits foreigners from serving in Mexico's military forces (i.e., the Mexican Army, and the police and public security forces) during peace time.⁴⁶ Only Mexicans by birth are allowed to join the Army during peace time (and the Mexican Navy and Air Force at any time).⁴⁷ The same requirement applies to be a captain, pilot, owner, machinist, mechanic and, in general, any person who is a member of the crew in any vessel or aircraft flying the Mexican flag or the emblem of the Mexican merchant marine.⁴⁸ Again, only Mexicans by birth may become Port Captain or provide services as commandant (*comandante*) or pratique (*práctico*) in an airport.⁴⁹

Evidently, Mexicans shall be preferred over foreigners, under equal circumstances, for any kind of official authorizations or permits (e.g., *concesiones*) and for any kind of government employment, positions, or commissions in which the status of citizenship (*calidad de ciudadano*) is not indispensable.⁵⁰

46. *Id.* art. 32.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

In 1997, Mexico's Federal Congress, pursuant to the special procedure established by Article 135 of the Federal Constitution,⁵¹ amended Articles 30, 32, and 37, introducing for the first time in Mexico the notion of a Mexican "indelible nationality," which led to a "dual nationality."⁵² Today's Federal Constitution explicitly states that the requirement to be "Mexican by birth"—needed to occupy certain governmental positions—is to be "reserved only for those who have said quality *and have not acquired any other nationality*."⁵³ Thus, Mexicans with "dual nationality" are not allowed to occupy those positions, even though factually and legally they may be Mexican by birth based on the traditional principle of *jus soli*.

7. Restrictions on Foreigners Acquiring Direct Ownership of Lands and Waters Located Within the Restricted Zone

For an American (or any other foreigner) interested in acquiring immovable property in Mexico, real estate is divided into two categories. The first encompasses a strip of land of 100 kilometers (some 64 miles) along the international boundaries of Mexico with the United States, Guatemala and Belize, including a strip of land of 50 kilometers (some 32 miles) along Mexico's coastlines (reputed to have a length of some 10,000 km), known as the "Restricted Zone" (*Zona Restringida*).⁵⁴ The remaining land in the

51. *Id.* art. 135.

52. The amending constitutional decree to Articles 30, 32, and 37 was published in the *Diario Oficial* of March 20, 1997, and also resulted in the amendment of Mexico's Nationality Act. See Decreto por el Que se Declaran Reformados los Artículos 30, 32 y 37 de la Constitución Política de los Estados Unidos Mexicanos [Declaration of Amendments to Articles 30, 32, and 37 of the Political Constitution of the United States of Mexico], *Diario Oficial de la Federación* [D.O.], 20 de Marzo de 1997 (Mex.). See generally Jorge A. Vargas, *Dual Nationality for Mexicans*, 35 SAN DIEGO L. REV. 823 (1998); Jorge A. Vargas, *Dual Nationality for Mexicans?: A Comparative Legal Analysis of the Dual Nationality Proposal and its Eventual Political and Socio-Economic Implications*, 18 CHICANO-LATINO L. REV. 1 (1996).

53. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 32, *Diario Oficial de la Federación* [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation) (emphasis added).

54. See *id.* art. 27(I). The "Restricted Zone" encompasses about 40% of Mexico's territory, and it includes the totality of the Baja California peninsula, formed by the states of Baja California and Baja California Sur. 1 VARGAS, *supra* note 13, § 10.12. Originally, this area was known as the "Prohibited Zone" (*Zona Prohibida*), until the name was changed by the 1998 Regulations to the 1973 Foreign Investment Act. See Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras [R.L.I.E.] [Regulations for the Foreign Investment Act and National Register of Foreign Investments], *Diario Oficial de la Federación* [D.O.], 8 de Septiembre de 1998 (Mex.).

Republic of Mexico located outside the Restricted Zone is called the "Permitted Zone" (*Zona Permitida*).

Americans and other foreign nationals may acquire the direct ownership of lands and waters located in the Permitted Zone, provided they enter into a special contractual agreement with Mexico's Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) ("SRE"), known as an "Article 27 Permit" (*Permiso Artículo 27 Constitucional*).⁵⁵ In this agreement, the foreigner applies to the SRE to be treated as a Mexican national; to recognize implicitly that any disputes arising out of said real estate are to be resolved by Mexican courts based on Mexican law; and, in particular, not to invoke the protection of his or her own foreign government in legal issues involving the real estate in question, under penalty of forfeiting the real estate in favor of the Mexican government.⁵⁶

The above-mentioned restrictions are found in the first paragraph of Article 27 (I) of the Federal Constitution, which reads:

Only Mexicans by birth or by naturalization and Mexican commercial societies [i.e., companies] have the right to acquire ownership of lands, waters and their accessions, or to obtain concessions for the exploitation of mines and waters. *The state may grant the same right to foreigners, provided they agree before the Secretariat of Foreign Affairs to consider themselves as [Mexican] nationals with respect to said properties and not to invoke the protection of their governments in matters relating thereto; under penalty, in case of violation of the agreement, of forfeiting to the benefit of the Nation the properties they had acquired by virtue of said agreement. Under no circumstances may foreigners acquire ownership of lands or waters within a strip of*

55. See Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Act], as amended, art. 10A, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.).

56. See Acuerdo General que Determina los Supuestos que Permiten a los Extranjeros Únicamente Presentar ante la Secretaría de Relaciones Exteriores un Escrito en el que Convenzan lo Dispuesto por la Fracción I del Artículo 27 Constitucional para Adquirir Bienes Inmuebles Fuera de la Zona Restringida [General Agreement Determining the Requirements which Allow Foreigners to Present to the Secretariat of Foreign Relations a Writing Stating They Are Suitable under Fraction I of Article 27 of the Constitution to Acquire Real Estate Outside the Restricted Area], Diario Oficial de la Federación [D.O.], 2 de Marzo de 1998 (Mex.). This special agreement or "convenio" with SRE may be characterized as Mexico's version of the "Calvo Clause," originally articulated by the Argentinean jurist Carlos Calvo. See David Schneiderman, *Constitutional Approaches to Privatization: An Inquiry into the Magnitude of Neo-Liberal Constitutionalism*, 63 LAW & CONTEMP. PROBS., Autumn 2000, at 83, 89-91 (2000) (describing history of Calvo Clause).

*one hundred kilometers along the [international] borders and fifty along the coastline.*⁵⁷

It is difficult to find such an outright prohibition regarding the acquisition of real estate by foreign nationals in the constitution of any other country. However, despite the harshness of the language, the manner in which this constitutional prohibition is interpreted and applied makes the prohibition in question no prohibition at all. Today Mexico allows foreign individuals and foreign companies to use, possess, and enjoy real estate in accordance and full compliance with Mexican law throughout the Republic of Mexico. This apparent legal contradiction or departure from such a strict constitutional "prohibition" requires a brief explanation.

From a historical viewpoint, the original prohibition on foreigners owning real estate in Mexico can be traced back to the early years of a young independent nation, when the prohibition especially applied to certain strategic areas such as the international borders and the lengthy Mexican coastline.⁵⁸ At that time, it was fully respected and enforced.⁵⁹ Although protecting strategic concerns was the original intention of the legally mandated prohibition, that intention became subject to a more flexible or practical interpretation when Mexico realized that it needed foreign investment, which was often attracted to real estate along the picturesque Mexican coastline and in the international border with the United States. Such foreign interest in Mexican real estate was dissuaded by the stern constitutional prohibition. This prompted President Luis Echeverría Álvarez to allow a lawful exception cleverly crafted to legally counteract the severe prohibition found in the language of paragraph I of Article 27.⁶⁰

Thus, in 1973, President Echeverría enacted Mexico's first Foreign Investment Act⁶¹ (*Ley para Promover la Inversión Mexicana*

57. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 27(I), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation) (emphasis added). *See generally* 1 VARGAS, *supra* note 13, §§ 10.1–10.42.

58. *See* 1 VARGAS, *supra* note 13, § 10.12.

59. *See id.* § 10.1.

60. The prohibition for foreigners not to have the direct ownership over real estate in Mexico dates back to the original text of Article 27 of the Federal Constitution of 1917. *See* Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 27(I), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

61. Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera [L.P.I.M.] [Act to Promote Mexican Investment and to Regulate Foreign Investment],

y *Regular la Inversión Extranjera*), which permitted foreign legal entities and foreign nationals to use, possess, and enjoy the real estate along the border and along the coastline by relying on the use of the U.S. legal notion of a real estate trust contract (*fideicomiso*).⁶² American companies and American retirees, by entering into *fideicomisos*, were legally allowed under Mexican law to have “only the beneficiary rights” to real estate throughout the Republic of Mexico (including what was then known as the Prohibited Zone) without having the “direct ownership” (*dominio*).⁶³ Therefore, because foreign legal entities and foreign individuals were only granted “beneficiary rights” and not “direct ownership” over a piece of real estate, there was no violation of the language in Article 27 of the Federal Constitution. This was the pioneering and creative legal interpretation that opened the window to foreign investment in Mexican real estate.

Today, pursuant to Mexico’s Foreign Investment Act of 1993⁶⁴ and the corresponding regulations of 1998,⁶⁵ American companies (and other foreign legal entities) are permitted to have the “dominion of immovable assets” (*dominio de bienes inmuebles* or direct ownership over real estate) located in the Restricted Zone, for “non-residential activities”⁶⁶ (*actividades no residenciales*), by in-

Diario Oficial de la Federación [D.O.], 9 de Marzo de 1973 (Mex.), *repealed by Ley de Inversión Extranjera* [L.I.E.] [Foreign Investment Act], *as amended*, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.).

62. Prior to 1973, the regulations and restrictions imposed on foreign investment in Mexico were found in an array of statutes and other legislative enactments, turning it into a real legal nightmare. President Echeverría’s Foreign Investment Act was the first attempt to consolidate, codify, and also systematize all forms of foreign investment in Mexico. The Foreign Investment Act of 1973 was *de facto* repealed by the 1989 Foreign Investment Regulations and formally abrogated by the 1993 Foreign Investment Act. *See* 1 VARGAS, *supra* note 13, at §§ 4.11–4.14.

63. Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera [L.P.I.M.] [Act to Promote Mexican Investment and to Regulate Foreign Investment], Diario Oficial de la Federación [D.O.], 9 de Marzo de 1973 (Mex.), *repealed by Ley de Inversión Extranjera* [L.I.E.] [Foreign Investment Act], *as amended*, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.).

64. Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Act], *as amended*, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.) (enacted by President Carlos Salinas de Gortari).

65. Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras [R.L.I.E.] [Regulations for the Foreign Investment Act and National Register of Foreign Investments], Diario Oficial de la Federación [D.O.], 9 de Septiembre de 1998 (Mex.) (enacted by President Ernesto Zedillo). For a discussion of these regulations, see generally Jorge A. Vargas, *Mexico’s Foreign Investment Regulations of 1998*, 23 HOUS. J. INT’L L. 1 (2000).

66. Article 5 of the 1998 Regulations provides examples of foreign investments in real

forming the SRE of the situation “within sixty days of the acquisition.”⁶⁷

Furthermore, the Foreign Investment Act permits American companies (and other foreign legal entities), as well as foreign individuals, to enter into *fideicomisos* real estate trust contracts with the SRE to enjoy the use of beneficiary rights (instead of direct ownership) in the Restricted Zone for residential purposes (*fines residenciales*).⁶⁸

American companies and individual citizens also may acquire the direct ownership of real estate located in the Permitted Zone (i.e., outside the Restricted Zone or *fuera de la Zona Restringida*) pursuant to the Foreign Investment Act.⁶⁹ In both cases, American companies and citizens must enter into the Article 27 Permit mandated by the Federal Constitution.⁷⁰

In principle, it appears that the provisions of the Foreign Investment Act and its regulations legally allowing American companies and U.S. citizens to have direct ownership over ocean-front properties for nonresidential purposes, or the enjoyment of beneficiary rights through *fideicomisos* within the Restricted Zone, are contrary to the tenor of Article 27 of Mexico’s Federal Constitution, which is unambiguous in mandating: “*Under no circumstances may foreigners acquire ownership of lands or waters [el dominio directo sobre tierras y aguas] within a strip of one hundred kilometers along the [international] borders and fifty along the coastline.*”⁷¹ However, the explanation is that Mexico needs a steady flow of foreign investment to sustain its social and economic development, and that the United States is by far the larg-

estate devoted to “Non-residential activities,” such as properties used as time-shares; properties used for industrial, commercial, or tourism purposes; properties acquired by credit institutions, financial brokers, and credit auxiliary organizations; properties used by legal entities to fulfill their “social objectives” (*objeto social*); and other immovable assets used for commercial, industrial, agricultural, livestock, fishing, forestry, and rendering services. See R.L.I.E. art. 5.

67. L.I.E. art. 10(I) (author’s translation).

68. *Id.* arts. 11–14.

69. *Id.* art. 10A.

70. See *id.* arts. 10A–11. For a discussion on these matters, see 1 VARGAS, *supra* note 13, §§ 11.1–11.53.

71. Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 27(I), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author’s translation) (emphasis added).

est foreign investor in Mexico.⁷² Accordingly, without having to amend Article 27—one of the bastions of Mexican nationalism enshrined in the Constitution—the government of Mexico provided a pragmatic legal loophole through the more flexible and modern language of the Foreign Investment Act of 1993.⁷³ Pursuant to this federal act—and in accordance with its regulations, enacted five years later⁷⁴—the much needed foreign investment along the border with the United States and in ocean-front areas, which for decades have been the clearly preferred areas for foreign investors, is now allowed to take place without having to amend the more “solemn” and “historical” language of the Constitution.

Fortunately, in recent years winds of change are beginning to be felt in Mexico and more modern ideas are timidly emerging, including the belief that Mexico should consider adopting a new Federal Constitution more in accord with twenty-first century notions.⁷⁵ Some proposals have been made not to use constitutional amendments to include topics or detailed provisions that would be more properly included in secondary legislation.⁷⁶ In this regard it has been proposed, for example, that numerous legal provisions that prohibit, restrict, or limit the rights of foreigners in

72. Jesus Cañas et al., *U.S., Mexico Deepen Economic Ties*, SOUTHWEST ECONOMY, Jan./Feb. 2006, at 11, 11 (“Since 1994, the U.S. has accounted for 62 percent of all foreign direct investment in Mexico.”).

73. See, e.g., L.I.E. art. 1 (“The object of [the Foreign Investment Act] is to determine rules to direct foreign investment to [Mexico] and to cause investment to contribute to national development.”) (author’s translation).

74. Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras [R.L.I.E.] [Regulations for the Foreign Investment Act and National Register of Foreign Investments], Diario Oficial de la Federación [D.O.], 9 de Septiembre de 1998 (Mex.).

75. This may be one of the most important and at the same time most delicate and controversial questions to be addressed by the new administration of Mexican President Felipe Calderón Hinojosa, who took office on December 1, 2006 for a six-year presidential term. See Kelly Arthur Garrett, *Calderon: We Must Update Constitution*, EL UNIVERSAL, Mar. 6, 2007, <http://www.eluniversal.com.mx/miami/23292.html> (quoting President Calderón as saying, “The nation is confronting new 21st-century circumstances demanding that we move forward . . . to modernize our constitutional and legal framework . . .”); Mexico—Presidency of the Republic, <http://www.presidencia.gob.mx/en/felipecalderon/> (last visited Feb. 21, 2008).

76. See, e.g., Jorge Carpizo, *Constitución e Información*, in CONSTITUCIONALISMO IBEROAMERICANO DEL SIGLO XXI 23, 50 (Diego Valadés & Miguel Carbonell eds., 2004) (arguing that a constitutional amendment is not necessary to protect the right to information in Mexico because such rights could be written into the regulatory or organic laws implementing Article 6 of the Federal Constitution). For an English translation of Professor Carpizo’s essay, see Jorge Carpizo, *The Constitution and Information*, MEXICAN L. REV., Jan.–June 2007, <http://info8.juridicas.unam.mx/cont/7/arc/arc3.htm> (Carmen Valderrama Ramos trans.).

Mexico, including the so-called Calvo Doctrine considered by many to be an obsolete historical relic, be eliminated.⁷⁷

Whereas some Mexicans think that the prohibition in paragraph I of Article 27 is *too generous* because they are of the opinion that foreigners and foreign companies should not be permitted to buy, own, or possess any real estate in Mexico, the large majority of Mexican investors and business persons believe that the country would benefit more and develop more rapidly if few or no legal barriers were erected in laws, statutes, or codes limiting or regulating foreign investment.⁷⁸ The legal framework applicable to foreign investment in Mexico is currently an important but sensitive issue for the administration of the Panista President Felipe Calderón, whose term runs through 2012.⁷⁹

D. Numerous Federal Statutes Regulate Foreigners and Their Activities in Mexico

In Mexico, a traditional and common practice in place since 1917, when the Federal Constitution was enacted, has been to use the tenor of the multiple constitutional provisions that impose prohibitions, restrictions, or limitations on foreigners (and foreign companies) as the legal justification for federal statutes that expand in greater detail such limitations. These statutes—

77. The Calvo Doctrine is the principle that an individual should not be entitled to rights or privileges against a foreign government—such as rights derived from international law or privileges arising from the intervention of the individual's home government—that are not enjoyed by citizens of that country. See Wenhua Shan, *Is Calvo Dead?*, 55 AM. J. COMP. L. 123, 126 (2007). Most Mexican specialists recognize that the Calvo Doctrine is unenforceable today because it is contrary to international law. Cf. Justine Daly, *Has Mexico Crossed the Border on State Responsibility for Economic Injury to Aliens?: Foreign Investment and the Calvo Clause in Mexico After the NAFTA*, 25 ST. MARY'S L.J. 1147, 1188 (1994) (arguing that the North American Free Trade Agreement abrogates the Calvo Doctrine). There are certain fundamental rights that cannot be validly resigned. Accordingly, if the government of a country violates those fundamental rights by its own domestic legislation or through a special agreement with a foreign national, this would not stop action on the part of the United States to protect the rights of its own citizens *vis à vis* a foreign government. Moreover, Chapter 11 of NAFTA does not allow any discriminatory treatment of foreigners in Mexico regarding investments in that country. North American Free Trade Agreement, arts. 1101–1105, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 639–40 (1993).

78. See, e.g., David Luhnow, *Dying Giant: Mexico Tries to Save a Big, Fading Oil Field*, WALL ST. J., Apr. 5, 2007, at A1 (noting how officials at Pemex, Mexico's national oil company, have been trying for years to remove restrictions on foreign investment that are hampering Pemex's ability to modernize its oil fields).

79. For biographical information on President Calderón, see Mexico—Presidency of the Republic, <http://www.presidencia.gob.mx/en/felipecalderon/> (last visited Feb. 21, 2008).

known as *leyes reglamentarias derivadas de un artículo constitucional*—regulatory statutes derived from a constitutional provision—are exemplified by the statutes that implement Article 27 of the Federal Constitution, which reads in part:

Regarding oil, and solid, liquid or gaseous hydrocarbons, or radioactive minerals, no concessions or contracts will be granted nor may those that have been granted continue, and the Nation shall carry out the exploitation of these products, in accordance with the terms indicated in the respective Regulatory statute.⁸⁰

From this language, Mexico's Federal Congress enacted two specific federal statutes prescribing that the commercial exploitation of oil and hydrocarbons,⁸¹ and of radioactive minerals,⁸² is exclusively in the hands of the Mexican federal government, as these natural resources are considered to be under the country's exclusive ownership.⁸³ Thus, in these areas, foreign investment has been openly rejected.

As mentioned earlier,⁸⁴ Mexico's Federal Congress, pursuant to the exclusive powers granted by Article 73 of the Constitution on federal matters,⁸⁵ has enacted numerous statutes imposing certain limitations on foreign nationals and foreign legal entities concerning, among other things, foreign investment, immigration, education, navigation, mining, civil aviation, electric energy, and firearms and explosives.⁸⁶

80. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 27, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation).

81. Ley Reglamentaria del Artículo 27 Constitucional Ramo del Petróleo [L.R.A.C.R.P.] [Regulatory Law for Article 27 of the Constitution for the Petroleum Industry], *as amended*, Diario Oficial de la Federación [D.O.], 29 de Noviembre de 1958 (Mex.).

82. Ley Reglamentaria del Artículo 27 Constitucional en Materia Nuclear [L.R.A.C.M.N.] [Regulatory Law for Article 27 of the Constitution for Nuclear Material], *as amended*, Diario Oficial de la Federación [D.O.], 4 de Febrero de 1985 (Mex.).

83. For a discussion of some of the negative implications these restrictions have on the Mexican oil industry, see Luhnow, *supra* note 78.

84. See *supra* note 21 for specific examples of these statutes.

85. Paragraph X of Article 73 of the Federal Constitution empowers Mexico's Federal Congress (*Congreso de la Unión*) to legislate matters pertaining to hydrocarbons, mining, the film industry, commerce, gambling games and lotteries, intermediation and financial services, electric and nuclear energy, and to enact reglamentary statutes of Article 123 of the Constitution on labor matters. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 73(X), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

86. The limitations, restrictions, and prohibitions imposed on foreigners and foreign companies by each of these federal statutes are extensive and beyond the scope of this ar-

Article 73 also empowers the Mexican Congress to enact legislation in the areas of nationality, legal status of foreigners, citizenship, naturalization, colonization, immigration and emigration, and the general health of the Republic;⁸⁷ general means of communication;⁸⁸ all kinds of schools and education, archaeological, artistic, and historical monuments;⁸⁹ foreign trade, electric energy, gasoline, forestry exploitation, and beer production and consumption;⁹⁰ economic actions;⁹¹ foreign investment and technology transfer;⁹² sports;⁹³ tourism;⁹⁴ and national security.⁹⁵

III. MEXICO'S FEDERAL LEGAL STRUCTURE: A FEDERAL CODE AND THIRTY-TWO STATE CODES

Mexico is a country of codes and a member of the civil law tradition, which is the oldest and most geographically widespread legal system in the world today.⁹⁶

Mexico has two sets of codes: federal codes, enacted by the Federal Congress that apply throughout the Republic on federal matters; and state codes enacted by each of the thirty-two local legislatures at the state level (comprised of thirty-one states and one Federal District, Mexico City, which operates administratively as the thirty-second state).⁹⁷ The state codes apply within the terri-

to become familiar with these limitations, it is indispensable to consult the language of the specific statute and its regulations, if any. The Spanish text of these federal statutes is available at the website of Mexico's Chamber of Deputies (*Cámara de Diputados*) at *Leyes Federales de México*, <http://www.diputados.gob.mx/LeyesBiblio/index.htm>, or from the author's website at Mexican Law with Professor Jorge A. Vargas, www.mexlaw.com.

87. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 73(XVI), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

88. *Id.* art. 73(XVII).

89. *Id.* art. 73(XXV).

90. *Id.* art. 73(XXIX).

91. *Id.* art. 73(XXIX-E).

92. *Id.* art. 73(XXIX-F).

93. *Id.* art. 73(XXIX-J).

94. *Id.* art. 73(XXIX-K).

95. *Id.* art. 73(XXIX-M).

96. See JOHN HENRY MERRYMAN & ROGELIO PÉLEZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 1 (3d ed. 2007).

97. See *supra* note 22.

torial jurisdiction of each of the thirty-two states that form the Republic of Mexico.⁹⁸

In Mexico, the civil code (whether federal or local, since the language of both texts is virtually the same)⁹⁹ governs the multiplicity of legal acts and interactions that take place between and among individuals, including foreigners. The provisions of this code constitute the crux of private law—the law that applies to the rights and obligation of private citizens, including their relations with foreigners (and foreign legal entities present in that country), in contrast to public law, which involves the interests of the nation.¹⁰⁰

The civil code is divided into four parts, or “Books.” Book One governs questions pertaining to pregnancy, births, acknowledgment of children, adoptions, tutelage, emancipations, marriage, divorce, and death.¹⁰¹ Book Two addresses personal and immovable property, usufruct, easements, and mortgages.¹⁰² Book Three pertains to decedents’ estates, inheritance and succession, last wills and testaments, and similar matters.¹⁰³ Book Four covers all types of contracts, including tort law, known in Mexico as “extra-contractual liability.”¹⁰⁴ Accordingly, when an American gets married in Mexico; acquires property; adopts a child; obtains a

98. See ZAMORA ET AL., *supra* note 22, at 118–24 (2004) (discussing legislation at the state level). The Spanish text of each and every local code is available at the official web site of each state, jointly with other local legislative enactments. See, e.g., Gobierno del Distrito Federal, Administración 2006–2012, <http://www.df.gob.mx/> (Mexico City’s website).

99. See ZAMORA ET AL., *supra* note 98, at 118, 120 (noting that most state civil codes were patterned on the civil code of Mexico City, which was enacted by the federal government). In Mexico, the first “national civil code” was enacted in 1870 by the Federal Congress. This code applied to Mexico City, locally, and to the rest of the nation on federal matters. Given the substantive legal authority of this Code, and the political power exercised by Mexico City over the rest of the nation, each of the states at that time virtually copied the entirety of the Mexico City Civil Code, enacting it by the respective local legislature as a local state code. This exercise was applied to each of the subsequent Civil Codes enacted by the Federal Congress, including the 1928 whose language continues to be in force today, thus resulting in the national “uniformity” of the language of the Civil Code. See Jorge A. Vargas, *The Federal Civil Code of Mexico*, 36 U. MIAMI INTER-AM. L. REV. 229, 229–33, 247 (2005).

100. See ZAMORA ET AL., *supra* note 22, at 446; MEXICAN CIVIL CODE ANN., *supra* note 43, at XXXVII.

101. Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, arts. 22–746, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex.)

102. *Id.* 747–1280.

103. *Id.* arts. 1281–1791.

104. *Id.* arts. 1792–3074.

divorce; leases a house; enters into a *fideicomiso* involving an ocean-front property in the Restricted Zone; acquires a ranch in the central portion of Mexico; enters into any kind of contract; suffers a personal injury; brings a wrongful death case; writes a testament; or dies intestate, his or her rights and responsibilities are governed by the applicable provisions of the Mexican Civil Code.¹⁰⁵

The Code of Civil Procedure, the Criminal Code, Code of Criminal Procedure, and Code of Commerce govern the corresponding legal acts or activities of Americans (or foreign companies) who are physically present, reside, or are located in Mexico, or are visiting the country, and have very close parallels with similar legislative enactments found in the United States.¹⁰⁶

IV. IMMIGRATION LAW ISSUES

From substantive and formalistic viewpoints, Mexico's immigration law closely parallels U.S. immigration law. Unlike the United States, which is often referred to as a "nation of immigrants,"¹⁰⁷ Mexico has developed primarily through the natural growth of its own population.¹⁰⁸ Accordingly, given Mexico's territorial base and natural resources, its degree of socio-economic development, and the considerable and sustained growth of its own population, Mexico historically did not have a need for opening the country to foreign immigration.

It may be said that Mexico's immigration law policies are based on two fundamental premises. First, immigrants have not been needed to populate the country, contrary to what happened in the United States and Canada, for example.¹⁰⁹ In this regard, Mexican immigration law has been designed since its inception not to

105. For a bilingual English-Spanish and annotated version of this code, see MEXICAN CIVIL CODE ANN., *supra* note 43. This version contains the *Ejecutorias* and *Jurisprudencias* rendered by Mexico's Supreme Court and by the Federal Circuit Collegiate Courts regarding each of the 3,074 Articles composing this Code.

106. See generally MEXICAN COMMERCIAL CODE: BILINGUAL EDITION (Jorge A. Vargas ed. & trans., 2005).

107. See, e.g., JOHN F. KENNEDY, A NATION OF IMMIGRANTS (1964).

108. FRANCISCO ALBA, THE POPULATION OF MEXICO: TRENDS, ISSUES, AND POLICIES 25-27 (1982) (noting that immigration has played only a "minor role" in the growth of Mexico's population).

109. 2 VARGAS, *supra* note 13, § 20.3.

welcome immigrants, but to restrict the entry of foreign nationals into the country. Second, Mexico strongly adheres to the antiquated notion that its federal executive possesses absolute and complete power in the area of immigration. Accordingly, one of the most fundamental principles defining Mexico's attitude towards foreigners is enunciated in Article 33 of the Mexican Constitution, as explained earlier.¹¹⁰

As a consequence of this legal and political philosophy, Mexico is a nation with no immigration courts or immigration judges, no deportation trials, and no refugee hearings. The right of a foreigner to remain in that country is so tenuous, legally speaking, that the physical presence of any foreign national is ultimately subject to the absolute and complete discretion of the Secretariat of the Interior (*Secretaría de Gobernación*), which is the federal agency empowered to enforce immigration law matters in Mexico,¹¹¹ similar to the U.S. Immigration and Customs Service. The nearly limitless power of the federal executive over immigration law in Mexico is such that not even a writ of *amparo*—which translates as “shelter” or “protection”—offers a foreigner any defense against deportation or any protection from the ample discretion exercised by federal authorities.¹¹²

110. See *supra* note 17, and the accompanying text.

111. See Ley General de Población [L.G.P.] [General Population Act], *as amended*, art. 3(VII), Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.).

112. In Mexico, the federal lawsuit of *amparo* is a unique action to be filed in a federal court by any individual (Mexican or foreigner) seeking legal remedy when the plaintiff (*quejoso*) believes a public authority (ranging from the President of the Republic to a police officer) has breached any of the individual guarantees provided in Mexico's Federal Constitution. Foreigners have standing to challenge the legality of their deportations with *amparo* actions, but this right is of little consequence because *Gobernación's* authority to deport foreigners is so broad. Compare *EXTRANJEROS, SU EXPULSIÓN DEBE SER JUSTIFICADA*, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Quinta Época, tomo XCV, Enero de 1948, Tesis 1258, Página 592 (Mex.) (holding the federal executive's Article 33 power to summarily deport foreigners must not be exercised arbitrarily and that the exercise of this power is subject to *amparo* actions), and *EXTRANJEROS INDOCUMENTADOS. PROCEDENCIA DEL JUICIO DE AMPARO PROMOVIDO POR. CASO NO PREVISTO POR EL ARTICULO 33 CONSTITUCIONAL*, Primer Tribunal Colegiado en Materia Administrativa del Primer Circuito [T.C.C.] [Circuit Collegiate Court], *Semanario Judicial de la Federación*, Séptima Época, Volúmenes 187–192, Sexta Parte, *Amparo en revision* 721/84, Página 74 (Mex.) (noting that foreigners have the legal standing to file *amparo* actions derived from Article 33 of the Mexican Federal Constitution because all persons in Mexican territory are entitled to the protection of Mexico's laws pursuant to Articles 1 and 2 of the Constitution), with *DEPORTACIÓN, SUSPENSIÓN CON MOTIVO DE*, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Quinta Época, tomo LXII, Octubre de 1939, Tesis 1045, Página 489 (Mex.) (refusing, in an *amparo* action,

Mexican immigration law may be characterized as a body of rules, administrative in nature, formulated to control and regulate the entry, stay, voluntary exit, and forced expulsion of foreigners from Mexico, under the control and enforcement of the competent federal authorities and in conformity with Mexico's national interests. In the application and enforcement of these immigration rules, the Secretariat of the Interior (*Secretaría de Gobernación*), through the National Institute of Migration (*Instituto Nacional de Migración*), and to a lesser extent the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*), exercise an almost absolute degree of discretion.¹¹³

A. Mexico's Domestic Legislation on Immigration Matters

1. General Constitutional Provisions

Articles 30, 32, 33, 37, and 73 of Mexico's Federal Constitution provide the legal foundation for Mexico's immigration policies. Article 30 defines Mexicans by birth and Mexicans by naturalization.¹¹⁴ Article 32 prohibits foreigners from entering the Mexican Army and other military posts, as discussed earlier.¹¹⁵ Article 37 enumerates the acts and conditions leading to the loss of Mexican nationality.¹¹⁶

On March 20, 1997, the Mexican Federal Congress amended Articles 30, 32, and 37 of the Constitution to establish an *indelible* nationality for Mexicans by birth.¹¹⁷ The practical result of these changes, which became effective in 1998, was to allow certain Mexicans by birth to have dual nationality for the first time in the legislative history of that country.¹¹⁸ Article 73, paragraph XVI of the Constitution enumerates the power of the Federal

to grant an injunction to stop a plaintiff from being deported because the plaintiff could return to Mexico if he was successful in the action).

113. For a detailed discussion on this subject, see 2 VARGAS, *supra* note 13, at § 20.

114. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 30, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

115. *Id.* art. 32; *see also supra* notes 46–47 and accompanying text.

116. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 37, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

117. Decreto por el Que se Declaran Reformados los Artículos 30, 32 y 37 de la Constitución Política de los Estados Unidos Mexicanos [Decree Declaring Amendments to Articles 30, 32 and 37 of the Political Constitution of the United States of Mexico], Diario Oficial de la Federación [D.O.], 20 de Marzo de 1997 (Mex.).

118. *See supra* note 52 and accompanying text.

Congress "to enact laws on nationality, legal status of foreigners, citizenship, naturalization, colonization, emigration and immigration, and the general health of the Republic."¹¹⁹

2. General Federal Statutes and Regulations

Mexico's major immigration law statutes and regulations are (1) the General Population Act (*Ley General de Población*) ("LGP");¹²⁰ (2) the LGP's corresponding regulations (*Reglamento de la Ley General de Población*);¹²¹ (3) the Nationality Act (*Ley de Nacionalidad*);¹²² and (4) the Regulations for the Issuing of Mexican Nationality Certificates (*Reglamento para la Expedición de Certificados de Nacionalidad Mexicana*).¹²³

The General Population Act and its regulations are the most important pieces of federal legislation applicable to immigration questions in Mexico. These two enactments closely parallel the U.S. Immigration and Nationality Act¹²⁴ and its regulations. It should be stressed that the LGP's provisions "are of a public order and of general observance throughout the Republic [of Mexico]," and the object of the act "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."¹²⁵

However, other federal statutes apply not only to the entry, stay, and departure of foreign individuals in Mexico, but also to their activities therein—principally those governing health and

119. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 73(XVI), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.); *see also supra* note 85–95 and the accompanying text.

120. Ley General de Población [L.G.P.] [General Population Act], *as amended*, Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.).

121. Reglamento de la Ley General de Población [R.L.G.P.] [Regulations of the General Population Act], *as amended*, Diario Oficial de la Federación [D.O.], 14 de Abril de 2000 (Mex.).

122. Ley de Nacionalidad [L.N.] [Nationality Act], *as amended*, Diario Oficial de la Federación [D.O.], 23 de Enero de 1998 (Mex.).

123. Reglamento para la Expedición de Certificados de Nacionalidad Mexicana [R.E.C.N.M.] [Regulation for Issuing Mexican Nationality Certificates], Diario Oficial de la Federación [D.O.], 18 de Octubre de 1972 (Mex.).

124. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.).

125. L.G.P. art. 1 (author's translation).

sanitation, customs, and taxes. These federal statutes include the General Health Act (*Ley General de Salud*);¹²⁶ the Customs Act (*Ley Aduanera*);¹²⁷ the Professional Activities Act (*Ley de Profesiones*);¹²⁸ and several tax statutes, including the Federal Income Tax Act (*Ley del Impuesto sobre la Renta*)¹²⁹ and the Value Added Tax Act (*Ley del Impuesto al Valor Agregado*).¹³⁰

As a result of the North American Free Trade Agreement,¹³¹ additional domestic provisions (*circulares*) establishing rules to expedite the temporary entry of business-persons have been enacted.¹³²

B. Classifications of Foreigners in Mexico

1. Foreigners Classified as Nonimmigrants (*No Inmigrantes*)

Adopting the same classifications established by the U.S. Immigration and Nationality Act,¹³³ foreign individuals lawfully entering Mexico are divided into two categories under the LGP: (1) nonimmigrants (*no inmigrantes*); and (2) immigrants (*inmigrantes*).¹³⁴

A nonimmigrant is a foreigner who, pursuant to a valid permit issued by *Gobernación*, is temporarily admitted to Mexico in any

126. *Ley General de Salud* [L.G.S.] [General Health Act], *as amended*, arts. 36, 286 Bis, 291, 367, 375(V), *Diario Oficial de la Federación* [D.O.], 7 de Febrero de 1984 (Mex.).

127. *Ley Aduanera* [L.A.] [Customs Act], *as amended*, *Diario Oficial de la Federación* [D.O.], 15 de Diciembre de 1995 (Mex.).

128. *Ley Reglamentaria del Artículo 5o. Constitucional, Relativo al Ejercicio de las Profesiones en el Distrito Federal* [L.R.A.C.R.E.P.] [Regulatory Law for the 5th Article of the Constitution, Relative to the Exercise of Professions in the Federal District], *as amended*, art. 7, *Diario Oficial de la Federación* [D.O.], 26 de Mayo de 1945 (Mex.).

129. *Ley del Impuesto sobre la Renta* [L.I.R.] [Income Tax Act], *as amended*, art. 1, *Diario Oficial de la Federación* [D.O.], 1 de Enero de 2002 (Mex.).

130. *Ley del Impuesto al Valor Agregado* [L.I.V.A.] [Value Added Tax Act], *as amended*, art. 10, *Diario Oficial de la Federación* [D.O.], 29 de Diciembre de 1978 (Mex.).

131. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 612 (1993).

132. *Regla a las Que se Sujetara el Ingreso Temporal de Personas de Negocios, de Conformidad con el Tratado de Libre Comercio para America del Norte (T.L.C.A.N.)* [Circular No. R.E.-1] [Rules for the Temporary Entry of Businesspersons pursuant to the North American Free Trade Agreement (N.A.F.T.A.)], *as amended*, *Diario Oficial de la Federación* [D.O.], 9 de Mayo de 1994 (Mex.).

133. See 8 U.S.C. § 1101(a)(15) (2000) (differentiating between immigrants and non-immigrants).

134. *Ley General de Población* [L.G.P.] [General Population Act], *as amended*, art. 41, *Diario Oficial de la Federación* [D.O.], 7 de Enero de 1974 (Mex.).

of these capacities (*calidades migratorias*): (1) tourist (*turista*); (2) in transit (*transmigrante*); (3) visitor (*visitante*); (4) member of a board of directors (*consejero*); (5) religious minister (*ministro de culto o asociado religioso*); (6) political asylee (*asilado político*); (7) refugee (*refugiado*); (8) student (*estudiante*); (9) distinguished visitor (*visitante distinguido*); (10) local visitors (*visitante local*); (11) provisional visitor (*visitante provisional*); and (12) press correspondent (*corresponsal*).¹³⁵

According to the regulations, the official authorization for a foreigner to be admitted as a nonimmigrant (*calidad de no inmigrante*) must be extended by the Secretary of the Interior (*Secretario de Gobernación*), the Undersecretary for Population and Migratory Services (*Subsecretario de Población y de Servicios Migratorios*), or the Commissioner of the National Institute of Migration (*Comisionado del Instituto Nacional de Migración*).¹³⁶ However, this power may be delegated to other authorities as determined by the Secretary or the Undersecretary.¹³⁷ In general, foreigners who enter Mexico as nonimmigrants may request entry for their spouses and first degree relatives, who may be given the same migratory status and length of stay (*característica migratoria y temporalidad*) under the category of “economic dependent” (*dependiente económico*) of the principal nonimmigrant.¹³⁸

The following are descriptions of the eleven categories of non-immigrants in Mexico.

a. Tourists (*Turistas*)

According to Mexico’s Secretariat of Tourism, 21.9 million international tourists visited Mexico in 2005.¹³⁹ Out of this total, over 80% were Americans, 10.5% more than those registered in the preceding year.¹⁴⁰ This abundance of international visitors positioned Mexico as the eighth most visited international tourist

135. *Id.* art. 42.

136. Reglamento de la Ley General de Población [R.L.G.P.] [Regulations of the General Population Act], *as amended*, art. 159, Diario Oficial de la Federación [D.O.], 14 de Abril de 2000 (Mex.).

137. *Id.*

138. L.G.P. art. 42 (*in fine*).

139. DIRECCIÓN DE ESTADÍSTICA, SECRETARÍA DE TURISMO, EL TURISMO EN MEXICO: 2005, at 5 (2006), available at http://datatur.sectur.gob.mx/pubbyrep/cargas_manuales/DE/TurMex.pdf.

140. *Id.*

destination and as the most visited country in the western hemisphere after the United States.¹⁴¹ These international tourists generated a total of nearly eight billion dollars, nearly twice the amount recorded ten years earlier.¹⁴²

A tourist is a foreign national who enters Mexico for recreational or health purposes, or to conduct any artistic, cultural, or sport activities which are neither remunerated, nor lucrative.¹⁴³ The maximum authorized stay is six months with no renewals.¹⁴⁴ However, rare extensions may be obtained in cases involving serious illness or *force majeure*.¹⁴⁵

Nationals of the United States and Canada, pursuant to reciprocal agreements entered into by Mexico with each of these countries, need not obtain a visa to enter Mexico as tourists.¹⁴⁶ These foreign nationals need to present a valid passport, birth certificate, certificate of naturalization, or other valid form of photo identification.¹⁴⁷ In addition, they have to fill out a "Tourist Form" (Form FMT), which can be obtained from any Mexican consulate or an authorized commercial airline, such as Aeromexico or Mexicana de Aviación.¹⁴⁸

141. According to the United Nations World Tourism Organization, the top ten countries receiving the largest number of international tourists included: (1) France; (2) Spain; (3) United States; (4) China; (5) Italy; (6) United Kingdom; (7) Germany; (8) Mexico; (9) Austria; and (10) Russian Federation. UNITED NATIONS WORLD TOURISM ORG., TOURISM HIGHLIGHTS: 2007 EDITION (2007), available at http://unwto.org/facts/eng/pdf/highlights/highlights_07_eng_hr.pdf.

142. SECRETARÍA GENERAL IBEROAMERICANA, UNITED NATIONS WORLD TOURISM ORG., TURISMO EN IBEROAMÉRICA: PANORAMA ACTUAL 11 (2006), available at http://www.unwto.org/regional/americas/images/publications/unwto_tur_ibero_lr.pdf.

143. L.G.P. art. 42(I).

144. Reglamento de la Ley General de Población [R.L.G.P.] [Regulations of the General Population Act], as amended, art. 160(I), Diario Oficial de la Federación [D.O.], 14 de Abril de 2000 (Mex.).

145. *Id.*

146. See Instituto Nacional de Migración, Secretaría de Gobernación, http://www.inami.gob.mx/EN/index.php?page/not_need_visa (last visited Feb. 21, 2008) (listing countries whose citizens do not require a tourist visa to enter Mexico); see also U.S. Dep't of State: Mexico, http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html (last visited Feb. 21, 2008) (U.S. State Department information on traveling to Mexico).

147. Instituto Nacional de Migración, *supra* note 146.

148. See *id.*; see also Circular Número 014/2000, Por la Que se Da a Conocer el Manual de Trámites Migratorios del Instituto Nacional de Migración [Circular Number 014/2000, By Which One Is to Know the Manual of Migratory Proceedings of the National Institute of Migration], Diario Oficial de la Federación [D.O.], TMN-I-1, 21 de Septiembre de 2000 (Mex.), available in THE IMMIGRATION LAW OF MEXICO: STATUTE, REGULATIONS, AND PROCEDURE MANUAL IV-15 to IV-31 (Marc W. Mellin & David D. Spencer trans., 2003) [hereinafter Manual de Trámites Migratorios].

b. In-Transit Aliens (*Transmigrantes*)

In-transit aliens (*transmigrantes*) are "aliens in transit to other countries who may stay in the [Mexican] national territory for up to a period of thirty days."¹⁴⁹ This thirty-day period is non-extendable.¹⁵⁰ These foreigners cannot adjust or change status under Mexican immigration law. Moreover, no Mexican official may authorize the entry of any alien in transit who is not admissible to the country of destination or who cannot secure an "In Transit Permit" in the United States or Guatemala, depending on his or her route.¹⁵¹

c. Visitors (*Visitantes*)

Visitors (*visitantes*) are foreigners admitted to Mexico "to engage in the exercise of some activity, lucrative or not, but licit and honest, for a period of up to one year."¹⁵² This period may be renewable four times in one year increments, with multiple entries.¹⁵³ Visitors are divided into the following five categories: (1) business visitors and investors; (2) technical or scientific visitors; (3) pensioner or retiree visitors; (4) professional visitors; and (5) managers or executive visitors.¹⁵⁴ To be admitted to Mexico under one of these categories, visitors must meet not only the requirements of *visitantes*, but also the specific requirements of each category.¹⁵⁵

149. Ley General de Población [L.G.P.] [General Population Act], *as amended*, art. 42(II), Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.) (author's translation); *see also* R.L.G.P. art. 161.

150. R.L.G.P. art. 161(I).

151. A "Previous Permit" (*Permiso Previo para la Internación*) for in-transit aliens may be issued when the National Immigration Institute (NII) expressly authorizes it. *See* Manual de Trámites Migratorios, *supra* note 148, at TMN-I-03.

152. L.G.P. art. 42(III) (author's translation); *see also* R.L.G.P. arts. 162-63.

153. R.L.G.P. art. 162(II).

154. *Id.* art. 163.

155. *Id.* For a discussion of the legal characteristics and specific requirements needed for each of these immigration categories, *see* 2 VARGAS, *supra* note 13, §§ 20.11-20.29; *see also* Manual de Trámites Migratorios, *supra* note 148, at TMN-I-4.1 to -4.10.

d. Religious Ministers (*Ministros de Culto o Asociados Religiosos*)

This new nonimmigrant category was recently created.¹⁵⁶ It applies to foreigners seeking to be admitted “to engage in the religious ministry of any religion, or for the undertaking of social and philanthropic work.”¹⁵⁷ It is indispensable for admission under this category that the religious association officially be recognized by *Gobernación*, and that the foreigner be a minister of that religion, in accordance with the meaning of the Religious Associations and Public Cults Act (*Ley de Asociaciones Religiosas y Culto Público*).¹⁵⁸

e. Political Asylees (*Asilados Políticos*)

Foreigners in this category are admitted on a provisional basis to protect their liberty or life from political persecutions in their country of origin.¹⁵⁹ Asylum seekers are admitted at the discretion of *Gobernación* for a period of time determined on a case by case basis.¹⁶⁰ Should the political asylee violate Mexico’s national laws, without prejudice of the applicable sanctions, his or her status is immediately terminated and *Gobernación* may determine whether or not to grant another immigration category so the asylee may remain in the country.¹⁶¹ The asylee who leaves Mexico “loses the right” to be admitted back as an asylee, save when *Gobernación* authorizes the temporary leave.¹⁶²

The LGP regulations enumerate the specific conditions and requirements with which foreigners must comply to be admitted and permitted to remain in Mexico as a political asylee.¹⁶³

156. This category was established by revisions to the immigration law in 1996. See Decreto por el Que se Reforma, Adiciona y Deroga Diversas Disposiciones de la Ley General de Población [Decree to Amend, Add, and Delete Various Provisions of the General Population Act], Diario Oficial de la Federación [D.O.], 8 de Noviembre de 1996 (Mex.).

157. L.G.P. art. 42(IV) (author’s translation); see also R.L.G.P. art. 164.

158. L.G.P. art. 42(IV) (citing Ley de Asociaciones Religiosas y Culto Público [L.A.R.C.P.] [Religious Associations and Public Cults Act], as amended, Diario Oficial de la Federación [D.O.], 15 de Julio de 1992 (Mex.)). For a general overview and discussion of this act, see generally Jorge A. Vargas, *Freedom of Religion and Public Worship in Mexico: A Legal Commentary on the 1992 Federal Act on Religious Matters*, 1998 B.Y.U. L. REV. 421.

159. L.G.P. art. 42(V); see also R.L.G.P. art. 165.

160. L.G.P. art. 42(V).

161. *Id.*

162. *Id.* (author’s translation).

163. See R.L.G.P. art. 165.

f. Refugees (*Refugiados*)

Refugees are foreigners who arrive in Mexico after fleeing their country of origin to protect their life, safety, or liberty, when they are threatened by generalized violence, foreign aggression, internal conflicts, or other circumstances, including “the massive violation of human rights” that has gravely altered the public order in their country of origin.¹⁶⁴

According to the LGP Regulations, refugees may be provisionally admitted by the Mexican immigration authorities (*Oficinas de Migración*) and must remain at the port of entry while the central authorities of *Gobernación* resolve each individual case.¹⁶⁵

g. Students (*Estudiantes*)

Over the past few decades, a growing number of Mexican universities and other academic institutions have designed programs tailored to U.S. and Canadian students. Most of them offer summer courses on subjects such as Mexican history, general culture, art, music, cuisine, and, of course, Spanish, in well-known locations such as San Miguel Allende, Guanajuato, Oaxaca, Morelia, Cuernavaca, and Mexico City.¹⁶⁶ Certain universities enroll foreign students in courses and careers in areas that include, for example, Spanish literature, sociology, anthropology, history, and even medicine. Most of these courses are becoming increasingly attractive because they are offered at a cost that is a fraction of what would be paid for them in the United States or Canada. In addition, most of these courses are not included in the curriculum of American colleges and universities.

Thousands of U.S. and Canadian students travel to Mexico every year under the Mexican immigration category of students (*estudiantes*),¹⁶⁷ which is functionally equivalent to an F-1 visa¹⁶⁸

164. L.G.P. art. 42(VI) (author's translation); see also R.L.G.P. arts. 166–167.

165. See R.L.G.P. art. 166(II).

166. See, e.g., Universidad Nacional Autónoma de México [Independent National University of Mexico], Centro de Enseñanza para Extranjeros [Center for Training Foreigners], <http://www.cepe.unam.mx/indexing.php> (last visited Feb. 21, 2008) (offering courses of study in the Spanish language and Mexican culture to non-Mexican students).

167. L.G.P. art. 42(VII); see also R.L.G.P. art. 168.

168. See 8 U.S.C. § 1101(a)(15)(F)(i) (2000).

holder under the U.S. immigration law system. Under Mexico's immigration law, a student is a foreigner admitted to Mexico

to initiate, complete, or perfect studies in schools, or in official schools or educational institutions . . . authorized to remain in the country only the time necessary to complete their studies and obtain the corresponding final academic certificate. Students may leave the country, every year, up to 120 days in total.¹⁶⁹

It is important to emphasize that foreign students in Mexico "cannot engage in any remunerated or lucrative activities, save for professional training or social service associated with his or her studies always subject to the prior and express authorization from *Gobernación*."¹⁷⁰ The interested student must prove to *Gobernación* that the activities form a part of the study plan as certified in writing by the school or institution in question.¹⁷¹ The student's spouse and relatives may be granted the same student immigration status.¹⁷² At the end of his or her studies, the student must leave the country.¹⁷³ Any additional time needed to write a thesis or dissertation, present the final examination (*examen profesional*), or for any other reason, must be expressly authorized by *Gobernación*, at its discretion.¹⁷⁴

h. Distinguished Visitors (*Visitantes Distinguidos*)

In very special cases, "courtesy permits" may be extended to foreigners admitted to Mexico and residing therein for up to six months.¹⁷⁵ These permits are typically extended to researchers, scientists, or humanists of international recognition, journalists, or other prominent persons. These exceptional permits may be renewed only at the discretion of *Gobernación*.¹⁷⁶

i. Local Visitors (*Visitantes Locales*)

Gobernación may authorize foreigners to visit border cities or maritime ports, provided their stay in Mexico does not exceed

169. L.G.P. art. 42(VII) (author's translation).

170. R.L.G.P. art. 168(X) (author's translation).

171. *Id.*

172. *Id.* art. 168(XI).

173. *Id.* art. 168(XII).

174. *Id.*

175. L.G.P. art. 42(VIII); see also R.L.G.P. art. 169.

176. R.L.G.P. art. 169.

three days.¹⁷⁷ Although not specifically mentioned in the General Population Act, the regulations refer to a second category of local visitors, whose purpose is almost identical to the U.S. immigration category known as “Border Card” holders.¹⁷⁸

j. Provisional Visitors (*Visitantes Provisionales*)

Under the LGP, *Gobernación* in exceptional cases may authorize, for up to thirty days, the provisional disembarkation of foreigners who arrive at sea ports or international airports whose documentation is incomplete, irregular, or defective.¹⁷⁹ In these cases, the foreigner “shall give a deposit or place bail guaranteeing his or her return to the country of embarkation, nationality or residence, within the period of time granted.”¹⁸⁰

k. Press Correspondents (*Corresponsales*)

A correspondent can engage in press or journalistic activities, cover a special event, or act as a correspondent or reporter (including photographers) on a temporary basis, provided these activities are duly authorized by *Gobernación*.¹⁸¹ Correspondents may be allowed to stay up to one year, with multiple one-year extensions possible.¹⁸²

2. Foreigners Classified as Immigrants (*Inmigrante*)

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.¹⁸³ The statute provides that admission to Mexico “obligates the foreigner to strictly comply with the

177. L.G.P. art. 42(IX); *see also* R.L.G.P. art. 170.

178. *See* R.L.G.P. art. 170(III). “Border cards,” also known as “laser visas,” permit Mexican and Canadian citizens to make frequent visits to the United States. *See* 8 C.F.R. § 212.6 (2007); *see also* U.S. Dep’t of State, Border Crossing Card, http://www.travel.state.gov/visa/temp/types/types_1266.html (last visited Feb. 21, 2008).

179. L.G.P. art. 42(X).

180. *Id.* (author’s translation).

181. L.G.P. art. 42(XI).

182. *Id.*; *see also* R.L.G.P. art. 172.

183. L.G.P. art. 44 (author’s translation); *see also* R.L.G.P. art. 190.

conditions established by the entry permit and what is provided for by the applicable laws.”¹⁸⁴

Immigrants must remain in Mexico for five years, in compliance with the conditions established by the applicable laws, to attain the status of *inmigrado*,¹⁸⁵ which would be a similar category to a lawful permanent resident (or “green card holder”) in the United States.¹⁸⁶ An “*inmigrado* is a foreigner who acquires rights of indefinite residency [*residencia definitiva*] in the country.”¹⁸⁷

Foreigners must prove to the satisfaction of *Gobernación* (1) that they are in full compliance with the conditions imposed upon their admission (*internación*);¹⁸⁸ (2) that they did not remain outside the country longer than eighteen months;¹⁸⁹ and (3) that “their activities have been honest and positive to the community.”¹⁹⁰ Additionally, there are other immigration documentation requirements, such as the *refrendo*—an annual authorization—in order to become *inmigrados*. *Inmigrado* status can only be attained by means of an express declaration from *Gobernación*.¹⁹¹ *Refrendo* is the administrative procedure whereby an immigrant must, during each of five consecutive years, submit supporting documentation to *Gobernación* proving that the immigrant has complied with all of the requirements of his or her *inmigrante* status. Doing so makes the immigrant eligible for *inmigrado* status after five years.¹⁹²

The status of immigrant (*inmigrante*) is comprised of the following eight categories: (1) retirees and pensioners (*rentistas*); (2) investors (*inversionistas*); (3) professionals (*profesionales*); (4) executives or managerial position-holders (*cargos de confianza*); (5) scientists (*científicos*); (6) technicians (*técnicos*); (7) family dependents (*familiares*); and (8) artists and sport figures (*artistas y*

184. *Id.* art. 43 (author’s translation).

185. *See infra* Part IV.B.3.

186. *See* L.G.P. arts. 44–45.

187. *Id.* art. 52 (author’s translation).

188. *Id.* art. 53.

189. *Id.* art. 47; *see also* R.L.G.P. art. 176.

190. L.G.P. art. 53 (author’s translation).

191. *Id.* art. 54 (author’s translation).

192. *See* R.L.G.P. arts. 179, 190.

deportistas).¹⁹³ The following are descriptions of the eight immigrant categories.

a. Retirees and Pensioners (*Rentistas*)

Rentistas are foreigners living in Mexico whose economic support comes from sources outside Mexico.¹⁹⁴ Such sources can include income from interest generated by capital investments in certificates, titles, and state bonds; or from national credit institutions, or other institutions to be determined by *Gobernación*; or from any other permanent foreign income source.¹⁹⁵

Retirees and pensioners must prove to *Gobernación* the existence of bank accounts outside Mexico and that the capital interests produced by them, or from investments, are "equivalent to a monthly income of no less than four hundred days of the minimum general salary in the Federal District."¹⁹⁶

b. Investors (*Inversionistas*)

Investors are foreigners who must invest capital in Mexican industry, commerce, or services in accordance with Mexican law, provided that such investment contributes to the socio-economic development of the country.¹⁹⁷ The investment must remain in Mexico in the amount, conditions, and duration determined by the regulations.¹⁹⁸

c. Professionals (*Profesionales*)

Professionals are immigrants admitted to Mexico "to practice a profession."¹⁹⁹ The regulations add that immigrants in this category "must have registered before the competent authorities his or her professional title and have obtained, when pertinent, the respective patent [*cédula respectiva*] to practice said profes-

193. L.G.P. art. 48.

194. *Id.* art. 48(I); *see also* R.L.G.P. art. 180.

195. L.G.P. art. 48(I).

196. R.L.G.P. art. 180(I) (author's translation); *see also id.* art. 180(II)–(VI) (detailing the amount, conditions, and type of income or investments to be proven to *Gobernación*).

197. L.G.P. art. 48(II); *see also* R.L.G.P. art. 181.

198. *See* R.L.G.P. art. 181.

199. L.G.P. art. 48(III) (author's translation); *see also* R.L.G.P. art. 182.

sion.”²⁰⁰ Preference is given to professors and researchers “in some scientific or technical area, or in other disciplines insufficiently covered by Mexicans.”²⁰¹

Article 5 of the Constitution of Mexico provides:

No person can be prevented from engaging in the professional, industrial or commercial occupation, or in the work of their choice, when these are lawful. The exercise of this liberty shall only be impeded by judicial order, when the rights of third parties are infringed, or by an authority's order, issued in the manner provided by law, when the rights of society are offended.²⁰²

However, the law in each state determines the professions that require a university degree (*título*) to be practiced, the requirements necessary to obtain it, and the authorities empowered to issue it.²⁰³ Since the implementation of the North American Free Trade Agreement (“NAFTA”), the opportunities for foreign professionals (especially in the technical and industrial areas) has improved considerably pursuant to Chapter XVI of that trilateral agreement.²⁰⁴

d. Directors and Managers (*Cargos de Confianza*)

This class of immigrants occupies managerial or executive positions, or other such positions that require the absolute confidence and trust of the corporation or institution in question.²⁰⁵ Under Mexico's Federal Labor Act (*Ley Federal del Trabajo*), these high level positions are known as *cargos de confianza*—offices of trust.²⁰⁶ It is at the discretion of *Gobernación* to determine that

200. R.L.G.P. art. 182(I).

201. *Id.* art. 182(II).

202. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 5, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (author's translation).

203. *Id.* Compare *id.* art. 73 (enumerating powers of Mexico's Congress), *with* art. 124 (stating that powers not granted to the Congress are reserved for the states). See also ZAMORA ET AL., *supra* note 22, at 62–63 (discussing requirements for admission to practice law).

204. In principle, pursuant to NAFTA art. 1603, a ceiling of 5,500 professionals per year was agreed to between the United States and Mexico (to be cancelled after ten years). See North American Free Trade Agreement, app. 1603.D.4, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 612, 670 (1993).

205. See L.G.P. art. 48(IV); see also R.L.G.P. art. 183.

206. Ley Federal del Trabajo [L.F.T.] [Federal Labor Act], *as amended*, art. 9, Diario Oficial de la Federación [D.O.], 1 de Abril de 1970 (Mex.).

there is no duplication of jobs and that the managerial or executive position truly requires a foreigner.²⁰⁷

e. Scientists (*Científicos*)

Foreign immigrants are admitted as scientists to direct or undertake scientific research, disseminate scientific knowledge, prepare investigators, or conduct teaching assignments when these activities are conducted in the interest of the national development in the opinion of *Gobernación*.²⁰⁸ In making this determination, *Gobernación* takes into consideration the general information given in this respect by the institutions consulted on these matters.²⁰⁹

Scientists must prove to *Gobernación* "sufficient expertise in the scientific specialty they are intending to conduct."²¹⁰ When requested by *Gobernación*, "the scientist must demonstrate to *Gobernación* that he or she has complied with the obligation of instructing (or training) at least three Mexicans in his or her specialty."²¹¹ It should be underscored that the LGP further prescribes:

All the foreigners that conduct investigations or scientific or technical studies in Mexico shall deliver to *Gobernación* a copy of the studies or works produced even when these are finished, improved, or printed abroad.²¹²

f. Technicians (*Técnicos*)

Technicians are admitted to conduct applied research in an industrial area or to conduct technical or highly specialized functions that cannot be provided by Mexicans, as determined by *Gobernación*.²¹³

This authorization may be requested by the immigrant or his or her agent when he or she plans to work independently, or by the individual owner of the Mexican corporation or institution

207. L.G.P. art. 48(IV).

208. *Id.* art. 48(V); *see also* R.L.G.P. art. 184.

209. L.G.P. art. 48(V); *see also* R.L.G.P. art. 184.

210. R.L.G.P. art. 184(I) (author's translation).

211. *Id.* art. 184(II) (author's translation).

212. L.G.P. art. 50 (author's translation).

213. L.G.P. art. 48(VI); *see also* R.L.G.P. art. 185.

where the technician intends to work.²¹⁴ The applicant must justify to *Gobernación* the need to employ the services of a foreign technician.²¹⁵

g. Family Dependents (*Familiares*)

Foreign immigrants in this category are admitted to live as the economic dependent of a spouse or close relative (*pariente consanguíneo*) who is an immigrant, foreign lawful permanent resident (*inmigrante*), or Mexican national.²¹⁶ Children and siblings admitted under this category must be minors, persons unable to work due to disability, or students.²¹⁷

The application must be made by the person who will economically support the foreign relative, and who, in turn, must prove his or her immigrant status, lawful permanent resident (*inmigrado*) status, or Mexican nationality.²¹⁸ The applicant must also prove the family relationship required by the LGP.²¹⁹

h. Artists and Sports Figures (*Artistas y Deportistas*)

Artists and sport figures may be admitted to Mexico as immigrants "to undertake artistic, athletic, or similar activities, provided these activities are beneficial to Mexico in the opinion of *Gobernación*."²²⁰ The application may be made by a corporation, institution, or association; by the interested foreigner directly; or through his or her agent if the applicant intends to work in an independent manner.²²¹

i. Assimilated Persons (*Asimilados*)

An *asimilado* is an immigrant admitted to conduct any legal and honest activity.²²² This expansive category includes foreigners who have been assimilated into Mexico's national environ-

214. R.L.G.P. art. 185(I).

215. *Id.* art. 185(II).

216. L.G.P. art. 48(VII); *see also* R.L.G.P. art. 186.

217. L.G.P. art. 48(VII).

218. R.L.G.P. art. 186(I).

219. *Id.* art. 186(II).

220. L.G.P. art. 48(VIII) (author's translation).

221. R.L.G.P. art. 187(II).

222. L.G.P. art. 48(IX); *see also* R.L.G.P. art. 188.

ment and foreigners who have (or had) a Mexican spouse or Mexican child, and who would not be covered by any of the preceding immigrant categories, as provided by the regulations.²²³

3. Foreigners Classified as Lawful Permanent Residents of Mexico (*Inmigrados*)

An *inmigrado* is "a foreigner who has acquired the right of indefinite residence in Mexico."²²⁴ This status can only be obtained through an express declaration by *Gobernación*.²²⁵

To be an *inmigrado*, the immigrant applicant must (1) request the status within six months of the expiration of the fourth renewal (*refrendo*) of his or her immigrant status²²⁶ at the central offices of *Gobernación* in Mexico City; (2) submit supporting documentation proving that he or she has maintained the requirements that were imposed at the time the immigrant was first admitted to Mexico; and (3) in the case of minors, the application must be submitted by the adult person who exercises custody over the minor.²²⁷ Given the importance and consequences that flow from the granting of this immigration category, *Gobernación* conducts a thorough examination of the applicant's file to ascertain compliance with all requirements. In particular, *Gobernación* considers the number of days the foreigner remained abroad, lawful entries, and duration in Mexico.²²⁸

Attaining *inmigrado* status provides the foreigner with certain privileges, especially the ability to work in Mexico, travel abroad within certain time limitations, conduct business, enroll in academic courses at Mexican universities and colleges as a local resident, and, above all, be legally considered a Mexican national for most practical purposes.²²⁹ However, certain labor and political limitations will continue to govern his or her activities: *inmigrados* are prohibited from intervening in any political activities or demonstrations; they cannot vote in political elections; and

223. L.G.P. art. 48(IX); R.L.G.P. art. 188.

224. L.G.P. art. 52 (author's translation).

225. *Id.* art. 54.

226. The immigrant classifications are described *supra* in Part IV.B.2.

227. R.L.G.P. art. 190(I)-(III).

228. *Id.* art. 193.

229. See L.G.P. arts. 55-56; R.L.G.P. art. 194.

they cannot hold public offices reserved by law to Mexican nationals.²³⁰

C. *Additional Important Legal Provisions Applicable to Foreigners Lawfully Admitted to Mexico*

1. National Registry of Foreigners (*Registro Nacional de Extranjeros*)

Foreigners admitted to Mexico as immigrants and nonimmigrants must register with the National Registry of Foreigners (*Registro Nacional de Extranjeros*) within thirty days of their admission.²³¹ They must also report any changes to their (1) immigration status; (2) nationality; (3) civil status; (4) domicile; or (5) profession, occupation, or activities performed, within thirty days of the change in circumstances.²³²

2. Authorities and Public Notaries (*Autoridades y Notarios Públicos*)

Any Mexican authorities—federal, state, or local—as well as public notaries (*notarios públicos*), “are obligated to request from foreigners appearing before them on official or business matters proof of their lawful immigration status in the country”²³³ and, when provided by the LGP regulations, to prove that their immigration status allows them to conduct the act, transaction, or contract in question, or that they are in possession of a special permit from *Gobernación* for that specific purpose.²³⁴ Furthermore, in the cases mandated by the LGP regulations, such authorities and notaries must report to *Gobernación* the foreigners’ special acts or activities within fifteen days of their having taken place.²³⁵

230. See Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 33, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

231. L.G.P. art. 63.

232. *Id.* art. 65.

233. *Id.* art. 67 (author’s translation).

234. *Id.*

235. *Id.*

3. Foreigners Before Judges and Civil Registry Officials (*Jueces y Funcionarios del Registro Público*)

Judges and civil registry officials (*funcionarios del registro público*) shall not enter into a Mexican contract involving a foreigner or conduct any civil status act—such as register a birth or death, conduct a marriage, divorce, or adoption, record the acquisition of real estate, sanction a *fideicomiso* in the Restricted Zone, or incorporate a Mexican company—unless the foreigner proves in advance his or her lawful immigration status in Mexico.²³⁶ In the cases of marriage of foreigners to Mexican nationals, the interested parties must obtain the proper authorization from *Gobernación*.²³⁷ Judges and civil registry officials, as well as civil or family judges, must report to *Gobernación* any foreigners who are subject to any civil or criminal judicial proceedings or any changes in civil status within five days of the initiation of the proceedings or change, judgment, resolution, or act in question.²³⁸

No judicial or administrative authority in Mexico is to conduct any divorce or marriage annulment involving foreigners unless accompanied by a certification issued by *Gobernación* asserting that the foreigner's residence in the country is lawful and that the foreigner's "conditions and immigration status (*calidad migratoria*) permits the individual to undertake the act in question."²³⁹

4. Public Forces Assistance in Immigration Law Enforcement

Mexican authorities are empowered "to utilize federal, local or municipal public forces [to] give their assistance to immigration authorities when they so request it to enforce the LGP provisions."²⁴⁰

5. Lawful and Unlawful Work by Foreigners

Foreigners can only engage in activities expressly authorized by *Gobernación*.²⁴¹ For any foreigner to engage in activities other

236. *Id.* art. 68.

237. *Id.*

238. *Id.* art. 72.

239. *Id.* art. 69 (author's translation).

240. *Id.* art. 73 (author's translation).

241. Reglamento de la Ley General de Población [R.L.G.P.] [Regulations of the General

than those expressly authorized, the foreigner must obtain the corresponding permit from *Gobernación* and comply with all necessary requirements.²⁴²

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 provide the work or service in question.²⁴³ When a corporation, foreigner, or their respective agents do not comply with the requirements imposed by *Gobernación* within the given period of time established for any immigration request, the request is deemed to have been dismissed.²⁴⁴

6. Special Restrictions on Foreigners Regarding Certain Acts and Contracts

The LGP Regulations were revised in 1992,²⁴⁵ and a special section was added imposing specific obligations for foreigners regarding certain “acts and contracts” (*actos y contratos*) executed in Mexico.²⁴⁶

a. Basic Rules

Irrespective of their immigration status, foreigners in Mexico may personally, or through legal counsel, acquire titles, negotiable instruments, securities, and active capital for corporate activities; make banking deposits; and obtain immovable assets in urban and rural areas and realty rights over said assets without having to obtain a permit from *Gobernación*.²⁴⁷ These actions are, however, subject to the restrictions imposed by Article 27 of the Federal Constitution,²⁴⁸ the Foreign Investment Act of 1993,²⁴⁹ and other applicable statutes.

Population Act], *as amended*, art. 139, Diario Oficial de la Federación [D.O.], 14 de Abril de 2000 (Mex.).

242. L.G.P. art. 60; R.L.G.P. art. 140.

243. R.L.G.P. art. 141.

244. L.G.P. art. 75.

245. See Decreto que Reforma y Adiciona Diversas Disposiciones a la Ley General de Población [Decree to Reform and Add Various Provisions to the General Population Act], Diario Oficial de la Federación [D.O.], 22 de Julio de 1992 (Mex.).

246. See R.G.L.P. arts. 147–58.

247. *Id.* art. 147.

248. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art.

Foreigners may execute any legal act, including direct ownership acts (*actos de dominio*), over assets which they legally own without seeking permission from *Gobernación*.²⁵⁰ Mexican authorities and public notaries are obligated to demand from foreigners appearing before them, before any business takes place, proof of their lawful immigration status in the country, with the exception of the execution of wills, powers of attorney, certified copies, and certification of certain acts.²⁵¹ Authorities and notaries also are obligated to ask foreigners to produce "the authorization, permit, or certification from *Gobernación* in the following cases: (I) adoptions; (II) marriage to Mexican nationals; and (III) divorces or marriage annulments."²⁵² In addition, authorities and notaries are required to ask the interested foreigner "to prove that their respective immigration status allows them to execute the act or contract they intend," except in cases of foreigners arriving by ships and other maritime transports, and in divorces and marriage annulments.²⁵³

When a foreigner is not expressly authorized by *Gobernación* to execute a given act or contract, such transactions may be entered into provisionally, provided that a specific writing (*previsión*) is inserted in the corresponding instrument indicating that the act or contract shall be subject to the discretion and eventual authorization of *Gobernación*.²⁵⁴ Authorities and notaries shall disclose information on any foreigner's acts or contracts only when that information is officially requested by *Gobernación*.²⁵⁵ The LGP regulations detail the procedures to be followed when foreigners are involved in divorces or marriage annulments, marriages to Mexicans, and adoptions.²⁵⁶

27, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

249. *E.g.*, Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Act], *as amended*, arts. 10–14, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.).

250. R.G.L.P. art. 148.

251. *Id.* art. 149.

252. *Id.* art. 150 (author's translation).

253. *Id.* art. 151 (author's translation).

254. *Id.* art. 152.

255. *Id.* art. 153.

256. *Id.* art. 156–58.

b. Foreigners Need Authorization from *Gobernación* to Marry Mexican Nationals

The authorization given to foreigners by *Gobernación* to marry a Mexican national is subject to four specific rules. First, the foreigner (or his or her agent) must request the authorization in writing from the Mexican immigration officials, enclosing the necessary documentation to prove his or her presence in the country is lawful.²⁵⁷ Second, marriages by proxy are subject to the prior issuance of the permit by *Gobernación*.²⁵⁸ Third, the written petition should be supported by the intended Mexican spouse, who must prove his or her Mexican nationality.²⁵⁹ Finally, the authorization may be valid for a period of no more than thirty days, but in no case should the authorization exceed the length of time the foreigner is authorized to remain in Mexico by *Gobernación* in the corresponding immigration document.²⁶⁰

Foreigners who marry Mexican nationals or have children born in Mexico may be admitted to the country under the immigration status determined by *Gobernación*.²⁶¹ If the marriage is dissolved or the foreigner does not comply with the obligations imposed by Mexico's civil legislation regarding economic support or alimony, the foreigner loses his or her immigration status and *Gobernación* sets a date for the foreigner to leave the country unless he or she is a lawful permanent resident (*inmigrado*).²⁶²

V. ACQUIRING MEXICAN CITIZENSHIP

Pursuant to the Federal Constitution, Mexico's Nationality Act (*Ley de Nacionalidad*)²⁶³ governs all questions pertaining to acquisition or loss of nationality, including the naturalization of aliens in that country.²⁶⁴ Provided that an applicant satisfies the

257. *Id.* art. 157(I).

258. *Id.*

259. *Id.* art. 157(II).

260. *Id.* art. 157(III).

261. Ley General de Población [L.G.P.] [General Population Act], as amended, art. 39, Diario Oficial de la Federación [D.O.], 7 de Enero de 1974 (Mex.).

262. *Id.*

263. Ley de Nacionalidad [L.N.] [Nationality Act], as amended, Diario Oficial de la Federación [D.O.], 23 de Enero de 1998 (Mex.).

264. See Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, arts. 30, 32, 33, 37, 73(XVI), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917

requirements for naturalization, he or she will receive a Letter of Naturalization (*Carta de Naturalización*), which takes effect the day after it is officially issued.²⁶⁵ In all cases involving naturalization, the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) ("SRE") must seek and obtain the opinion of *Gobernación*.²⁶⁶

The Nationality Act mandates that the SRE must deny the requested naturalization if the applicant (1) does not comply with the requirements prescribed by the law; (2) is serving a deprivation of liberty sentence involving an intentional criminal offense (*delito doloso*) in Mexico or abroad; or (3) if, in the opinion of the SRE, it is not convenient, in which case the SRE must provide the reasons and the corresponding legal bases.²⁶⁷ The Nationality Act empowers the SRE to declare the Letter of Naturalization null and void in a special hearing personally attended by the interested party when said letter has been issued "without complying with the requirements or in violation of the law."²⁶⁸

Under Mexican law, there are two kinds of naturalization: ordinary (*ordinaria*) and special (*privilegiada*).

A. Ordinary Naturalization

Ordinary naturalization is available to any foreign national who has no special relationship with Mexico arising out of family, marriage, or ethnicity. In this case, the foreigner must submit to the SRE all of the following: (1) a naturalization application;²⁶⁹ (2) an express renunciation of his or her current nationality, in the terms prescribed by the Nationality Act;²⁷⁰ (3) proof of fluency in

(Mex.).

265. L.N. art. 20 (*in fine*).

266. *Id.* art. 23.

267. *Id.* art. 25.

268. *Id.* art. 26 (author's translation).

269. *Id.* art. 19(I).

270. *Id.* art. 19(II). Article 17 of the Nationality Act mandates that this renunciation must be explicit, abandoning any "submission, obedience, or fidelity" to the foreign nation in question, and disclaiming "any foreign protection against the laws and authorities of Mexico and any right that treaties and international conventions bestow upon foreigners." *Id.* art. 17 (author's translation). The foreigner must also "protest adhesion, obedience, and submission to the Mexican laws and authorities, refraining from undertaking any behavior that may imply submission to a foreign state." *Id.* (author's translation). These renunciations must be done *after* the SRE has determined to grant the requested naturalization. *Id.* art. 19(II).

Spanish, familiarity with Mexico's history, and his or her "integration with the national culture;"²⁷¹ and (4) proof of lawful residency in Mexico for at least the five years immediately preceding the application.²⁷²

B. *Special Naturalization*

Article 20 of the Nationality Act addresses special naturalization.²⁷³ Foreigners that fall into one of three categories may be eligible for expedited special naturalization.

The first type of special naturalization is reserved for foreigners who have resided in Mexico for no less than two years—instead of the usual five years—and have one of the following five characteristics: (1) being able to trace direct descent from a Mexican by birth; (2) being the parent of Mexican children [*sic*, in the plural] by birth; (3) being a national of a Latin American country or from the Iberian peninsula (i.e., Spain and Portugal); or (4) being a person who, in the SRE's discretion, "has rendered services or accomplished salient works in the cultural, social, scientific, technical, artistic, sport, or business areas which benefit Mexico."²⁷⁴

The second type of special naturalization benefits foreign women and men who marry Mexican nationals. These foreigners must prove they have resided in Mexico in their shared marital home (*domicilio conyugal*) during the two years immediately preceding the filing of the naturalization application.²⁷⁵

The third category of special naturalization applies to the children of Mexican citizens. Adoptees and minors within the second degree (i.e., children and grandchildren) who are subject to the custody (*patria potestad*) of a Mexican national may obtain naturalized citizenship after one year of uninterrupted residency in Mexico.²⁷⁶

271. *Id.* art. 19(III) (author's translation).

272. *Id.* arts. 19(IV), 20.

273. *See id.* art. 20.

274. *Id.* art. 20(I) (author's translation).

275. *Id.* art. 20(II).

276. *Id.* art. 20(III).

C. *Children Born in Mexico*

Article 30 of the Mexican Constitution provides that "Mexican nationality is acquired by birth or by naturalization."²⁷⁷ Mexicans by birth may be divided into four categories.

The first and most complex category includes children born in Mexico to non-Mexican parents.²⁷⁸ This situation may lead to cases of dual nationality when the parents are, for example, U.S. citizens and their baby is born in Mexico. Because the baby is born in Mexico, the *jus soli* doctrine—the right that derives from the soil—provides that the baby should have the same nationality as the soil.²⁷⁹ However, because the parents are U.S. citizens, the doctrine of *jus sanguinis*—the right given by the blood—asserts that the baby should have the same nationality as that of the parents. As of today, the procedure is that when the baby turns eighteen years of age, which is the age of adulthood under Mexican law, the interested teenager chooses between U.S. and Mexican nationality before the SRE or a Mexican consulate. This procedure has been known as "The Option" (*La Opción*).

Based on a recently amended provision of the Mexican Constitution, a baby born in Mexico by U.S. parents will always have Mexican nationality (as well as the U.S. nationality of the parents).²⁸⁰ This holds true even if the baby, upon reaching adulthood, chooses to acquire the citizenship of a third country by naturalization.

Children born under the following three circumstances also have Mexican citizenship by birth: (1) children born outside Mexican territory provided that one or both parents is a Mexican citizen by birth; (2) children born outside Mexican territory provided that one or both parents is a naturalized Mexican citizen; and (3) children born on Mexican vessels or aircraft, whether for war or merchant use.²⁸¹

277. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 30, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

278. *See id.* art. 30(I).

279. *Id.*

280. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 37(A), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

281. *Id.* art. 30(II)–(IV).

VI. CONCLUSION

The Federal Constitution of 1917 is the apex of Mexico's legal system. This fundamental law, although inspired by the Constitution of the United States, is an important and solemn document that reflects Mexico's long and rich history. Significant historical events, dating back to Mexico's independence in 1810 and including the Juarez reformation period in the 1860's, the 1910 revolution, and the emergence of Mexico as a modern country, have shaped Mexico's Constitution. At the same time, "Mexico's Magna Carta" serves as a symbol of the country's policies in the areas of national sovereignty over natural resources, form of government, political structure, culture and education, social and economic development, and scientific and industrial progress. In sum, the history and life of the Mexican people is reflected in their Constitution.

Therefore, because Mexican history has recorded military invasions by foreign countries—such as the United States and France—it may only be expected that Mexico makes use of its Constitution as the supreme document that enunciates in an explicit manner the limitations, restrictions, and prohibitions imposed upon foreigners. Traditionally, the Mexican Constitution has been used to send a clear message to certain countries.

However, it is unquestionable that over the last two decades the bilateral relationship between Mexico and the United States has never been so close, so expansive, and so interdependent. From a domestic viewpoint, Mexico continues to grow economically, socially, and democratically. At the same time, there is no other country in the world today on which Mexico depends so highly, and in so many respects, than the United States. For example, foreign investment, trade and commerce, industrial development, and technology transfer—to mention but a few—are areas where the United States' presence in Mexico is overwhelming.

The fact that geography, wealth, and people make the relations between these two countries more and more complex, and more and more interdependent, suggests that profound changes are also taking place between the peoples of these two countries, clearly beyond wealth and skill. Indeed, the dawn of the twenty-first century marks but the beginning of this new bilateral era, an era of friendlier and closer relations, but more importantly, a new era with a better understanding across the international bound-

ary, with more justice and fairness, with enlightened policies devoid of old prejudices, and abundant mutual respect and open communication. In sum, this is a bilateral relationship that should not be obstructed by physical or irrational walls erected along the international boundary.