

# ANALYSIS OF ENTRY INTO MEXICO

February 18, 2018

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### **PURPOSE OF ANALYSIS:**

- 1) TO PRESENT THE LAWS GOVERNING ENTRY INTO MEXICO, EXAMINING THE MEXICAN CONSTITUTION, CARTA MAGNA, AS WELL AS THE EFFECT OF INTERNATIONAL TREATIES AND AGREEMENTS SIGNED BY MEXICO.
- 2) ADDITIONALLY, TO PRESENT THE POTENTIAL REMEDIES, EVALUATING HUMAN RIGHTS WITH RESPECT TO INDIRECT AND DIRECT AMPAROS.
- 3) TO UNDERSTAND HOW LEGAL CASES MIGHT BE USED TO MAKE CHANGES IN MEXICAN LAW.

### **From the Carta Magna: Constitution of Mexico**

#### *First Title*

#### *Chapter I, On Human Rights and their Guarantees*

*Article 1o. In the United Mexican States, all persons shall enjoy the human rights recognized by the Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions established by this Constitution .*

*The norms related to human rights will be interpreted in accordance with this Constitution and with the international treaties, favoring the people with the widest protection at all times.*

*All authorities, within the scope of their powers, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressivity. Consequently, the State must prevent, investigate, punish and repair violations of human rights, in the terms established by law.*

*Slavery is prohibited in the United Mexican States. By this single fact, the slaves of the foreigner who enter the national territory will have their freedom and the protection of the laws of the Mexican State.*

*Any discrimination based on ethnic or national origin, gender, age, disability, social condition, health conditions, religion, opinions, sexual preferences, marital status or any other that threatens dignity or aims to nullify or impair the rights and freedoms of individuals is prohibited.*

## **GUARDIAN ANGEL PROGRAM**

Guardian Angel is a program that sometimes uses a combination of agencies to protect minors from experiencing sex crimes. Furthermore, those individuals who have been arrested for sex or attempted sex with underage children are listed on a sexual offender Registry, so that anyone can find out about their crime.

This is damaging for those on the Registry who wish to travel outside the USA, because the US government shares this Registry with many foreign governments. A very large number of Americans like to visit Mexico. The US government shares the Registry with Mexico, and Mexico currently enforces the Registry religiously against those with sex crimes. In fact, Mexicans call the Registry Angel Guardian, and customs officials have been known to force sex crime offenders to stay on the plane they arrived on and return immediately to the USA. To date, the Mexican government has shown very little tolerance indeed to sex crime offenders.

News reports from 2017 state, "During the recent two-week Easter vacation period, Immigration officials at the Puerto Vallarta Airport denied entry to four foreign citizens with criminal records in their home country for sex-related offenses, according to Jalisco Government Secretary Arturo Zamora.

Zamora reported that the men were between the ages of 33 and 55, but he did not reveal their nationalities or identities. All were flown back to their home countries by the airlines on which they arrived.

Zamora went on to say that the visitors were identified before they entered Mexico, thanks to an international interchange of information.

At the end of March Zamora announced that during the previous nine months 38 foreigners convicted in their home countries of sexual crimes against minors had been refused entry into Mexico by immigration staff working at the Guadalajara and Puerto Vallarta airports.

All of this, thanks to a program known as "Guardian Angel," which allows Mexican Immigration officials to identify and prevent people with previous criminal convictions from entering the country."

<http://www.banderasnews.com/1405/nb-mexico-guardian-angel-program.htm>

In the US, enforcement arms for the Guardian Angel Program include the US Justice Department and the FBI. In fact, if someone is not registered with the FBI, they should be able to bring a copy of their disposition, apostilled by an appropriate official, accompanied by a translation into Spanish. This pack of documents may very well serve to allow an individual to enter into Mexico without immigration problems.

Additionally, International Megan's Law is enforced to make international travel by registered sex offenders more difficult. International Megan's Law: An act to protect children and others from sexual abuse and exploitation, including sex trafficking and sex

tourism, by providing advance notice of intended travel by registered sex offenders outside the United States to the government of the country of destination, requesting foreign governments to notify the United States when a known sex offender is seeking to enter the United States, and for other purposes.

International Megan's Law is a federal law that requires, among other things, a visual "unique identifier" to be placed on the passports of registrants convicted of sex offenses involving a minor. The law also requires covered offenders to notify law enforcement 21 days before traveling abroad. Critics have claimed violation of constitutional rights and note that the law would also cover those who were convicted as minors.

[https://en.wikipedia.org/wiki/International\\_Megan%27s\\_Law\\_to\\_Prevent\\_Child\\_Exploitation\\_and\\_Other\\_Sexual\\_Crimes\\_Through\\_Advanced\\_Notification\\_of\\_Traveling\\_Sex\\_Offenders](https://en.wikipedia.org/wiki/International_Megan%27s_Law_to_Prevent_Child_Exploitation_and_Other_Sexual_Crimes_Through_Advanced_Notification_of_Traveling_Sex_Offenders)

Operation Angel Watch is an intelligence-driven program targeting registered sex offenders traveling abroad who ICE believes are likely to engage in child sex tourism. By evaluating patterns and trends, ICE identifies high risk countries to compare with the travel plans of persons included in sex offender registry. Since the inception Operation Angel Watch, nearly 300 suspected CST perpetrators have been identified. In 2007, Angel Watch sent 1,700 leads to 100 countries.

The 2014 bill to establish the Angel Watch Center was described as an "International Megan's Law". A 2010 Government Accountability Office report had found that at least 4,500 U.S. passports were issued to registered sex offenders in fiscal year 2008. Congressman Chis Smith noted, "The goal is reciprocal notice between countries."

[https://en.wikipedia.org/wiki/Operation\\_Angel\\_Watch](https://en.wikipedia.org/wiki/Operation_Angel_Watch)

The combination of Guardian Angel, International Megan's Law, and Angel Watch create great difficulties for those registered sex offenders who seek to travel internationally, and especially to Mexico. Mexico takes very seriously any offender who is listed on a sex registry. Because organizations such as ICE (Immigration and Customs Enforcement) and the Department of Justice, as well as the FBI are spearheading the effort to list sexual registrants, serious enforcement remains at the forefront of efforts to keep sexual offenders from traveling to Mexico.

The US Congress has passed International Megan's Law. The highest political power in the US shows that their priority is tracking sexual crime offenders.

At the same time, all sexual offenders are being held equally responsible whether or not they committed a recent crime, whether they have since married the one whom they "offended," and a variety of other factors go unnoticed. The best possible solution is to work with Mexico to educate its officers as to the differences in sexual offences. However, this must be done in conjunction with following the legal processes provided for by the Mexican Constitution.

Mexico can learn to draw its own conclusions as to whom it can admit as a visitor to Mexico, and we will help Mexico to do so. Understanding that the US standard may be arbitrary and capricious, we may convince Mexico, over time, that Mexico can develop its own manners of admitting tourists instead of following every cue from the United States.

Of course, the process of education and lobbying will take time and effort, but filing cases and working with the Mexican government is a great start.

#### GUARDIAN ANGEL REVIEW WITH RESPECT TO SEX CRIME CLIENT:

Case Study: A client was denied entry into Mexican territory, due to an immigration alert under the GUARDIAN ANGEL PROGRAM of which Mexico is a participant. The alert was generated and sent to Mexico by the US Government. It is important to note that the client was prosecuted and sentenced for a sex offense in the United States. A National Institute of Migration Officer instituted a computer filter which indicated that he must refuse the client entry.

#### GENERAL ALERT AND REFUSAL:

The refusal was not issued with respect to a “visitor visa without permission to perform remunerated activities” or “**visa de visitante sin permiso para realizar actividades remuneradas.**” <https://www.gob.mx/tramites/ficha/visa-de-visitante-sin-permiso-para-realizar-actividades-remuneradas/SRE232>

Visas are regulated under various provisions with respect to national security and allow the migration authority to deny access to foreigners. Any type of visa is issued by consular personnel assigned to the Ministry of Foreign Affairs.

#### OTHER OPTIONS FOR ENTRY: PERMANENT, TEMPORARY, AND FAMILY UNIT

It is important to mention that a client also has the option of applying for PERMANENT residence under the migratory status of FAMILY UNIT, which is regulated under different provisions than those concerning a TEMPORARY visa. Family unit visas consider rights acquired by both foreigners and a Mexican citizens.

#### **APPLICABLE REGULATIONS OF LAW OF MIGRATION:**

##### **MEXICAN LAW OF MIGRATION IS UNDER TWO AGENCIES:**

- 1) SECRETARY: SECRETARY OF FOREIGN RELATIONS (SRE) and
- 2) SECRETARY: THE NATIONAL INSTITUTE OF MIGRATION (INM)

Article 18. (This and all articles are from the Mexican Constitution (Carta Magna) -

The secretary will have the following authority in immigration matters:

IV.- Suspend or prohibit the entry of foreigners, in terms of this Law and its Regulations.

Article 20. The Institute will monitor the entry and exit of people to the territory of the United Mexican States and review their documentation;

Article 21. The Ministry of Foreign Affairs will have the following power with respect to immigration matters:

Section IV. In the cases provided for in this Law, the process and resolution of the issuance of visas:

THE OFFICIALS OF THE NATIONAL INSTITUTE OF MIGRATION MAY ACCEPT OR DENY THE ACCESS OF FOREIGNERS TO MEXICAN NATIONAL TERRITORY. THE OFFICIALS ARE IN THE BORDER CROSSINGS. NORMALLY, THE OFFICIALS OFFER MIGRANTS THE FORM FMM TO ENTER MEXICO. MIGRANTS COMPLETE THE FORM FMM AND IF ACCEPTED, ENTER INTO MEXICO.

THIS PROCESS OF CROSSING THE BORDER IS DIFFERENT THAN REQUESTING A VISA AT A MEXICAN EMBASSY OR CONSULATE ABROAD. MIGRATION OFFICIALS AT THE BORDER BELONG TO THE INM (NATIONAL INSTITUTE OF MIGRATION), RELATED TO THE SECRETARY OF GOVERNANCE, AND CONSULAR OFFICERS BELONG TO THE SECRETARY OF EXTERNAL RELATIONS, TWO DIFFERENT INSTITUTIONS.

HOWEVER, ACCORDING TO THE TYPE OF ENTRY INTO MEXICO, BOTH TYPES OF OFFICIALS, UNDER THE MIGRATION LAW, ARE EMPOWERED TO ACCEPT OR DENY THE ENTRY OF A FOREIGNER INTO MEXICO OR THE ISSUANCE OF A VISA FOR ENTRY INTO MEXICO.

Article 38. The Secretary, for reasons of public interest and motivating causes, may suspend or prohibit the admission of foreigners through the issuance of general administrative provisions. The provisions shall be published in the Official Gazette of the Federation.

Article 38 addresses sex crime cases as having been already investigated and decided. Because of public interest in Mexico with respect to sex crimes Guardian Angel was adopted and is in force in Mexico. This is the barrier that we must confront as attorneys trying to change the law.

AS ARTICLE 38 STATES THAT MATTERS OF PUBLIC INTEREST ARE REASONS FOR PROHIBITING FOREIGNERS TO ENTER MEXICO, SEX CRIMES, ESPECIALLY WITH RESPECT TO MINORS, ARE VIEWED WITH GREAT INTEREST CONCERNING PUBLIC AND SOCIAL REPUTATION. THEREFORE, UNDER THIS ARGUMENT OF MAINTAINING THE PUBLIC INTEREST, THE SECRETARY OF EXTERNAL RELATIONS CAN DENY THE ISSUANCE OF VISAS TO INDIVIDUALS CONVICTED OF SEX CRIMES.

Article 43. Without prejudice to the provisions of Article 42 of this ordinance, the immigration authorities may deny visa issuance or regular admission to Mexican

national territory. Immigration authorities may deny foreigners in any of the following cases:

- I. Subject to criminal proceedings.
- II. Convicted of a felony in accordance with national laws in criminal matters or the provisions contained in international treaties and agreements to which the Mexican State is a party, or
- III. Because of foreigner criminal background in Mexico or
- IV. Because the foreigner could compromise national security or public safety.

THE IMMIGRATION AUTHORITIES ARE:

- 1) THE IMMIGRATION OFFICER OF THE INM (Instituto Nacional of Migration) AND
- 2) THE CONSULAR OFFICER OF THE SRE (Secretary of Exterior Relations). IN THIS CASE, THE SEX CRIME CLIENTS MAY HAVE NOT BEEN SUBJECT TO CRIMINAL PROSECUTION FOR MANY YEARS, FOR EXAMPLE, MORE THAN 20 YEARS. NEVERTHELESS, FOR A CLIENT THAT HAS BEEN CONVICTED OUTSIDE OF MEXICO, A CONVICTION WILL BE ENTERED INTO AND ENFORCED UNDER MEXICAN LAW.

THE FINAL PARAGRAPH OF ARTICLE 43 states: In cases where the alien has been convicted of a felony according to national laws, the Institute will assess the aliens immigration status with regard to the principles of social rehabilitation as well as to family reunification. IN CASES WHERE THE FOREIGN PERSON WAS CONVICTED WITH A GRAVE OFFENSE ACCORDING TO NATIONAL LAW, THE INSTITUTE NATIONAL OF MIGRATION will assess the migratory status for the foreign person with respect to the principles of social rehabilitation and family reunification.

The right to family reunification or family reunification is the right of migrants to maintain the unity of their family, so that they may reunite with certain relatives in the country to which they have moved.

THIS STRESSES THE DIFFERENCE BETWEEN APPLYING FOR ANY TYPE OF TEMPORARY VISAS (FMM), AND TO APPLY FOR PERMANENT RESIDENCE AS A FAMILY UNIT VISA. ALIENS HAVE A RIGHT TO APPLY FOR RESIDENCE WITH A FAMILY UNIT VISA.

THE RIGHTS OF MEXICAN CITIZENS ARE THE SAME THAN THOSE OF NON-CITIZENS, EXCEPT FOR POLITICAL ELECTION. THE GOVERNMENT OF MEXICO HAS THE OBLIGATION TO PROTECT ITS CITIZENS AND THOSE WITHIN ITS BORDERS. THIS IS THE PRIMARY REASON THAT THE QUESTION OF WHOM THE GOVERNMENT CAN ADMIT INTO MEXICAN TERRITORY IS EXTREMELY IMPORTANT.

THE MEXICAN CONSTITUTION, OR CARTA MAGNA, DISCUSSES THE RIGHTS OF MEXICANS AND FOREIGNERS WITHIN THE NATIONAL TERRITORY. THESE RIGHTS ARE KNOWN AS INDIVIDUAL GUARANTEES, TODAY AS "HUMAN RIGHTS

AND THEIR GUARANTEES." THE RIGHTS PROTECT ANYONE FOR THE SIMPLE QUALITY OF BEING HUMAN.

### **POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES (CARTA MAGNA)**

Article 14. No law shall be retroactive to the detriment of any person. No one may be deprived of liberty or his property, possessions, or rights, without a trial followed before previously established courts, which comply with the essential formalities of the procedure in accordance with previously issued Laws.

THE ANGEL GUARDIAN PROGRAM WAS ADOPTED AFTER THE CRIMINAL ACTS OF SOME POTENTIAL CLIENTS, AND THEREFORE IS SUBJECT TO THE GENERAL RULE OF EX POST FACTO, THAT AFTER THE FACT LAWS ARE PREJUDICIAL TO A CLIENT. THEREFORE, IT MAY BE THAT THE ANGEL GUARDIAN PROGRAM IS A VIOLATION OF HUMAN RIGHTS. HOWEVER, IT IS IMPORTANT TO REMEMBER THAT THE SAME LAW OF MIGRATION, THAT "No law shall be retroactive to the detriment of any person" ALSO INDICATES THAT THOSE WITH CRIMINAL RECORDS MAY ENDANGER MEXICAN NATIONAL SECURITY.

As demonstrated above, a human rights trial and its guarantees (AMPARO trial) are available for a client, after INM or SRE refuses a client entry into the country under a temporary visa or an FMM (Formato Multiple de Migración).

THE REFUSAL TO ENTER MEXICO FOR A FAMILY UNIT CLIENT IN PARTICULAR: IF THE REFUSAL IS MANIFESTED VERBALLY BY THE OFFICIAL OF MIGRATION, WHICH BASES ITS DECISION UNDER THE TREATMENT OF THE PROGRAM "ANGEL GUARDIAN." WE HAVE FOUND THE SUPPOSED VIOLATION WITH RESPECT TO ANGEL GUARDIAN CARRIES LITTLE FORCE. WITH A DECISION TO REFUSE ENTRY WITH RESPECT TO ANGEL GUARDIAN, THERE IS NO OFFICIAL DOCUMENT ISSUED BY COMPETENT AUTHORITY, ATTACHED TO THE JUDGMENT OF REFUSAL TO ENTRY. THIS IS A DIRECT VIOLATION WITH RESPECT TO HUMAN RIGHTS.

Therefore, we suggest having available documentary evidence concerning the Family Unit's income and assets, because the FAMILY UNIT VISA is a both a right of the foreigner and a right of the Mexican citizen. The FEDERAL government maintains an obligation to avoid emotional, psychological, economic and family damage to the Family Unit.

### **FAMILY UNIT VISA**

FAMILY UNIT is a type of visa that gives Mexican citizens residing within the national territory the right to request the entry of their family members. Like all



official immigration procedures, it must cover certain requirements and be accompanied by supporting documents:

- Current official Mexican identification.

PETITIONER, WHO IS THE PERSON WHO WILL EXERCISE THE RENUNCIABLE RIGHT TO THE FAMILY UNIT VISA UNDER THE FEDERAL CONSTITUTION.

- Passport or Travel Identity Document of the foreign person for whom the Visa is requested. Passport or Travel Identity Document must correspond to international law and be valid. (A requirement: the foreign person for whom the visa is filed does not have a permanent or temporary residence visa application already filed with the Institute by family unit pending resolution.)

The applicant must prove a family relationship with the foreign person for whom the visa is requested, in accordance with the following:

1. Birth certificate, if it is the father or mother of the petitioner; must submit the original and copy.
2. Birth certificate, if it is a child of the applicant of the requested foreign person. This is if the foreign person for whom the visa is requested is a girl, child or adolescent who has not married, or who is under their legal representation or is of legal age who lacks mental capacity and is under their legal representation, in original and copy.
3. Marriage certificate, if the spouse of the petitioner is involved in the proceedings. If the petitioner is Mexican, he must present the Mexican marriage certificate in original and copy.

TWO ASSUMPTIONS:

1) IF THE MARRIAGE WAS CELEBRATED WITHIN MEXICAN TERRITORY, THE PRESENTATION OF THE MARRIAGE ACT IN CERTIFIED COPY AND CURRENT FORMAT IS SUFFICIENT;

2) IF MARRIAGE IS CELEBRATED ABROAD, THE FOREIGN MARRIAGE ACT DOCUMENT MUST BE SUBMITTED WITH AN APOSTILLE FROM THE COUNTRY OF ORIGIN, AS WELL AS AN OFFICIAL TRANSLATION TO SPANISH. THIS WILL ALLOW THE CIVIL REGISTRY JUDGE TO ACCREDIT THE MARRIAGE IN THE CIVIL REGISTRY. THIS WILL RECOGNIZE THE VALIDITY OF THE MARRIAGE ACT DOCUMENT IN THE FOREIGN COUNTRY AND GRANT THE SPOUSES THE SAME RIGHTS AND OBLIGATIONS OF THE MARRIAGE UNDER MEXICAN LAWS.

3) IF the petitioner has been married with another person, he must submit a document issued by a competent authority, expressing the dissolution or termination, in original and copy.

4) In the case of a civil union with the petitioner, he must submit a document issued before the competent authority of the country of origin or residence of the foreign

person for whom a visa is requested, or of the country where the legal act was executed proving that the foreign person lived with the petitioner in common, constantly and permanently for a minimum period of five years, in original and copy.

5) If requesting a visa for child of the spouse, or the civil union partner, as long as the foreign person for whom the visa is requested is a girl, child or adolescent who has not married or who is under their legal representation, or is of legal age that is without mental capacity and is under its legal representation, the requirements are:

- Birth certificate of the foreign person for whom the visa is requested in original and copy.
- That the father or mother of the foreigner for whom a visa is requested proves an accredited relationship with the petitioner.
- Passport or travel identity document that is valid according to the international and current law of the spouse; civil union partner or equivalent figure of the petitioner, in copy.
- Document issued by the competent authority in which the other parent of the minor consents to the departure of their minor child to reside in Mexico, in the original and in copy.
- If it is a child or adolescent, whose guardianship is in charge of the petitioner, a document issued by the competent authority in original and copy showing such guardianship, or
- Birth certificate, if it is a sibling of the applicant and the birth certificate of the foreign person for whom an original and a copy of the visa is requested.

The foregoing information, provided that the foreigner for whom the visa is requested is a girl, child or adolescent who has not married, or is of legal age who is incapacitated and is under legal representation.

This procedure is done before the National Institute of Migration, and may be face-to-face or virtual ([www.gob.mx/tramites/ficha/visa-por-unidad-familiar/INM75](http://www.gob.mx/tramites/ficha/visa-por-unidad-familiar/INM75)). Even if the procedure is done face-to-face it is essential to previously download and require a migratory format: ([www.inm.gob.mx/tramites/publico/internacion.html](http://www.inm.gob.mx/tramites/publico/internacion.html)).

It is important to state that the legality and obligation of the immigration authorities to hold this process was published on October 10, 2014 in the Official Gazette of the Federation, specifically in the general guidelines for the issuance of visas issued by the Secretaries of Governance and Foreign Affairs.

Procedure 8. Visa of temporary or permanent residence requested by the Institute for the family unit.

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5363603&fecha=10/10/2014](https://www.dof.gob.mx/nota_detalle.php?codigo=5363603&fecha=10/10/2014)

### **CRITERIA FOR RESOLVING FAMILY UNIT APPLICATION REQUESTS BEFORE THE "INM," NATIONAL INSTITUTE OF MIGRATION**

- The applicant is considered Mexican if he applies for a Mexican visa for a foreign person with whom the applicant demonstrates family ties. (THIS TYPE OF VISA CAN ALSO BE REQUESTED BY FOREIGNERS WHO RESIDE IN MEXICO AS TEMPORARY AND/OR PERMANENT RESIDENT).
- Those who live together constantly and permanently without marrying, for a minimum period of five years are considered concubinees or concubines (a civil union) in accordance with the Federal Civil Code. Concubine or concubinage will also be recognized if the foreign person has children in common with the Mexican or foreign resident in the country even if the minimum period of five years of living together constantly is not met.
- The immigration authority will deny the immigration procedures of the promoters that are located in the cases of Article 43 of the Law.

Article 43 is with reference to criminals who have been convicted, no matter when the conviction took place. For this reason, an Amparo must be used in a lawsuit against the Government. There are no other remedies available in this case. The National Institute of Migration agent Gabiño. stated when interviewed by Luis Fernández, that:

“The Amparo, and only the Amparo, is available for those with sex crimes or any convictions or with a denied entry to Mexico.”

- The authorization issued by the Institute will be valid for **30 business days** after it is granted. At the end of this period, the authorization loses its effects and the process cannot be continued.

### **TYPES OF FAMILY UNIT VISA**

1) Permanent residence visa. For relatives of Mexicans: a) parents, b) minor children who have not married and are under legal representation, or who are of legal age but lack mental capacity and are under legal representation, as well as the children of the spouse, concubinary, concubine or equivalent figure (civil union), c) siblings of minor age who have not married and are under their legal representation; or that they are of legal age but lack mental capacity and are under legal representation.

2) Temporary residence visa. For relatives of foreigners holding temporary resident or temporary resident student status: a) parents, b) minor children who have not married and are under their legal representation or who are of legal age but lack mental capacity and

are under legal representation, the same applies to the children of the spouse, concubine, concubine or equivalent figure (civil union), c) spouse, concubine, concubine or equivalent figure (civil union).

**NOTE OF IMPORTANCE:** The foreigner must process the visa within 30 calendar days after entering Mexican national territory, before an office of procedures of the Institute National of Migration (INM). He shall exchange the FMM for a residence card that proves the legality of his stay and allow him to remain in national territory.

### **TEMPORARY RESIDENT INVESTOR VISA**

This visa applies to foreigners who wish to enter Mexico as temporary residents for a period greater than 180 days and no longer than 4 years, for having made investments in Mexico pursuant to section VI of article 107 of the Regulations of the Migration Law. This visa does not authorize paid work in Mexico.

Article 107. The temporary residence visa referred to in section IV of Article 40 of the Law will be issued to a foreign person who states his intention to remain in the national territory for a period greater than one hundred and eighty days and up to four years. The applicant must demonstrate any of the following assumptions:

VI. That has investments in the Mexican national territory consisting of:

a) Shares in the capital stock of Mexican companies in accordance with the laws and other applicable legal provisions, and that the value of the investment exceeds the amount established in the general administrative provisions issued jointly by the Secretary of National Institute of Migration and the Secretary of External Relations, and that will be published in the Official Gazette of the Federation;

b) Personal property or fixed assets used for economic or business purposes in accordance with the laws and other applicable legal provisions, whose value exceeds the amount established in the general administrative provisions issued jointly by the Secretary and the Ministry of Foreign Affairs, and that will be published in the Official Gazette of the Federation, or

c) The development of economic or business activities in the Mexican national territory in accordance with the laws and other applicable legal provisions that generate formal employment in terms of the general administrative provisions issued jointly by the Secretariat and the Ministry of Foreign Affairs, and that will be published in the Official Gazette of the Federation. The positions occupied by the foreigner and their relatives referred to in Article 111 of this Regulation will not be considered as new jobs.

The temporary resident visa will be issued with a validity of one hundred and eighty calendar days with a single entry. The foreign person must process his residence card within thirty calendar days after entry into the national territory.

THE FOREIGNER MAY REMAIN UP TO A MAXIMUM OF 4 YEARS IN NATIONAL TERRITORY THROUGH MAKING AN INVESTMENT IN MEXICO. THIS VISA DOES NOT GIVE THE RIGHT TO UNDERTAKE REMUNERATED ACTIVITIES IN MEXICO. HOWEVER THE FOREIGNER CAN APPLY FOR AUTHORIZATION TO WORK IN THE NATIONAL INSTITUTE OF MIGRATION (INM). THE MIGRATION LAW INDICATES THAT AFTER REMAINING IN MEXICO FOR FOUR YEARS AS A TEMPORARY RESIDENT, A FOREIGNER CAN APPLY FOR MEXICAN CITIZENSHIP AT THE SECRETARY OF FOREIGN AFFAIRS (SRE).

REQUIREMENTS TO PROCESS THE INVESTMENT VISA:

Appointments for the consular interview and the delivery of documentation for visa procedures are carried out through the "Mexitel" website.

<https://mexitel.sre.gob.mx/citas.webportal/pages/public/login/login.jsf>

Necessary documents:

I. Original and copy of valid passport.

II. Completed visa application form:

<https://embamex.sre.gob.mx/espana/images/stories/SeccionConsular/visasolicitudspanol.pdf>

III. A photograph with the face visible and without glasses, color, passport size, with measurements of at least 32.0 millimeters x 26 millimeters and a maximum of 39.0 millimeters x 31.0 millimeters, with white background and front.

IV. Original and copy of the document proving stay in Mexico is legal (visa and/or resident card), applicable to foreigners who are not nationals of the country where the visa application was submitted.

V. Accredited the investment made in Mexico through the following documentation:

a) Original and copy of the deed or policy of the Mexican legal entity granted before a Notary Public, or document duly certified by the administrative body or competent official thereof, stating that the foreign person owns share capital of said entity "Mexican moral person," and that the amount of the investment disbursed for the participation of the foreign person in the Mexican legal entity exceeds twenty thousand days of the general minimum wage in effect in Mexico City. This may be evidenced, by means of a contract for the sale of shares or "parte social," a contract for the transfer of goods or rights in favor of the Mexican legal entity, or a document issued by the latter that proves the amount contributed by way of participation in social capital, and,

b) Original and copy of the document proving the ownership of personal property or fixed assets in favor of the foreign legal entity, used for economic or business purposes, with a value that exceeds twenty thousand days of the minimum salary in force in Mexico City.

c) Original and copy of the documentation that accredits the development of economic or business activities in the national territory: this information which may be accredited, but not limited to contracts, service orders, invoices, receipts, business plans, licenses or permits, and certificate issued by the Mexican Institute of Social Security (IMSS) proving that the foreign legal entity is an employer of at least three workers.

IV. Payment of rights, in cash, according to the exchange rate applicable during the month, to the Consular Section, for the reception of the application, study of the application, and, where appropriate, authorization of the visa, in accordance with the Federal Law of Rights. Documentation presented in another language must be accompanied by an official translation into Spanish. Processing time: from 2 to 10 business days, after the documentation is received in a complete and satisfactory manner.

#### **ADDITIONAL INFORMATION ABOUT THE INVESTMENT VISA**

The temporary resident card will have a validity of one, two, three or four years, according to the authorization of the National Institute of Migration (INM). One can apply to the INM for the corresponding renewals up to four years from the date one obtained the status of legal presence in Mexico.

AS WRITTEN ABOVE, AFTER FOUR YEARS OF LEGAL STATUS IN MEXICO, THE RESIDENT FOREIGNER MAY OBTAIN FOR CITIZENSHIP THROUGH MEXICAN NATIONALITY BY NATURALIZATION, ACCORDING TO SECTION B) OF CONSTITUTIONAL ARTICLE 30 ESTABLISHING THAT THEY ARE MEXICAN BY NATURALIZATION:

THE FOREIGNER SHALL OBTAIN A NATURALIZATION LETTER FROM THE SECRETARY OF EXTERIOR RELATIONS. The permanent resident card will be valid indefinitely, except in the case of foreigners under three years of age, who must renew the card every year until they reach three years. From three years of age and until they reach eighteen years of age, the migration document must be renewed every four years.

The application for authorization for any temporary or permanent resident to perform paid work in the national territory must be submitted directly to the National Institute of Migration (INM).

#### **JUDGMENT OF HUMAN RIGHTS AND GUARANTEES: AMPARO JUDGMENT**

The amparo trial is a manner of supervising constitutional control of acts issued by the Mexican legal system, whether local, state, or federal. The amparo trial aims to protect those human rights and fundamental rights established in the Constitution, as well as in the International Treaties of which Mexico is a party. When human rights and fundamental rights are violated by general norms, acts or omissions of authority, or of individuals indicated in the law, the amparo trial is a remedy. The Mexican amparo proceeding is regulated by Articles 103 and 107 of the Political Constitution of the United Mexican States and its regulatory law, called the Amparo Law. IT IS IMPORTANT TO ENUNCIATE THAT MEXICO IS A SIGNER OF THE GUARDIAN ANGEL PROGRAM.

Article 103. The Courts of the Federation shall resolve any controversy that may arise

I. By general norms, acts or omissions of the authority that violate the recognized human rights and the guarantees granted for protection by this Constitution, as well as by the international treaties of which the Mexican State is a part.

**THE CONSTITUTION, AGREEMENTS AND TREATIES SIGNED BY MEXICO  
GOVERN THE MEXICAN STATE.**

Article 11. Everyone has the right to enter the Republic, leave it, travel through its territory and move from residence, without the need for a security letter, passport, safe-conduct or other similar requirements. The exercise of this right will be subordinated to the faculties of the judicial authority, in cases of criminal or civil responsibility, and those of the administrative authority, as regards the limitations imposed by the laws on emigration, immigration and general health of the Republic, or pernicious foreigners residing in the country.

Everyone has the right to seek and receive asylum. The recognition of refugee status and the granting of political asylum will be carried out in accordance with international treaties. The law will regulate its origins and exceptions:

Article 107. The disputes referred to in Article 103 of this Constitution, with the exception of those in electoral matters, shall be subject to the procedures determined by the regulatory law, in accordance with the following provisions:

I. The Amparo judgment shall always be at the request of aggrieved party, who claims to be the owner of a right or a legitimate individual or collective interest, if it is alleged that the claimed act violates the rights recognized by this Constitution and thereby directly affects the legal sphere, or by virtue of a special situation with respect to legal order.

In addition to restoring the individual with respect to his human rights that have been violated, it is of great importance to suspend the execution of the claimed violating act. i.e. If a suspension has been granted, the authority responsible for executing the act must refrain from carrying out the act.

ONCE HAVING OBTAINED A FAVORABLE RESOLUTION AT AN AMPARO TRIAL, THE INSTITUTION OF NATIONAL MIGRATION (INM) CANNOT DENY A FOREIGN PERSON ENTRY TO MEXICAN NATIONAL TERRITORY, IF THE FOREIGN PERSON HAS BEEN AWARDED:

1) THE PROTECTION OF FEDERAL JUSTICE (FEDERAL JUDGES for Amparos)  
AND/OR

2) THE PROTECTION OF JUSTICE OF THE UNION (FEDERAL JUDGES for Amparos)

### **TYPES OF AMPARO JUDGMENT:**

There are two types of AMPARO: the Indirect and the Direct. The Indirect Amparo is the case of the next to last resort and the Direct Amparo is the case of last resort; after the Direct Amparo there is no further appeal. The Indirect Amparo is resolved by the District Courts and, in certain cases, the Unitary Circuit Courts and is regulated by the second title of the Amparo Law, proceeding, among other cases, against:

- Laws, international treaties or regulations which, by their own entry into force or on the occasion of the first act of application, cause harm to the complainant;

FOR THE PARTICULAR CASES, WE WILL NEED TO SUBMIT THE JUDGMENT DENYING ENTRY INTO MEXICO FOR PROVISIONS BASED ON A PROGRAM (IN THIS CASE GUARDIAN ANGEL), THAT IS PART OF AN INTERNATIONAL TREATY OR AGREEMENT SIGNED BY MEXICO.

- acts of courts, executed outside of trial or after completion of trial; for example, courts accepting information to make a judgment after the statutory time frame is illegal and invalid.

- acts issued in a judgment that, if executed, can not be remedied; for example, a year spent in prison cannot be returned to the prisoner;

- laws or acts of the federal authority that violate or restrict the sovereignty of the States, or when they invade the sphere of competence of the federal authority, and

- Public Prosecutor's resolutions that confirm the criminal action was non-exercised or withdrawn; for example, proving a “stolen” car was actually purchased by presentation of a buy/sell agreement and contract.

For its part, the direct appeal is resolved by the Collegiate Circuit Courts and, in certain cases due to the relevance of the matter, the Supreme Court of Justice of the Nation, the ability to resolve the cases governed by the third title of the Amparo Law.



IF WE FIRST PRESENT AN INDIRECT AMPARO, AND THE RESOLUTION IS NOT IN ACCORDANCE WITH OUR INTERESTS, WE CAN SUBMIT A DIRECT AMPARO BECAUSE WE HAVE HAD A FINAL SENTENCE ISSUED ALREADY.

INTERNATIONAL TREATIES CAN NEVER BE ABOVE THE MEXICAN CONSTITUTION. THEREFORE AMPAROS, WHICH ADHERE TO THE CONSTITUTION, CAN BE USED AS RELIEF FOR THOSE NOT ADMITTED TO MEXICO.

### **FUNDAMENTAL REGULATIONS ON ADMISSION OF PERSONS TO MEXICO**

Article 37. To enter the country, foreigners must:

I. Submit the following documents in the migration review filter before the Institute:

- a) Passport or travel identity document that is valid in accordance with current international law, and
- b) When required, a visa validly issued and in force, in terms of article 40 of this Law; or
- c) Residence card or authorization in the condition of stay of regional visitor, visitor border worker, or visitor for humanitarian reasons.
- d) Holders of an authorized stay condition, in cases previously determined by the Secretariat;
- e) Applicants for refugee status, complementary protection and the determination of a stateless person, or for humanitarian reasons or causes of force majeure, and
- f) Members of the crew of commercial vessels or aircraft in accordance with international commitments assumed by Mexico.

II. Provide the information and personal data that the competent authorities request within the scope of their power.

AT THIS TIME, THE MIGRATORY OFFICIAL WILL ENTER PERSONAL DATA INTO THE COMPUTER AND APPLY THE MIGRATORY FILTER TO FIND OUT WHETHER A PERSON IS ADMISSIBLE OR NOT INTO MEXICO.

III. Foreigners in any of the following situations do not need a visa:

- a) Nationals of countries with which a visa suppression agreement has been signed or that does not require a visa under a unilateral decision assumed by the Mexican State;
- b) Applicants for the condition of stay of regional visitor and visitor border worker;
- c) Holders of an exit and return permit;
- d) Holders of an authorized stay condition, in cases previously determined by the Secretariat;
- e) Applicants for refugee status, complementary protection and the determination of a stateless person, or for humanitarian reasons or causes of force majeure, and
- f) Members of the crew of commercial vessels or aircraft in accordance with international commitments assumed by Mexico.

**DELEGATION AGENT GAMBIÑO OF NATIONAL MIGRATION INSTITUTE:**

“IT IS IMPORTANT TO HIGHLIGHT THAT THE IMMIGRATION AUTHORITY (INM), AFTER BEGINNING THE FILTER PROCESS FOR MIGRATION, ONLY HAS FEW HOURS TO DECIDE IF THEY GIVE OR DENY ENTRY TO A PERSON.”

“IF THERE IS A DENIAL OF ENTRY, THEREAFTER, TRIAL OF HUMAN RIGHTS AND GUARANTEES (TRIAL OF AMPARO) CAN BE PRESENTED WITH THE COMPETENT AUTHORITIES (FEDERAL JUDGES).”

### **OTHER TYPES OF VISAS FOR FOREIGNERS**

#### **Visitor visa without permission to perform paid activities.**

This visa allows one to visit Mexico to perform activities that do not involve receiving remuneration such as: tourist activities, transit through Mexico, business (such as attendance at meetings, supervision visits, training or consultancies in Mexico), activities related to the exercise of the ministers of worship, technical works in companies (without receiving payment in Mexico), philanthropic activities, sports, transportation of merchandise, receiving medical treatments, attending fairs and/or conferences, as well as conducting studies that do not involve a period of time greater than 180 days.

- Visitor visa without permission to perform paid activities. Long duration (10 years).
- Electronic Visa (SAE)
- Visitor visa to carry out adoption procedures
- Temporary residence visa
- Student temporary residence visa
- Permanent residence visa

#### **Visas whose procedure must be initiated in Mexico before the National Institute of Migration (INM):**

1. Visitor Visa without permission to perform remunerated activities, when requested for humanitarian reasons, in accordance with the assumptions set forth in these Guidelines, provided that the individual or institution that invites is in national territory
2. Visitor Visa with permission to perform paid activities, when requested by job offer.
3. Temporary Residency Visa, when requested by job offer or by family unit. In the case of the family unit, provided that the relative who gives them the right to the visa is in the national territory.

4. Permanent Resident Visa, when requested by job offer in the points system, by family unit or by derivation of recognition of refugee status. In the case of the family unit, provided that the relative who gives them the right to the visa is in the national territory.

## CONCLUSION

**This document examines the manners in which a foreigner can legally enter Mexico or attempt to enter Mexico. We also examined the entry options of a foreign sex crime offender. Interviews with immigration agents, including Federal Delegation Agent Gambiño, continually pointed our research toward the Carta Magna, or Mexican Constitution. We contacted Federal, state and local politicians, including representatives of the city and state of Mexico City, as well as a staff representative of the Mexican Senate. All political representatives indicated that only the Constitution itself provided for immigration law queries.**

**We will use this document we have authored as a guide for any immigration case concerning a denied entry into Mexico. At the same time, we can prepare any potential applicant for entry into Mexico using this document. We have examined the manners in which the Mexican Constitution allows or forbids entry into Mexico. The appropriate articles regarding entry and immigration into Mexico are fully examined, the text of the Constitution is presented, and an analysis of the text with respect to real entry possibilities is given.**

**We must also focus on the fact that Mexico includes international treaties and agreements as a part of its immigration policy. This inclusion of international treaties and agreements is consistently noted in the constitution. The Guardian Angel Program is part of these international agreements, addressed by the constitution. We must endeavor to win lawsuits in Mexico to overcome the hurdles imposed by the Mexican Constitution and international treaties and agreements, particularly Guardian Angel.**

**To change the law in Mexico, it is necessary to bring five similar cases to trial, and win them, so that the Mexican Amparo Courts may re-examine the immigration law in a different light. Five case victories are necessary so that the Supreme Court of Mexico can declare the new decisions to be new jurisprudence. This would constitute a new order from the Supreme Court, which must be respected by migratory agents and consular agents. All of this would take significant work by making Amparo Lawsuits, which could be instituted by anyone, foreigner or Mexican. We will need real cases to start the process of change.**

**Appeals processes and other legal work would be required as a part of the Amparo Lawsuits. Amparo Lawsuits can take upwards of 7 to 8 months or more to complete. This work requires constant effort. Remember that cases must be very similar to count toward the 5 case requirement. For example, 5 cases concerning a minor male aged 15 to 17 years old and an adult female having illegal sex (because of the ages involved) would constitute similar cases.**

**The Constitution and its provision for Amparo Lawsuits offers the best opportunity to effectuate legal change in Mexico and benefit members of your organization. Structural legal change is currently available and possible. Also, we can work to change attitudes and educate officials and politicians, but we must remember that Mexico is a very conservative country with respect to its attitudes, and slow to change. The court system offers the best option for real change soon.**

**Remember that there are two types of Amparos: Indirect (next to last resort case) and Direct (last resort case).**

**We require cases to challenge the status quo in Mexican Immigration Law. Because we have the structure of the available arguments organized in this document, we are ready to challenge GUARDIAN ANGEL in MEXICO through the Mexican Court System. Then, we will initiate cases concerning clients with Sex Crime Backgrounds who would like to enter Mexico for the first time, or have already been denied entry into Mexico.**

**Luis Fernandez and his firm JAI stand ready to counsel clients:**

- 1) Prior to attempting entry in Mexico,**
- 2) To attempt to resolve entry refusals in Mexico, and**
- 3) To elevate complaints to the Amparo level, to require recognition of constitutional rights of foreigners and Mexican natives to allow for entry of foreigners with sex crimes into Mexico.**

**JAI has significant experience in the realm of Mexican migration, and the partners and associates look forward to focus on making changes to the migratory policy of Mexico.**

**We welcome moving forward quickly, and we invite all of your members and any interested individuals to read our document and hire us to bring them in to Mexico. We hope that many people will consider a trip to Mexico, and we are excited in doing our part to help facilitate the process. This journey is one worth fighting for. Success in entering Mexico may also mean success in entering other countries despite having a sex crime background.**

**NOTE ON TRANSLATION:**

**Please be advised that the translation kept the meaning of the original document as authentic as possible. Luis is an expert in Mexican Migration Law and his understanding and expression of the law must be available to all readers. Also, the English translation allows the concepts of the analysis and Mexican Laws to be as readable and understandable as possible.**