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# What Are They Smoking?! Mexico's Decriminalization of Small-Scale Drug Possession in the Wake of a Law Enforcement Failure

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# NOTES

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### I. INTRODUCTION

Mexico can no longer afford to prosecute illegal drug users.[1] Due to a failing law enforcement system with a severe shortage of resources, the Mexican government maintains that its long-standing policy of prosecuting small-scale drug possession has detracted from more important initiatives such as drug trafficking, related

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1. *See* Tracy Wilkinson, *Mexico Moves Quietly to Decriminalize Minor Drug Use*, L.A. TIMES (June 21, 2009), http://articles.latimes.com/2009/jun/21/world/fgmexicodecriminalize21?pg=2.

violence, and police corruption.[2] More specifically, the Mexican government has recognized that prosecuting casual drug users and addicts has only squandered law enforcement resources and promoted police corruption through extortion and improper shakedowns.[3] Consequently, in August 2009, Mexico's Congress decriminalized the possession of small amounts of illegal drugs.[4] The decriminalization policy has generated many proponents and opponents in Mexico and the U.S. Mexico has been a haven for drug trafficking for generations, and Mexican drug cartels exert more power and influence now than ever before.[5] Mexico's most efficient use of its meager law enforcement resources is seemingly targeting well-established drug trafficking organizations.[6] Indeed, drug addicts and casual users in Mexico are far more prevalent and less dangerous than those involved in trafficking drugs in high volumes.[7] In contrast, allowing Mexican citizens and international tourists to carry illegal drugs free of criminal sanctions may carry numerous consequences that were not foreseen by the Mexican government.[8] These potential consequences are the source of firm ideological differences between opposing policy-makers with respect to Mexico's decriminalization policy.

Decriminalizing small-scale drug possession in Mexico is far from foolish. Drug trafficking organizations have thrived under traditional "zero tolerance" drug policy for decades, which has resulted in unprecedented police corruption and violence. The prosecution of small-scale drug users has encouraged the underpaid and underequipped police officers throughout Mexico to prey on nonviolent drug addicts in the form of extortion and

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2. *See* Ioan Grillo, *Mexico's New Drug Law May Set an Example*, TIME (Aug. 26, 2009), http://time.com/time/world/article/0,8599,1918725,00.html.

3. *See, e.g.*, Mark Stevenson, *Mexico Decriminalizes Small-Scale Drug Possession*, ASSOCIATED PRESS (Aug. 21, 2009, 7:49 AM), http://rawstory.com/blog/?s=mexico%2Bdrug.

4. *See* Grillo, *supra* note 2.

5. *See* Mark Potter, *Mexico's 'War Next Door' Linked Directly to the United States*, MSNBC (Dec. 13, 2010), http://www.msnbc.msn.com/id/39812764/ns/world_news-americas; *see also* Jason C. Carney, *Meth, Mexico, and Mutuality: Reemphasizing a Transnational Approach to Fighting the Methamphetamine Epidemic in the United States*, 15 TULSA J. COMP. & INT'L L. 97, 130 (2007).

6. *See* Stevenson, *supra* note 3.

7. *See* Wilkinson, *supra* note 1. The Mexican government has changed its perspective and concluded that casual drug users are generally non-violent and do not present a threat to the state. Numerous in-depth studies have revealed the nonviolent nature of casual drug users and even hardcore addicts. *See, e.g.*, Craig Horowitz, *Drugs Are Bad: The Drug War is Worse,* NEW YORK MAGAZINE, Feb. 5, 1996, at 22, *available at* http://www.marijuanalibrary.org/ nymag_worse_020596.html.

8. *See* Wilkinson, *supra* note 1.

improper shake-downs in the field.[9] This has destroyed the integrity of law enforcement and distracted police forces from pursuing the drug trafficking organizations that are responsible for nearly 30,000 deaths since Mexican President Felipe Calderon declared war on drug cartels in 2006.[10] Furthermore, with an extreme shortage of law enforcement resources and almost a half million hardcore drug addicts in Mexico, it has proved near impossible to effectively address the drug-trafficking dilemma while prosecuting small-scale drug possession.[11] The Mexican government has duly recognized that decriminalizing small-scale drug possession can assist in battling drug trafficking by reducing police corruption and conserving law enforcement resources.[12]

However, Mexico's drug trafficking dilemma should not be underestimated, and the Mexican government cannot expect the decriminalization policy alone to effect lasting change. Decriminalization of small-scale drug possession addresses only a fraction of drug trafficking-related concerns that have overwhelmed Mexican law enforcement initiatives for decades.[13] This note argues that, while Mexico's decriminalization policy should be considered a positive step in addressing numerous drug trafficking-related concerns, it is an under-inclusive measure that will not have a major impact on Mexico's drug war. Part II of this note illustrates the pervasive drug trafficking and related violence resulting from Mexico's drug war. Part III outlines the inadequacy of Mexico's law enforcement resources that inspired the decriminalization policy. Part IV presents the terms and provisions of the decriminalization policy, which has been codified in Mexico's General Law of Health.[14] Part V provides an in-depth

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9. *See* Stevenson, *supra* note 3.

10. Tim Johnson, *Mexico Rethinks Drug Strategy as Death Toll Soars,* McClatchy Newspapers (Aug. 12, 2010), http://www.mcclatchydc.com/2010/08/12/99089/mexico-rethinks-drug-strategy.html. President Calderon's 2006 declaration of war on drug cartels has since been referred to as Mexico's drug war. *See Mexico Says 28,000 Killed in Drugs War Since 2006*, BBC News, (Aug. 4, 2010, 5:57 PM), http://www.bbc.co.uk/news/world-latin-america-10860614 [hereinafter *28,000 Killed in Drug War*]. Many commentators have considered Mexico's drug war to be an utter failure based on the escalating violence and corruption scandals since 2006. *See* Stevenson, *supra* note 3.

11. *Latin America Moves to Decriminalize Drugs,* L.A. Times (Sept. 2, 2009), http://www.latimes.com/news/opinion/la-ed-druglaws2-2009sep02,0,4623257.story [hereinafter *Latin America Moves to Decriminalize*].

12. *See* Stevenson, *supra* note 3.

13. *See* Stevenson, *supra* note 3.

14. *See* Ley General de Salud [LGS][General Health Laws], *as amended*, arts. 478, 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

analysis of the decriminalization policy, and its likely effect on Mexico's drug war. Finally, Part VI concludes this note.

## II. CURRENT STATE OF MEXICO: DRUG TRAFFICKING AND RELATED VIOLENCE

### *A. Drug Trafficking in Mexico*

In order to fully appreciate the drug trafficking dilemma Mexico hopes to correct by decriminalizing the possession of illegal drugs, a discussion of the current state of the country is helpful. The United Nations estimated that illegal drug trafficking is a $300 billion per year industry worldwide.[15] A major source of this outrageous volume is Mexico, which has historically been a leader in illegal drug trafficking and drug-related violence.[16] Mexico was responsible for producing 15,500 metric tons of marijuana in 2007 alone.[17] Further, over eight metric tons of heroin are produced yearly in Mexico.[18] Moreover, shipments of cocaine come into Mexico by the ton through Central America for export into the U.S.[19] Mexico is also a major producer and distributor of methamphetamine.[20] Since Mexico's drug war began in 2006, Mexican police and military have seized roughly 84,000 weapons; 35,000 vehicles; and confiscated more than $400 million in suspected drug money.[21] Despite these figures, drug trafficking organizations continue to succeed in marketing their products throughout the country, as there are currently over 460,000 hardcore drug addicts in Mexico.[22]

Drug trafficking in Mexico has become an enormous concern for the U.S., where consumption of cocaine, marijuana, heroin, and other illegal drugs has steadily grown despite President

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15. *Latin America Moves to Decriminalize*, *supra* note 11.

16. *See* AGNES GEREBEN SCHAEFER ET AL., SECURITY IN MEXICO: IMPLICATIONS FOR U.S. POLICY OPTIONS (RAND Corp. 2009).

17. *Id.* at xvi.

18. Mary Anastasia O'Grady, *Drug Gangs Have Mexico on the Ropes*, WALL ST. J., (Jan. 26, 2009), http://online.wsj.com/article/SB123292962031814007.html.

19. *See* SCHAEFER ET AL., *supra* note 16, at 22.

20. *See* Carney, *supra* note 5, at 98-99. Methamphetamine use can be more harmful and addicting than heroin and cocaine. *Id.* at 98. Further, the prevalence of methamphetamine is increasingly problematic because its production can be just as harmful as its use due to the nature of the synthetic chemicals used. *Id.*

21. *See 28,000 Killed in Drug War*, *supra* note 10. The Mexican law enforcement's seizure of weapons should be considered a promising accomplishment for the drug war. However, law enforcement corruption is so pervasive that the weapons seized may very well be returned to traffickers to commit further violence.

22. *See Latin America Moves to Decriminalize*, *supra* note 11.

Nixon's "war on drugs" declaration in 1972.[23] It is estimated that approximately $25 billion – $30 billion worth of illegal drugs are smuggled into the U.S. from Mexico yearly.[24] Further, nearly ninety percent of the cocaine that enters the U.S. is trafficked through Mexico, mainly originating in Central America.[25] Of the 15,500 metric tons of marijuana produced each year in Mexico, an overwhelming majority is exported to the U.S.[26] The U.S. is also Mexico's largest market for methamphetamine export.[27] Colombian drug trafficking organizations have developed arrangements with Mexican traffickers to move their drugs out of Colombia and into the U.S. through the U.S.-Mexican border.[28] Consequently, drug trafficking organizations have distribution capabilities in as many as 230 U.S. cities.[29] Mexican drug trafficking organizations focus so strongly on the U.S. for export of illegal drugs that they have successfully corrupted U.S. border patrol agents, a practice that appears to be growing along the border as the number of corruption investigations involving U.S. border patrol agents increases.[30]

More recently, the U.S. government has determined that it must fund Mexican law enforcement and drug trafficking initiatives due to the effects that trafficking has had on the U.S. This is not surprising as the U.S. Department of Justice, in its 2009 *National Drug Threat Assessment*, stated that "Mexican drug trafficking organizations represent the greatest organized crime

23. *See* Horowitz, *supra* note 7, at 22, 30.

24. SCHAEFER ET AL., *supra* note 16, at xvi.

25. *See id.* The cooperation between Mexico and Central America in cocaine smuggling has created what many commentators refer to as the "Mexico-Central America Corridor," which is currently the predominant passage route for cocaine flow into the U.S. Donnie R. Marshall, *The Transit Zone: Strategy and Balance*, U.S. SENATE CAUCUS ON INT'L NARCOTICS CONTROL, http://drugcaucus.senate.gov/transitmarshall.html. This smuggling strategy probably originated as a result of increased law enforcement in South America and the Caribbean. *Id.* Drug traffickers were forced to turn to experienced Mexican smuggling organizations to export their cocaine into the U.S. *Id.* These Mexican organizations now control virtually all cocaine sold in the U.S. *Id.*

26. *See* SCHAEFER ET AL., *supra* note 16, at xvi. Special Agent Rafael Reyes, chief of the Mexico and Central America Section of the U.S. Drug Enforcement Administration, explains that "marijuana is the king crop" for Mexican drug cartels and it "consistently sustains marketability and profitability." Solomon Moore, *Tougher Border Can't Stop Mexican Marijuana Cartels*, N.Y TIMES, Feb. 1, 2009, http://www.nytimes.com/2009/02/02/us/02pot.html?_r=1.

27. SCHAEFER ET AL., *supra* note 16, at xvi.

28. Melvyn Levitsky, *Transnational Criminal Networks and International Security*, 30 SYRACUSE J. INT'L. L. & COM. 227, 233 (2003).

29. *See* O'Grady, *supra* note 18.

30. *See* SCHAEFER ET AL., *supra* note 16, at xvii.

threat to the U.S."[31] Additionally, Michael Hayden, former director of the U.S. Central Intelligence Agency under President George W. Bush, called Mexico's current state one of the largest threats to American national security, second only to Al Qaeda and on the same level as nuclear-armed Iran.[32] Further, the U.S. Joint Forces Command, in its latest report on possible security risks to the U.S., considered Mexico and Pakistan together as being at risk of a "rapid and sudden collapse."[33] To address this ongoing dilemma, the U.S. government finalized a multi-year program in October 2007 to provide the Mexican government over $1.6 billion to combat drug trafficking, termed the "Merida Initiative."[34]

### *B. Violence Stemming from Drug Trafficking in Mexico*

Violence resulting from Mexico's drug trafficking concerns has been devastating in recent years. Since Mexican President Felipe Calderon took office in 2006, drug trafficking organizations in Mexico are responsible for more than 28,000 deaths.[35] Through-

31. SCHAEFER ET AL., *supra* note 16, at 45.

32. Judith Miller, *Are Our Crime Fighters Becoming 'Mexicanized'?*, FOX NEWS, Oct. 27, 2009, http://www.foxnews.com/opinion/2009/10/27/judith-miller-mexico-drug-gangs-america-crime/.

33. *Mexico Biggest Crime Threat to U.S.?*, CBS NEWS, Jan. 9, 2009, http://www.cbsnews.com/stories/2009/01/19/world/main4734169.shtml?source=RSSattr=HOME_4734169.

34. *U.S. Delays Counternarcotics Aid to Mexico,* CNN INT'L., Aug. 6, 2009, http://edition.cnn.com/2009/WORLD/americas/08/05/mexico.aid/index.html [hereinafter *U.S. Delays Counternarcotics Aid*]. Thus far, the Merida Initiave funds have been dispersed as follows: in 2008, an initial $400 million for Mexico and $65 million for Central America, the Dominican Republic, and Haiti; in 2009, $300 million for Mexico and $110 million for Central America, the Dominican Republic, and Haiti. U.S. DEP'T OF STATE, BUREAU OF INT'L NARCOTICS & LAW ENFORCEMENT, MERIDA INITIATIVE: FACTS SHEET, (June 26, 2009), *available at* http://www.state.gov/p/inl/rls/fs/122397.htm [hereinafter MERIDA INITIATIVE: FACTS SHEET]. Through the Merida Initiative funding, the U.S. hoped to impose its aggressive "war on drugs" policy on the Mexican government. *See U.S. Delays Counternarcotics Aid, supra*. Incidentally, the recent decriminalization of drug possession in Mexico is a large deviation from U.S. policy, which could conceivably affect the disbursement of the remainder of the Merida Initiative. Notwithstanding, the Obama administration has requested an additional $450 million for Mexico and $100 million for Central America from Congress for 2010. *See* MERIDA INITIATIVE: FACTS SHEET, *supra*.

35. *See* Johnson, *supra* note 10. Along with the outrageous number of deaths stemming from Mexico's drug war, the methods by which these murders are carried out illustrate the overwhelming nature of drug-related violence in the country. In some cases, coroners cannot accurately determine the cause of death of certain murder victims because their bodies reveal numerous injuries that would each cause death independently, including bullet wounds, stab wounds, asphyxiation, blood loss,

out this time period, the trend has been a steady increase in violence throughout Mexico. The 2,300 drug trafficking-related deaths in 2007 more than doubled to over 6,300 deaths in 2008.[36] Further, there were over 2,000 deaths in 2009 from January to April alone.[37] Estimates have indicated that drug-related violence in Mexico results in fifteen deaths per day.[38] Primarily, these deaths stem from turf battles between competing drug cartels and tension between the cartels and law enforcement.[39] As the U.S. is the primary market for drugs produced and stored in Mexico, rival drug trafficking organizations wage war over smuggling routes into the U.S., and the resulting dead bodies are discovered along the U.S.-Mexican border, primarily in the U.S. states of Texas and Arizona.[40]

Much of the violence resulting from Mexico's drug war is directed toward law enforcement.[41] An extraordinary number of Mexican police officers have lost their lives while attempting to carry out President Calderon's goal of cracking down on drug-trafficking. Drug trafficking organizations are now targeting police forces more than ever because of this newly inspired law enforcement focus on ending trafficking.[42] Cartels have recently taken the approach that high-level police forces must be corrupted or killed.[43] A vicious cycle has been created by the connection between violence upon the police and corruption in Mexico: because the goal of traffickers is to corrupt the entirety of the Mexican law enforcement at all levels, those honorable officers who wish to maintain order and integrity will almost certainly be murdered by traffickers as recent history has proved. More than

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and decapitation. *Mexico Morgues Crowded with Drug-War Dead*, ASSOCIATED PRESS (Mar. 8, 2009, 2:02 PM), http://www.msnbc.msn.com/id/29583080.

36. *Mexico Senate OKs Bill to Legalize Drug Possession*, REUTERS (Apr. 28, 2009), http://www.reuters.com/article/latestCrisis/idUSN28349522 [hereinafter *Mexico Senate OKs Bill*].

37. *Id.*

38. Jonathan Hunt, *Top General Says Mexico Is Winning Drug Wars That Claim 15 Lives Every Day*, FOX NEWS (Feb. 2, 2009), http://www.foxnews.com/story/0,2933,487010,00.html.

39. *See U.S. Delays Counternarcotics Aid*, *supra* note 34.

40. *See Mexico Senate OKs Bill*, *supra* note 36; *see also* Jerry Brewer, *'Spillover' Violence Ranges Beyond the U.S.-Mexico Border*, MEXIDATA INFO (Mar. 22, 2010), http://www.mexidata.info/id2593.html.

41. *See* SCHAEFER ET AL., *supra* note 16, at 2-3.

42. *See* SCHAEFER ET AL., *supra* note 16, at xiv.

43. *See id.*

500 police officers were killed in 2008 alone.[44] Traffickers are virtually exterminating the few remaining clean state police officers and government officials in Mexico, which has created a state with unprecedented corruption.[45]

While the vast majority of drug-related violence in Mexico involves members of drug trafficking organizations and law enforcement, a staggering number of innocent citizens are dying in the drug war as well.[46] Many innocent victims, including children, are inadvertently shot and killed in the crossfire between law enforcement and drug traffickers due to the constant war zone that this drug war has created.[47] These drug-related shootouts and turf battles are becoming more prevalent throughout the country, including areas frequented by international tourists, such as Acapulco.[48] Additionally, innocents are often mistaken for members of rival drug cartels or law enforcement and are murdered as a result.[49] Most commonly, drug traffickers kill innocents merely to send a message. Traffickers often murder the loved ones of rivals and law enforcement officers to inform any potential adversaries that their operations are not to be interfered with.[50] In such

44. *See id. See* discussion *infra* Part III for specific examples of the prevalent violence upon Mexican law enforcement officers.

45. *See* discussion *infra* Part III for a more comprehensive overview of the corruption epidemic in Mexico.

46. *Id.*

47. *See* SCHAEFER ET AL., *supra* note 16, at 3; *see also* Melissa Del Bosque, *Mexico's Future in 2010, Calderon's Failed Drug War*, TEXAS OBSERVER (Jan. 5, 2010), http://www.texasobserver.org/lalinea/calderons-war-on-drugs-is-a-failure.

48. *See* Ken Ellingwood, *Deadly Street Shootout Strikes Fear in Acapulco*, L.A. TIMES (Apr. 14, 2010), http://articles.latimes.com/2010/apr/14/world/la-fg-acapulco-shooting15-2010apr15. In June 2009, a shootout between suspected drug cartel members and law enforcement occurred on a popular hotel strip road in Acapulco, which resulted in eighteen casualties. *Id.* Although no tourists were harmed, the shooting occurred at a popular location for international tourism. *Id.*

49. *See* Chris Hawley, *Gunmen Kill 18 at Mexico Rehab Center*, U.S.A. TODAY (Sept. 4, 2009), http://www.usatoday.com/news/world/2009-09-03-mexico-slayings_N.htm. In their quest for power and exclusivity, drug cartels have shown their willingness to execute large groups of innocents where there is only a slight possibility that the victims might be enemies. For instance, in September 2009, drug traffickers broke into a rehabilitation center in the Mexican state of Chihuahua and shot eighteen patients to death execution-style after receiving word that a rival drug cartel member was hiding out in the facility. *Id.*

50. *See generally* Tracy Wilkinson, *Mexico Drug Raid Hero's Family Slaughtered*, L.A. TIMES (Dec. 23, 2009), http://articles.latimes.com/2009/dec/23/world/la-fg-mexico-revenge-attack23-2009dec23. In December 2009, suspected members of the Zeta drug cartel executed the entire family of a Mexican soldier who participated in a raid of the cartel's hideout. *Id.* The soldier was shot to death in the raid, and only hours after his funeral, where he was honored for his dedication to law enforcement, his mother, sister, brother, and aunt were all murdered by masked gunmen. *Id.*

cases, traffickers often leave threatening notes at the scene or even carve references in the flesh of the corpses.[51] While bloody feuds between rival drug cartels have been customary in Mexico for decades, the drug war has now turned the entire country into a battlefield where innocent lives are lost every day.

## III. THE MEXICAN LAW ENFORCEMENT FAILURE

The Mexican government has virtually given up on prosecuting small-time drug users and addicts in part because the Mexican law enforcement and national security institutions are frightfully underequipped, unorganized, and corrupt.[52] A predominant motive for Mexico's decriminalization legislation, a radical deviation from drug law precedent, is that it would be unreasonable to expend such limited and poorly structured law enforcement efforts on drug addicts who are far less of a threat to society than those responsible for trafficking drugs in and out of the country.[53]

### *A. A Lack of Coordination Among Mexican Law Enforcement Branches*

Since the 2000 presidential election of Vicente Fox, Mexico's law enforcement has been in a state of chaos due to lack of an organized, broad national security strategy. The Mexican government spends what little means it has on law enforcement equipment and infrastructure rather than training police officers of separate branches to properly carry out a limited scope of duties.[54] Further, the 1,661 police departments in Mexico commonly keep information they may have acquired to themselves and fail to inform others of their plans.[55] This lack of organization within federal, state, and local law enforcement agencies has led to constant shifting and overlapping of responsibilities.[56] The result has been confusion, tension, and hostility across separate police forces and failed law enforcement.[57] Mexico has a total of 370 police officers per 100,000 citizens while the U.S. has only 225 police officers per 100,000.[58] This disorganization in Mexico's national security sys-

51. *See Mexico: 6 Bodies in Cave, 3 with Hearts Cut Out*, CBS NEWS (June 7, 2010), http://www.cbsnews.com/stories/2010/06/07/world/main6557732.shtml.

52. *See, e.g.*, Stevenson, *supra* note 3.

53. *See id.*

54. *See* SCHAEFER ET AL., *supra* note 16, at 17.

55. *Id.* at 19.

56. *Id.* at xiii.

57. *Id.*

58. Tim Padgett, *Mexico's Drug War: A Cops and Choppers Story*, TIME (Aug. 19,

tem helps to explain why the U.S. is significantly more secure in spite of the disparity in manpower.

### *B. Limited Law Enforcement Resources in Mexico*

Police forces in Mexico are experiencing a severe shortage of resources required to carry out justice, especially in the midst of Mexico's drug war. Mexico suffers considerable shortcomings in police training, equipment, prisons, courts, and drug centers for rehabilitation of addicts.[59] While the U.S. effectively counters the majority of organized crime through the use of technology and wise spending, quite the opposite is true in Mexico.[60] For decades, Mexico's state governors, attorney generals, and chiefs of the Finance Ministry have been seeking reform and improvement of the most fundamental law enforcement resources, but the political system has failed to strengthen the institution of law enforcement.[61] Mexico is feeling this deficiency now more than ever as the drug war has continued to spiral out of control. Since 1997, the number of prison inmates in Mexico has doubled to more than 227,000, many of whom are drug addicts incarcerated for small-scale drug possession.[62] This has resulted in significant overcrowding of Mexico's prison system.[63] In fact, prisons are so overcrowded that over 40,000 inmates charged with federal crimes have been sent to serve their sentences in state jails.[64] Under these circumstances, ruthless hitmen for drug cartels commonly share jail cells with petty thieves, underage inmates, and suspects awaiting trial.[65] Further, the prison guards charged with control-

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2009), http://www.time.com/time/world/article/0,8599,1917453,00.html?xid=rss-top stories.

59. *See* Graham H. Turbiville, Jr., *Law Enforcement and the Mexican Armed Forces: The Military Undertakes New Internal Security Missions*, U.S. ARMY FOREIGN MILITARY STUDIES OFFICE (Apr. 2007), http://struggle.ws/mexico/usa/army_on_mex_army_apr97.html.

60. *See* Ray Walser, *Mexico, Drug Cartels, and the Merida Initiative: A Fight We Cannot Afford to Lose*, HERITAGE FOUNDATION (July 23, 2008), *available at* http://www.heritage.org/Research/Reports/2008/07/Mexico-Drug-Cartels-and-the-Merida-Initiative-A-Fight-We-Cannot-Afford-to-Lose.

61. *See* Turbiville, *supra* note 59.

62. Mica Rosenberg, *Corrupt, Insecure Prisons Undermine Mexico Drug War*, REUTERS (Aug. 18, 2010), http://www.reuters.com/article/idUSTRE67H43A20100818.

63. *See id.; see also* Ernesto Lopez Portillo, *La Adiccion a la Prison*, EL UNIVERSAL (Apr. 13, 2009), http://www.eluniversal.com.mx/editoriales/43659.html. Mexico City, for example, has a prison overcrowding rate of 100 percent.

64. *See* Rosenberg, *supra* note 62.

65. *Id.* The Mexican government has pledged to build fifteen new modern federal prisons by 2012 to correct this problem, and a bulk of the funding for these new facilities will come from the U.S. through Merida Initiative funding.

ling the overpopulated prisons are underpaid and undertrained, leading to corruption and complicity. In the most extreme cases, prison guards even furnish drug traffickers with weapons and set them free.

Mexico has also failed to create adequate witness protection programming, which has proven to be relatively successful in the U.S. Although witness protection programs do exist in Mexico, hitmen for drug cartels have been able to locate and kill informants with relative ease despite governmental protection.[66] Informants have even been murdered inside guarded federal "safe houses" which function solely to protect such witnesses. Such events stem from institutional corruption and information leaks, and certainly act to deter other potential informants from coming forward with information. Two major problems have resulted from Mexico's lack of adequate witness protection programming: failure to report crime for fear of retaliatory violence and the retaliatory violence itself.

Mexico's shortage of law enforcement resources is compounded by the fact that drug trafficking organizations are highly adaptable and spend enormous amounts of money on technological equipment of their own.[67] This hefty income allows cartels to outspend the Mexican government and neutralize its drug trafficking initiative. With the use of heavy-duty military equipment, drug cartels are setting up "states within the state" and enforcing their own sets of laws.[68] These areas, isolated by roadblocks, are protected by military-like platoons utilizing state-of-the-art night vision goggles, electronic intercept collection, encrypted communications and information systems, sea-going midget submarines, helicopters, automatic weaponry, mines, booby traps, fifty-caliber sniper rifles, military-quality hand grenades, and grenade machine guns.[69] The Mexican government has identified at least 230 of these "zones of impunity" operated by drug trafficking organizations in Mexico.[70]

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66. Tim Padgett, *Mexico's Witness Protection Program: What Protection?*, TIME (Dec. 8, 2009), http://www.time.com/time/world/article/0,8599,1945983,00.html.

67. *See* Levitsky, *supra* note 28, at 233.

68. *Mexican Drug Trafficking*, N.Y. TIMES, http://topics.nytimes.com/top/news/international/mexico/drug_trafficking/index.html (last updated Sept. 22, 2010).

69. O'Grady, *supra* note 18.

70. *See Mexican Drug Trafficking*, *supra* note 68. In one such case, drug traffickers operating a roadblock in the state of Durango opened fire on a vehicle for failing to stop and acknowledge the member guarding the area, resulting in the death of ten young students. Tracy Wilkinson & Cecilia Sanchez, *10 Youths Slain in Mexico*, L.A. TIMES (Mar. 30, 2010), http://articles.latimes.com/2010/mar/30/world/la-fg-

What's worse is that drug trafficking organizations have been able to employ their technology in ways that the Mexican government cannot, which further complicates the disparity in equipment. The government is constrained by international and domestic law, treaties, and ethical principles.[71] Additionally, the government cannot spend without suffering through the slow-moving budget approval process of the Mexican legislature.[72] On the other hand, drug trafficking organizations are boundless. These organizations have more to spend and can spend immediately without requiring approval to work new technology into their operation.[73] They are not submissive to any laws or government and can acquire an aerial helicopter or a midget submarine immediately without impediment.[74]

### *C. Police Corruption*

Along with the gross disorganization of law enforcement and its shortage of resources, a predominant cause of Mexico's failure to combat trafficking is corruption within the police forces and political arena. Federal, state, and local law enforcement branches experience widespread corruption, creating an enormous hurdle for national security and Mexico's drug war.[75] Additionally, police corruption has been widely alleged at every level of administration and in every Mexican state.[76] Furthermore, it is estimated that six out of ten crimes in Mexico involve some form of police complicity.[77] According to public opinion polls, eighty percent of Mexico's population considers their law enforcement to be corrupt.[78]

A powerful illustration of the prevalence of police corruption in Mexico came before the U.S. Court of Appeals, Eighth Circuit,

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mexico-shootings30-2010mar30. The students, ranging from eight to twenty-one in age, were traveling to receive federal scholarships at the time of the massacre. *Id.*

71. *See* Levitsky, *supra* note 28, at 233-34.

72. *See* Levitsky, *supra* note 28, at 234.

73. *See* Levitsky, *supra* note 28, at 234.

74. *See* O'Grady, *supra* note 18.

75. *See* Turbiville, *supra* note 59.

76. *See* Turbiville, *supra* note 59. More than 100 state police officers in the northern state of Nuevo Leon were suspended due to corruption-related concerns in April 2007 alone. SCHAEFER ET AL., *supra* note 16, at 39.

77. *See* Turbiville, *supra* note 59.

78. *See* Diego Cevallos, *Drugs-Mexico: Police Caught Between Low Wages, Threats, and Bribes*, INTER PRESS SERVICE (June 7, 2007), http://ipsnews.net/news.asp?idnews=38075.

in August 2009.[79] Guillero Ramirez-Peyro, a former narcotics informant for the U.S. government, appealed a U.S. Board of Immigration (BIA) decision to remove him to Mexico.[80] Fearing for his life, Ramirez-Peyro alleged that he would be tortured or killed by law enforcement for his work as an informant if he were forced to return to Mexico.[81] Ramirez-Peyro further alleged that all levels of the Mexican police forces have illicit connections to drug trafficking and that "Mexican authorities, including Mexico's Federal Agency of Investigation, regularly reveal the identities of informants to the drug cartels, which has led to at least one informant's assassination."[82] To support his allegations, Ramirez-Peyro submitted to the court strong documentary evidence confirming the relationship between Mexican law enforcement, politicians, and drug cartels.[83] The Eighth Circuit vacated the BIA decision to remove Ramirez-Peyro and remanded on the basis of the *2007 U.S. State Department Country Report on Mexico*, which attested to a "deeply entrenched culture of impunity and corruption in [Mexico's government], particularly at the state and local level."[84]

Combating corruption has been a top priority of the Mexican government since the presidency of Ernesto Zedillo beginning in 1994.[85] This goal has been extremely difficult to accomplish due to the position in which Mexican police officers are put. The majority of police officers in Mexico are underpaid, poorly trained, and completely overwhelmed by drug trafficking organizations.[86] The average police officer in Mexico City earns an average of $700 per month, as opposed to the average payroll clerk in Mexico's city government who makes more than $900 per month.[87] Further, "thousands of lower-ranking officers [throughout Mexico] earn less than $250 per month and have not completed primary school."[88] Many officers are told they must buy their own guns for work while they are earning the same amount of money as a supermarket cashier.[89] Meanwhile, in some areas of Mexico, lowly

79. *See* Ramirez-Peyro v. Holder, 574 F.3d 893 (8th Cir. 2009).
80. *See id.* at 895.
81. *See id.* at 896.
82. *See id.*
83. *See id.*
84. *See id.* at 897.
85. *See* Cevallos, *supra* note 78.
86. *See id.*
87. *See* SCHAEFER ET AL., *supra* note 16, at 17.
88. *See* Cevallos, *supra* note 78.
89. Ken Ellingwood, *Mexico Safety Chief's Tough Job: Policing the Police*, L.A.

ranked officers can collect $300 to $500 per day from trafficking organizations in exchange for favors and immunity, which has proved to be tempting.[90] Police officer wages in Mexico are grossly inadequate and have forced many officers into corruption, supplementing their income with payoffs from drug trafficking organizations.[91]

Aside from the need to supplement meager income, police officers in Mexico are commonly coerced into corruption or resignation based on fear and threats of violence. In cases where drug trafficking organizations are unsuccessful in corrupting police and government officials, an overwhelmingly common result is murder.[92] In May 2008 alone, many high-ranking government officials who remained immune to corruption were killed by trafficking organizations, including the acting chief of the federal police, the head of the organized crime division of the federal police, and the head of the military body in charge of President Calderon's personal security.[93]

Also in May 2008, the police chief of Ciudad Juarez was assassinated just twenty-four hours after he succeeded his predecessor, who was also murdered.[94] Following these assassinations, the entire Ciudad Juarez municipal police force resigned, requiring emergency military presence.[95] The mayor of Ciudad Juarez appointed Roberto Orduna Cruz as the latest police chief at the end of May 2008.[96] Instead of assassinating Cruz as they did his two predecessors, drug trafficking organizations took a different approach. They vowed to kill a police officer every forty-eight hours until Cruz resigned. Traffickers carried out their threat, killing four of Cruz's deputies and several prison guards.[97] Cruz eventually resigned and fled Ciudad Juarez in February 2009, after many others were murdered.[98] This episode demonstrates the clear control traffickers currently have over the Mexican gov-

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TIMES (Sept. 15, 2008), http://www.latimes.com/news/nationworld/world/la-fg-mexcops15-2008sep15,0,514108.story.

90. *See* Cevallos, *supra* note 78.

91. *See* Cevallos, *supra* note 78.

92. *See* SCHAEFER ET AL., *supra* note 16, at 3.

93. *See* SCHAEFER ET AL., *supra* note 16, at 3.

94. *See* SCHAEFER ET AL., *supra* note 16, at 3.

95. *See* SCHAEFER ET AL., *supra* note 16, at 3.

96. *See* Marc Lacey, *With Force, Mexican Drug Cartels Get Their Way*, N.Y. TIMES (Feb. 28, 2009), http://www.nytimes.com/2009/03/01/world/americas/01iht-01juarez.20499645.html.

97. *See id.*

98. *See id.*

ernment, as Cruz's departure from the city was most likely in his best interest. Had he not left the Ciudad Juarez, he would likely end up like his counterpart in the city of Chihuahua, whose head was found in an ice cooler in front of the police station with a calling card from drug traffickers in January 2009.[99]

Police corruption in Mexico has become so widespread in recent years that President Calderon has been forced to dispatch military troops to drug-trafficking "hot-spots" all over Mexico, a move that has been a large source of controversy in Mexico and the U.S.[100] Since taking office in 2006, President Calderon has sent out at least 40,000 military troops and 5,000 federal police officers nationwide to assume duties normally carried out by state police officers.[101] The reason for this strategy is that the military and federal police of Mexico are generally viewed as better trained and higher paid, and, thus, less susceptible to corruption than state police officers.[102] Many commentators have charged that President Calderon's decision to dispatch this large number of troops was an overzealous result of his anti-crime campaign as a conservative presidential candidate.[103] The reason for this strategy is that the military and federal police of Mexico are generally viewed as trustworthy and less susceptible to corruption than state police officers.[104] According to opinion polls in Mexico, the military is the most highly respected organization in the country aside from the Catholic Church.[105] The military has historically been utilized as the institution of last resort when there is a failure on the part of the state police, especially in instances of police corruption.[106]

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99. *See* O'Grady, *supra* note 18 (explaining that the calling card at the scene of this assassination was produced by the Sinola drug cartel, which operates mainly out of the Mexican state of Baja California). According to U.S. Attorney General Eric Holder, the Sinola cartel alone is responsible for importing at least 200 tons of powder cocaine between 1990 and 2008.

100. *See* SCHAEFER ET AL., *supra* note 16, at 4. Mexican military troops have been dispatched by previous administrations to combat drug trafficking dating back to the 1960s. However, the amount of military troops that President Calderon has sent since taking office in 2006 is largely unprecedented.

101. *See* Ellingwood, *supra* note 89.

102. *See* Cevallos, *supra* note 78.

103. *See* Ellingwood, *supra* note 48.

104. *See* Cevallos, *supra* note 78.

105. *See* Cevallos, *supra* note 78.

106. *See* Cevallos, *supra* note 78; *see also* Turbiville, *supra* note 59 (providing that state-imposed militarization of Mexican state police divisions has been prevalent in recent history). In 1995, Mexico's largest state of Chihuahua set in motion a program to replace state police officers with ex-military personnel placed on "leave." Further, the Mexican state of Tamaulipas has created a trend of hiring army officers as its state police commanders for decades. For instance, a former Army general currently

Surveys of Mexican citizens show that President Calderon's decision to militarize the drug trafficking initiative has been met with a considerable amount of approval, even from some left-wing opposition legislators.[107] Many liberal citizens of Mexico agree that the government had no alternative but to increase the role of the military in the drug war due to the unprecedented amount of organized crime in Mexico.[108]

However, the sincerity of the Mexican military has come at a price. Widespread concern over human rights violations has arisen due to the dispatch of military in organized crime "hot spots" throughout Mexico. This concern for the way the Mexican military has treated citizens has created a large group of opponents to the militarization of Mexico's drug war.[109] In July 2009, Mexico's National Human Rights Commission reported the documentation of over 2,000 complaints against the Mexican military since President Calderon's term began in December 2006.[110] Those opposing the use of military in police work argue that members of the military are not trained to carry out policing responsibilities and are therefore more likely to violate the human rights of the people of Mexico.[111] For example, military training does not encompass criminal investigations, dealing with civilians, or less-than-lethal police tactics; in fact, quite the opposite.[112] According to documents and interviews with victims of human rights violations, the Mexican army has tortured citizens and conducted illegal raids in its pursuit of drug traffickers.[113] Mauricio Ibarra, lead investigator for the National Human Rights Commission of Mexico, explains that the army takes suspects back to their bases for questioning and there are pending investigations relating to the torture that sometimes derives from the questioning.[114]

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runs the police force in the Mexican state of Tabasco as well. Mexican state police agencies have strongly encouraged hiring of ex-military for police leadership positions due to perceived insusceptibility to corruption by drug trafficking organizations.

107. *See* Cevallos, *supra* note 78.

108. *See* Cevallos, *supra* note 78.

109. *See* SCHAEFER ET AL., *supra* note 16, at 4.

110. *See* Steve Fainaru & William Booth, *Mexico Accused of Torture in Drug War*, WASH. POST (July 9, 2009), http://www.washingtonpost.com/wpdyn/content/article/2009/07/08/AR2009070804197.html?sid=ST20090708043333.

111. Cevallos, *supra* note 78.

112. *See* Kristin Bricker, *Mexican Generals Propose a Militarized National Police Force*, NARCOSPHERE (Aug. 30, 2008, 12:36 AM), http://narcosphere.narconews.com/notebook/kristin-bricker/2008/08/mexican-generals-propose-a-militarized-national-police-force.

113. Fainaru & Booth, *supra* note 110.

114. Fainaru & Booth, *supra* note 110.

Examples of violent treatment by the Mexican military have not been sparse. In June 2007, army troops at a military checkpoint in the Mexican state of Sinaloa opened fire on a vehicle, which resulted in the death of two innocent women and three children under the age of seven.[115] This incident led to the arrest of three Mexican army officers and sixteen troops who "will feel the full weight of the law."[116] Additionally, in June 2009, soldiers in the state of Guerrero reportedly stuck needles under the fingernails of a disabled farmer, knifed a thirteen-year-old boy in the back, gunned down a pastor, and robbed civilians, all while attempting to gather information about organized crime.[117] Also in June 2009, soldiers in the state of Tijuana held plastic bags over detainees' heads and used electric shock and drowning as methods to extract confessions from potential drug traffickers.[118]

Consequently, many human rights activists and opposing leftist legislators are calling for President Calderon to withdraw the military troops in Mexico from policing responsibilities and the drug war.[119] Indeed, President Calderon admits that his decision to dispatch the military has created a "war zone."[120] The human rights violations of the Mexican military have become so prevalent that the Mexican Defense Ministry has even paid compensation to victims.[121] The Mexican military's treatment of citizens has also been an enormous concern for U.S. policy-makers, and these human rights violations have had a large impact on the decisions of the U.S. to provide aid and assistance to the Mexican government.[122] The problem of police corruption in Mexico, by requiring the assistance of military in policing, has created all of these peripheral obstacles in the Mexican government's ongoing battle against drug trafficking.

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115. Cevallos, *supra* note 78.

116. Cevallos, *supra* note 78.

117. Fainaru & Booth, *supra* note 110.

118. Fainaru & Booth, *supra* note 110.

119. Cevallos, *supra* note 78.

120. Bricker, *supra* note 112.

121. *See* Ken Ellingwood, *Abuse Allegations Rise Against Mexican Army*, L.A. TIMES (Mar. 21, 2009), http://articles.latimes.com/2009/mar/21/world/fg-mexico-army21.

122. *See U.S. Delays Counternarcotics Aid*, *supra* note 34 (providing that the distribution of a portion of the Merida Initiative has been delayed as of August 2009 because of the human rights violations of the Mexican military). A precondition of the Merida Initiative is the mandatory prosecution of police and military officers who violate human rights, which has not occurred to the satisfaction of the U.S. Congress. By stipulation, up to fifteen percent of the Merida Initiative funds are to be withheld until the U.S. State Department gives the U.S. Congress a favorable report on Mexico's human rights record.

## IV. TERMS OF MEXICO'S DECRIMINALIZATION LEGISLATION

Decades of failed law enforcement strategy relating to drug trafficking and related violence has prompted the Mexican government to contemplate novel, if not radical, policy since the turn of the century. Considering the country's severe shortage of law enforcement resources and police misconduct toward nonviolent drug addicts, the Mexican government decriminalized the possession of small amounts of narcotics in an attempt to focus on the *source* of the problem.[123] Policy-makers supporting decriminalization do not want to squander manpower, administration, prison space, and other law enforcement resources on mere drug addicts and casual users while providing the opportunity for police extortion.[124] Such legislation was nearly enacted during the administration of former Mexican president Vicente Fox in 2006.[125] During that time, a decriminalization bill was approved by the Mexican Senate; however, President Fox did not sign the bill into law due to pressure from the U.S. under the administration of George W. Bush.[126] Conversely, the Obama administration has not been outspoken on the Mexican government's decision to decriminalize, and many commentators attribute this to approval.[127] Consequently, Mexico's current decriminalization bill, originally filed by President Calderon in October 2008, was approved by the Mexican Congress in April 2009, and officially went into effect in August 2009.[128] The decriminalization policy is codified in Articles 478 and 479 of Mexico's General Law of Health[129] and has been colloquially termed the "narcomenudeo decree," which translates to the law against retail drug dealing.[130] Article 478 provides in pertinent part:

> The Public Ministry will not pursue penal action for the crime detailed in the previous article [possession of drugs], against an addict or consumer in possession of any of the

123. *See* Stevenson, *supra* note 3.

124. *See* discussion *infra* Part V for a description of how the prosecution of small-scale drug possession has lead to unmanageable police extortion and bribery of drug users in the field.

125. *See* Grillo, *supra* note 2.

126. *See* Grillo, *supra* note 2.

127. *See* Grillo, *supra* note 2.

128. *See* Grillo, *supra* note 2.

129. Ley General de Salud [LGS][General Health Laws], *as amended*, arts. 478, 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

130. *Drug Law Reform in Latin America*, TRANSNATIONAL INSTITUTE: DRUGS AND DEMOCRACY, http://www.druglawreform.info/index.php?option=com_flexicontent&view=category&cid=105&Itemid=18&lang=en (last visited Jan. 12, 2010).

> narcotics detailed in the table [see table below], in equal or less quantity than described in the same table, for strict personal use . . . . The ministerial authority will inform the consumer on the location of medical treatment institutions or addiction prevention centers.[131]

The Mexican government strongly maintains that the decriminalization law stands for regulation of drugs, not legalization. Under the terms of the legislation, anyone caught by law enforcement with small amounts of marijuana, cocaine, heroin, ecstasy, LSD, opium, or methamphetamine may not be prosecuted, imprisoned, or fined.[132] The quantity of each drug that may now be carried free of criminal prosecution differs based on intensity of the drug.[133] For example, people in Mexico may now legally carry up to five grams of marijuana, but only up to one-half gram of cocaine.[134] These figures amount to an estimated three to four joints of marijuana or four lines of cocaine respectively.[135] The following is a comprehensive list of the drugs encompassed by the decriminalization law.[136]

| DRUG | DECRIMINALIZED QUANTITY (MAX.) |
|---|---|
| Marijuana | 5 grams |
| Opium | 2 grams |
| Cocaine | 1/2 gram |
| Methamphetamine | 1/5 gram |
| Ecstasy/MDMA | 1/5 gram |
| Heroin | 1/10 gram |
| LSD | 150 micrograms |

Mexico's decriminalization policy is not unconditional. Although possession of these limited quantities of illegal drugs is no longer arrestable, the sale of drugs, even in quantities legal for

131. *See* Ley General de Salud [LGS][General Health Laws], *as amended*, art. 478, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

132. Ley General de Salud [LGS][General Health Laws], *as amended*, art. 478, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

133. Ley General de Salud [LGS][General Health Laws], *as amended*, art. 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

134. Ley General de Salud [LGS][General Health Laws], *as amended*, arts. 478, 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

135. *See* Grillo, *supra* note 2.

136. Ley General de Salud [LGS][General Health Laws], *as amended*, art. 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

possession remains a serious offense punishable by previous law.[137] Additionally, establishments serving any quantity of drugs will remain criminally liable under the new law.[138] Those who are caught with an amount of drugs in excess of the law's minimum guideline amount will face full criminal prosecution as well.[139]

While the most noteworthy policy change under the decriminalization law is the freedom to possess drugs without fear of prosecution, a major provision under the law focuses on rehabilitating the 460,000 drug addicts in Mexico. Under the law, anyone caught in possession of a decriminalized amount of drugs will be "encouraged" to seek treatment, but for those caught a third time, treatment is mandatory.[140] The perpetrator will then have her name, address, and telephone number recorded by the police officer, who will then send her personal information to Mexico's Health Ministry.[141] The Health Ministry will contact the citizen and inform her of her residence.[142] For those caught in possession of drugs for a third time, rehabilitative treatment is mandatory.[143] Although there is no provision in the decriminalization law setting out precise punishment for repeat offenders who do not pursue mandatory treatment, the practice in Mexico has been arrest and incarceration.[144] Due to the law's focus on rehabilitation, a provision has been included to allocate funding to the construction of 310 new federal rehabilitation centers to handle the likely increase in patients.[145] Further, the treatment offered by the

137. Ley General de Salud [LGS][General Health Laws], *as amended*, art. 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.).

138. Ley General de Salud [LGS][General Health Laws], *as amended*, art. 477, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.). This provision was expressly added to the decriminalization bill in an attempt to avoid the emergence of establishments similar to "coffee shops" in Amsterdam which profit primarily from mind-altering substances.

139. Ley General de Salud [LGS][General Health Laws], *as amended*, arts. 478, 479, Diario Oficial de la Federación [DO], 7 de Febrero de 1984 (Mex.). *See also* Grillo, *supra* note 2.

140. Stevenson, *supra* note 3.

141. Louis E.V. Nevaer, *New Threat to Mexico's Drug Cartels: Rehab Center*, NEW AMERICA MEDIA (Sep. 12, 2009), http://news.newamericamedia.org/news/view_article.html?article_id=4559bd69c4e883b4f39dac9e5dd76e94.

142. *Id.*

143. *See* Stevenson, *supra* note 3.

144. *See* Nevaer, *supra* note 141.

145. *See* Wilkinson, *supra* note 1 (demonstrating that many commentators believe that there will be a significant shortage of rehabilitation centers in the near future notwithstanding the construction of 310 new facilities); see also Hawley, *supra* note 49 (explaining that an additional problem that has arisen relating to drug rehabilitation centers in Mexico is their location). Regina Kuri, spokeswoman for the Monte Fenix Center for Advanced Studies in Mexico City, which trains drug

Health Ministry's federal facilities will be completely free of charge for those caught in possession of legal amounts of drugs.[146]

## V. Analysis of Mexico's Decriminalization Policy

Considering Mexico's long history of failed law enforcement and unprecedented drug-related violence, the Mexican government's decriminalization policy is a refreshing change of strategy. It is understandable that many policy-makers in Mexico and the U.S. are outraged by the thought of Mexican citizens and international spring-breakers running wild in the country with hard drugs. Ideally, the Mexican government would prosecute both drug traffickers and mere users in order to express its unconditional disapproval of illegal drugs; however, there are logical reasons for not doing so.[147] The decriminalization policy could work to conserve valuable law enforcement resources and eliminate a widespread source of police corruption, while at the same time offering rehabilitation to Mexico's staggering number of drug addicts.[148] Furthermore, because the decriminalization policy has taken immediate effect, its intended benefits could materialize quite rapidly. However, the decriminalization policy alone will not be enough to transform the drug trafficking "culture" that has consumed Mexico, and it must be followed by aggressive law enforcement reform.

### *A. Conservation of Law Enforcement Resources*

A predominant motive behind Mexico's decriminalization policy is conserving its limited and poorly structured law enforcement resources.[149] The logic follows that drug traffickers in Mexico are far more elusive than drug addicts and mere users, and the history of prosecuting users has tied up the very limited number

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counselors, argues that many drug rehab facilities in Mexico are located in poor neighborhoods. According to Kuri, the state does not have the money or resources to send patients away to safer areas where they are shielded from temptation and retribution.

146. *See* Stevenson, *supra* note 3.

147. *See generally* Turbiville, *supra* note 59. Mexican reform campaigners argue that the relatively limited amount of jail space should not be filled with drug addicts who present no real threat to society. *See* Rory Carroll, Jo Tuckman & Tom Phillips, *Mexico and Argentina Move Towards Decriminalising Drugs*, Guardian (Aug. 31, 2009, 2:07 PM), http://www.guardian.co.uk/world/2009/aug/31/mexico-argentina-decriminalise-drugs.

148. *See* Stevenson, *supra* note 3.

149. *See* Stevenson, *supra* note 3.

of police officers, prisons, and courts.[150] As indicated above, empirical evidence suggests that drug addicts are generally nonviolent,[151] and the new focus on the source of the drug trafficking dilemma should be considered a wise measure given the devastating violence and corruption for which drug trafficking organizations are responsible. The record number of drug addicts in Mexico has nearly doubled to 460,000 in the last five years alone.[152] The relative ease with which Mexican police departments have expended their resources on such prevalent and uncrafty "criminal" drug users is extraordinary; meanwhile, drug trafficking organizations have taken advantage of the law enforcement deficiency.[153] As the virtually harmless non-violent drug addicts tie up police officers and occupy courtrooms and prison space in Mexico, drug trafficking organizations aggressively introduce and addict more and more Mexican citizens to their products.[154] In essence, drug traffickers have benefited enormously from the Mexican government's criminalization of drug possession and President Calderon has recognized this pattern. By treating drug addiction as a health problem rather than a crime under the decriminalization policy, the Mexican government can offer addicts treatment rather than allowing them to deplete the country's limited resources.

There is some validity to the argument that the Mexican government's resources will continue to deplete under the decriminalization policy because Mexico cannot afford the rehabilitation of drug addicts any more than it can afford to prosecute them. After all, if Mexico were to send all of those guilty of small-scale drug possession to rehabilitation centers, as the decriminalization policy recommends, then there would be no significant resource conservation due to the obligation to support an extreme influx of rehabilitation patients. However, a complete shift in the placement of drug addicts and casual users from prisons to rehabilitation centers is unrealistic and therefore not the immediate goal of the decriminalization policy. As stated above, the decriminalization policy directs police only to encourage perpetrators to seek rehabilitative treatment unless they are caught in possession of

150. *See* Wilkinson, *supra* note 1.

151. *See* Horowitz, *supra* note 7.

152. *See Latin America Moves to Decriminalize*, *supra* note 11.

153. *See* Carroll et al., *supra* note 147.

154. *See* Carroll et al., *supra* note 147; *see also* Alexis Okeowo, *Addiction Explodes in Mexico*, CHRONICLE FOREIGN SERVICE (Feb. 8, 2009), http://articles.sfgate.com/2009-02-08/news/17187173_1_drug-users-cartels-drug-prevention.

illegal drugs for the third time, in which case treatment is mandatory.[155] This lenient procedure toward non-repeat offenders, along with commitments from both Mexico and the U.S. to build hundreds of new federal rehabilitation facilities in Mexico,[156] demonstrates the Mexican government's recognition that the decriminalization policy is merely the beginning of a new approach that can lend itself to resource efficiency. For example, as opposed to prisons in Mexico, many rehabilitation facilities in Mexico are private institutions, and the decriminalization policy could encourage private investment and construction of additional facilities to take the burden off of government spending. Additionally, drug addicts have historically been a large source of continuous, petty crime[157] that can be eliminated if the focus on rehabilitation under the decriminalization policy is successful, thereby easing the burden on law enforcement resources. Most importantly, there is a considerable amount of data suggesting that rehabilitation is far cheaper than prison altogether.[158] Under these circumstances, promoting the gradual shift of drug users from prisons to rehabilitation centers could work to conserve the Mexican government's meager resources.

While the decriminalization policy can conserve a considerable amount of government resources and money, far more will be required to put Mexico's law enforcement in a position to battle formidable drug trafficking organizations effectively.[159] Law enforcemnt strategy as a whole must be perfected so that any resource efficiency derived from decriminalization can be capital-

155. Stevenson, *supra* note 3. Many critics are appalled that the decriminalization policy only recommends and does not require rehabilitative treatment for one caught in possession of legal amounts of drugs until a third offense. Many believe this demonstrates that the Mexican government's alleged health concerns for citizens is merely a pretext to cover up a panicking government. *See* Phillip Smith, *Mexico and Argentina Enact Drug Decriminalization*, STOPTHEDRUGWAR.ORG (Aug. 28, 2009), http://stopthedrugwar.org/chronicle/2009/aug/28/feature_mexico_and_argentina_ena.

156. *See* Nevaer, *supra* note 141.

157. *See* JAMES P. GRAY, WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT: A JUDICIAL INDICTMENT OF THE WAR ON DRUGS 29 (2001).

158. *See* Portillo, *supra* note 63 (providing studies which reveal that imprisonment is the most expensive way to deal with criminals in Mexico); *see also* Joseph B. Treaster, *Prisoners, and Prisons, Gain From Drug Therapy*, N.Y. TIMES, Nov. 16, 1992, at B4, *available at* http://www.nytimes.com/1992/11/16/nyregion/prisoners-and-prisons-gain-from-drug-therapy.html (stating that the high cost of imprisonment can likely be attributed to the need for adequate security to house criminals in the form of infrastructure and staffing). In the U.S., it can cost up to $100,000 to build a single prison cell. Additionally, prisoners with severe health problems create extreme financial obligations for the state.

159. *See generally* SCHAEFER ET AL., *supra* note 16.

ized upon.[160] Mexico must establish effective coordination among federal, state, and municipal police forces, especially with respect to data collection, communication, and operational planning.[161] As one branch of law enforcement obtains information, it must be immediately made available to other branches to ensure efficient use of manpower. This form of communication has never been perfected by the Mexican government despite extraordinary technological breakthroughs in computer programming.[162] Consequently, important criminal information, including complaints, witness statements, and investigative reports are not recorded on a reliable database for institutional reference.[163] To address this concern, much of the Merida Initiative funding from the U.S. has been dedicated to strengthening communications within law enforcement.[164] It will be up to the Mexican government to capitalize on this opportunity by establishing effective communication among law enforcement branches once and for all.

Furthermore, it is equally important for Mexican law enforcement to take advantage of modern technology relating to surveillance, forensic science, and rapid response of police units. As it stands, drug trafficking organizations in Mexico operate on a far more sophisticated level than law enforcement in terms of contemporary equipment.[165] The primitive methods by which Mexican police forces respond to crimes and investigate crimes leave no curiosity as to why drug trafficking organizations have dominated the country. Traffickers utilize state-of-the-art surveillance and communication hardware to track law enforcement and facilitate cross-border drug smuggling.[166] Meanwhile, until recently, the Mexican government lacked simple X-ray equipment to inspect vehicles entering the country, and its inspection capacity remains limited. Curbing this disparity will be difficult due to the Mexican government's poor financial situation; however, wise spending in terms of law enforcement technology can be economical. Because ninety-five percent of a typical law enforcement budget is spent on labor, shifting tasks from personnel to modern technology can cut

160. *See* SCHAEFER ET AL., *supra* note 16, at 13-19.

161. *See* discussion *supra* Part III(A); *see also* SCHAEFER ET AL., *supra* note 16, at 18-19.

162. *See* SCHAEFER ET AL., *supra* note 16, at 18-19.

163. *See* SCHAEFER ET AL., *supra* note 16, at 18-19.

164. *See* MERIDA INITIATIVE: FACTS SHEET, *supra* note 34.

165. *See* discussion *supra* Part III(B).

166. U.S. NATIONAL DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 2009 (2008).

substantial costs.[167] The Mexican government must learn from other nations that have mastered the modernization of law enforcement and update their antiquated practices. While Mexico's decriminalization policy promises appreciable resource efficiency, the Mexican government cannot expect to put an end to the drug trafficking dilemma until these more substantial changes are implemented.

### *B. Reducing Police Corruption*

Another essential purpose of the decriminalization policy relates to police corruption and bribery. The Mexican state police have been exceptionally prone to corruption for generations. The power to arrest drug users for possession of illegal drugs has afforded corrupt police officers more opportunity to bribe and extort.[176] Simple statistics illustrate this point. From December 2006 to August 2009, there have been over 15,000 police searches related to drug possession or small-scale dealing resulting in the detainment of just fewer than 100,000 people.[168] Interestingly, only twelve to fifteen percent of this large number of detainees was ever charged.[169] The large gap between those detained and those charged can be attributed to two features of police corruption: extortion and lack of evidence. Before the decriminalization policy, police officers were able to use the criminality of small-scale drug possession to bribe potential offenders. If the victim were in fact in possession of illegal drugs, police would threaten stiff jail sentences and ask for money or property to avoid charges. Bernardo Espino del Castillo of the Mexican Attorney General's office, who confirms that this was a major consideration in the enactment of the decriminalization policy, confirmed the prevalence of police extortion in small-scale drug arrests.[170] The new drug laws seek to prevent this type of extortion and promote honor and trustworthiness within the Mexican state police forces.

Many opponents of the decriminalization policy contend that the law will not be effective in battling corruption. The argument follows that if police officers are corrupt, it does not matter what the law holds because corrupt police officers do not follow the law.[171] It is no secret that, with respect to corruption, the

167. *See id.*
168. *See* Stevenson, *supra* note 3.
169. *See* Stevenson, *supra* note 3.
170. *See* Stevenson, *supra* note 3.
171. *See* Stevenson, *supra* note 3.

decriminalization policy is under inclusive because police officers who rely on substantial payoffs directly from drug trafficking organizations will remain corrupt regardless of whether they can extort drug users under the new law.[172] However, as the above-mentioned statistics demonstrate, police extortion in Mexico is incredibly substantial, and it promotes wrongdoing and untrustworthiness of the institution of law enforcement. Quite conceivably, small-time police extortion could very well be a first step in the development of more extreme corruption because it desensitizes young, impressionable police officers to immorality. While the U.S. continues to provide economic aid to the Mexican government for law enforcement, much of which is dedicated to police training and phasing out corruption, eliminating any source of corruption is essential. The decriminalization policy can effectively do away with police extortion relating to small-scale drug possession, and should be considered a positive measure given the police corruption epidemic in Mexico.

Despite this promising step, Mexican police forces are so deeply infected with corruption that merely eliminating small-time police extortion will not suffice to transform the culture of law enforcement. Putting an end to the corruption epidemic will be difficult, but there are additional steps that must be taken in order to initiate significant change. First and foremost, police officers must be paid higher wages. As the average police officer earns the equivalent of $700 per month, the temptation of large payoffs from drug trafficking organizations has proved to be irresistible.[173] Additionally, such poor earnings can instill indignity and lack of self-worth in police officers, which in turn discourages pride in law enforcement. The Mexican government must find a way to better compensate state police officers, whether it be through restructuring domestic expenses or Merida funds from the U.S.[174] The U.S. has apportioned a significant amount of Merida funding to improving police officer training; however, it should be considered equally important to provide funding for the increase of police officer wages. Doing so will make drug cartel payoffs less desirable for impoverished police officers while promoting honor within the institution of law enforcement. Strengthening Mexico's national security is of high importance in both

172. *See supra* Part III for information regarding the prevalence of police officer payoffs from drug trafficking organizations.

173. *See* SCHAEFER ET AL., *supra* note 16, at 17-18.

174. *See* MERIDA INITIATIVES: FACTS SHEET, *supra* note 34.

Mexico and the U.S.,[175] and in their cooperation in this matter, the need to increase police officer wages must be recognized and addressed.

Moreover, police officer recruiting standards must be improved to build an immunity to police corruption. While police academies in Mexico do have educational standards, they are generally not enforced, and the majority of Mexican police officers have completed only elementary school or less.[176] This has led to a culture of undisciplined, under qualified police officers that are especially susceptible to corruption.[177] Eliminating police misconduct and corruption will require recruitment of reasonably educated candidates with integrity and a passion for justice. The continued practice of empowering any person off the street with authority to enforce the law will not serve the Mexico's drug war well. As the Mexican government continues to wage war against drug cartels, it must ensure that recruiting standards are enforced at police academies across the country to ensure quality law enforcement that will remain impervious to corruption.

Phasing out corruption in Mexico will not happen overnight, nor will it be accomplished by any single measure. The corruption epidemic should be attacked at all angles while the Mexican government effectively strengthens its law enforcement system. Most importantly, Mexico must improve its ability to protect witnesses and other targets of drug trafficking organizations so police officers can comfortably refuse bribes without fear of being murdered. Achieving this level of security could take decades due to Mexico's lack of state funding and slow-moving legislative processes.[178] In the meantime, decriminalizing small-scale drug possession alone will not end police corruption, nor is it intended to.[179] The decriminalization policy is merely a positive start in Mexico's goal of chipping away at the corruption epidemic.

### *C. Mexico's Drug Addiction Problem*

Perhaps the most promising objective of Mexico's decriminalization policy deals with the country's rising drug addiction. Throughout Mexico's history of criminalizing drug possession,

175. *See* SCHAEFER ET AL., *supra* note 16.

176. Benjamin Reames, *Police Forces in Mexico: A Profile*, PROJECT ON REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO (May 15, 2003), http://escholarship.org/uc/item/1sq4g254;jsessionid=8C8F85A9DD8FCD424AC6BCE91FB1B16D#page-1.

177. *See* Cevallos, *supra* note 78.

178. *See* SCHAEFER ET AL., *supra* note 16.

179. *See* Stevenson, *supra* note 3.

there was no distinction between ruthless drug traffickers and less harmful drug addicts. Furthermore, the law did not distinguish between the criminal nature of drug trafficking and personal drug use except for penalties imposed.[180] The drug addicts who presented no real threat to society were sentenced to prison without regard for rehabilitation or education. Upon release from custody, these addicts would return to the streets in search of drugs and enrich trafficking organizations until their next encounter with law enforcement. Now, the Mexican government essentially treats the extraordinary number of Mexican drug addicts as offenders of public health laws rather than criminal laws.[181] This allows the Mexican government to address not only the country's unprecedented drug addiction problem, but also allows for concentration on trafficking organizations. The United Nations, in its 2009 *World Drug Report*, gave credence to this concept, asserting that decriminalization "keep[s] drugs out of the hands of those who would avoid them under a system of full prohibition, while encouraging treatment, rather than incarceration, for users."[182]

This concept of decriminalizing drug possession to promote rehabilitation is not unprecedented, and has proved to be enormously successful in Portugal.[183] In 2001, Portugal lifted criminal sanctions for all drugs in an attempt to control its rising drug addiction problem.[184] Under the law, all persons guilty of possessing small amounts of drugs are sent to social workers and psychologists to discuss rehabilitation instead of jail.[185] While many critics in the socially conservative country expressed concern that decriminalization would perpetuate Portugal's drug problem, results since 2001 have been extremely favorable.[186] Studies have shown that, since Portugal decriminalized drug possession in 2001, the country has been able to dramatically improve its ability to encourage drug addicts to seek rehabilitative help.[187]As a result,

180. *See* Smith, *supra* note 155.

181. *See* Smith, *supra* note 155. Recall the terms of the Mexican decriminalization law which provide offenders with free treatment options rather than jail time.

182. U.N. OFFICE OF DRUGS & CRIME, WORLD DRUG REPORT (2009), at 168.

183. *See* Maia Szalavitz, *Drugs in Portugal: Did Decriminalization Work?*, TIME (Apr. 26, 2009), http://www.time.com/time/health/article/0,8599,1893946,00.html.

184. *Id.*

185. *Id.*

186. *Id.*

187. *See generally* Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*, CATO INSTITUTE (Apr. 2, 2009), http://www.cato.org/pubs/wtpapers/greenwald_whitepaper.pdf.

the number of drug addicts seeking rehabilitative treatment in Portugal more than doubled since 2001.[188] Meanwhile, illegal drug use among teens and drug-related deaths have steadily declined.[189] This success can be attributed to the fact that the most substantial barrier to the rehabilitation of drug addicts before Portugal's decriminalization was the addicts' fear of criminal sanctions upon seeking help.[190] The decriminalization policy in Portugal has eliminated addicts' fear of prison and motivated them to face their addictions. Consequently, once a country known for its widespread drug addiction, Portugal's current drug use rates for almost every drug are far lower than Europe generally.[191] Additionally, critics' fears of Portugal turning into a "drug tourism" destination have not materialized.[192] Not surprisingly, policymakers in Portugal are virtually unanimous in their support of decriminalization, and there has been no serious political push to return to criminalization.[193]

## VI. CONCLUSION

The general theme of the Mexican government's decriminalization policy is desperation. Mexico is in a state of total chaos, as statistics concerning drug trafficking, cartel violence, and police corruption across the country are staggering. Mexico's dilemma has gotten so tumultuous that just its secondary effects in the U.S. have warranted over $1.4 billion in U.S. taxpayer money to combat drug trafficking.[194] Traditional "zero tolerance" drug policies have failed in Mexico for generations because they tend to create optimal conditions for drug traffickers to thrive.[195] The Mexican government desperately needed to implement a fresh approach to law enforcement concerning drug trafficking, and the decriminalization of small-scale drug possession was a rational attempt to implement change.[196] However, the decriminalization policy alone will not fix Mexico's broken law enforcement system, nor will it

188. *Id.*

189. *See id.*

190. *See id.* at 6-9 (stating that Joao Castel-Branco Goulao, the chairman of Portugal's principal drug policy agency, the Institute on Drugs and Drug Addiction, confirmed that a predominant reason for Portugal's decriminalization to encourage rehabilitation by eliminating drug addicts' fear of criminal prosecution).

191. *See id.* at 22.

192. *See id.* at 6.

193. *See id.* at 28.

194. *See U.S. Delays Counternarcotics Aid*, *supra* note 34.

195. *See* discussion *supra* Part V of this note.

196. *See* Carroll et al., *supra* note 147 (providing that immediately upon writing the

put an end to the stranglehold drug trafficking organizations have on the country. The Mexican government must continue to revamp and strengthen the institution of law enforcement through improved conditions and wages for police officers, police training, equipment, witness protection programming, and systematic coordination and communication among branches of law enforcement. Without such improvements, drug trafficking organizations will always be a step ahead of law enforcement and will continue to haunt the country.

The decriminalization of illegal drug possession is not unprecedented. Colombia's highest court declared the criminalization of drug possession unconstitutional in 1994.[197] In 2001, Portugal officially eliminated all criminal penalties for drug possession, which has proved to be remarkably successful.[198] The Brazilian government passed a decriminalization bill similar to that in Mexico in 2006, where rehabilitative treatment may be required in lieu of incarceration.[199] Today, decriminalization continues to gain worldwide approval around the globe. The Argentine Supreme Court, like Brazil, declared the unconstitutionality of drug possession just four days after Mexico's decriminalization became law. Similar legislation can be expected in Uruguay and Ecuador in the near future.[200] This trend is most common in countries where law enforcement resources make the prosecution of mere drug users unfeasible, but the potential benefits of decriminalization extend far beyond resource efficiency. Could the U.S. be next in line to decriminalize the possession of small amounts of illegal drugs? Many commentators believe that the U.S. will face pressure to decriminalize if it is determined to be a success in Mexico.[201] Skeptics of this possibility ought to wonder why the Obama administration was utterly silent during the passing of Mexico's decriminalization bill.

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decriminalization bill into law, the Mexican government essentially reduced drug traffickers' potential to profit and corrupt state police).

197. *See* Smith, *supra* note 155.

198. *See* Szalavitz, *supra* note 183.

199. *See* Szalavitz, *supra* note 183.

200. *See* Smith, *supra* note 155.

201. *See* Carrol et al., *supra* note 147. Where Walter McKay, spokesman for Mexico's Institute for Security and Democracy, predicts that the U.S. will be inclined to consider legalization or decriminalization when its fear of a narco-tourist boom in Mexico does not occur. *Id.*