

Dr. Francisco E. González

Riordan Roett Senior Associate Professor

Latin American Studies Program

The Johns Hopkins University School of Advanced International Studies (SAIS)

Washington, D.C.

Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the invitation to testify today. There is no doubt that the Mexico-United States relationship has strengthened significantly since the 1990s and this is reflected in economic, demographic and political indicators. Mexico ranks as the second country in the world for U.S. exports while it is number three in terms of goods imported by the U.S. The bilateral trade between the two countries grew exponentially between the late 1990s and the late 2000s, and by 2011 it was close to half a trillion dollars. A country of 115 million inhabitants with a GDP per capita of approximately \$10,000, an economy of roughly \$2.3 trillion, and a country that shares a two thousand mile border with the United States, it is unsurprising that most official meetings between American and Mexican government officials usually start with the invariable motto ‘there is no more important bilateral relationship for the United States than Mexico and, obviously, vice-versa.’

### **Merida Initiative and the Absence of the Rule of Law in Mexico**

The bilateral relationship grew significantly closer with respect to security, intelligence and military cooperation during the presidency of Felipe Calderón (2006-2012) of the conservative Partido Acción Nacional (PAN). Calderón asked President George W. Bush for assistance during a meeting they held in Mérida, Yucatán in 2007. The Merida Initiative, involving resources appropriated by the US Congress of close to \$2bn between 2008 and 2013, was the result. Focused originally on training and the sale of military and police equipment to help the Mexican government pursue the so-called ‘war on drugs’, the initiative had a significant and welcome change of focus in 2010, which emphasized helping Mexico to introduce the rule of law to the country.

Many policymakers, think tanks and policy documents in Washington and Mexico City make the mistake of saying that the aim is to help Mexico “strengthen the rule of law.” This is incorrect. There is and has not been a rule of law in Mexico. According to the Centro de Estudios y Docencia Económica (CIDE) in Mexico City, 93% of accused criminals are prosecuted without a prior investigation. Usually, defendants cannot access government documents, trials are carried out in secret, and key witnesses are coerced and 80% never see the judge that sentenced them.<sup>1</sup> Likewise, a study by the National Center for State Courts estimated that defendants are found guilty 90% of the time, but evidence against them is almost nonexistent.<sup>2</sup>

The numbers reported make it clear that this is not just a pedantic quarrel over qualifying official phraseology. Had there ever been a rule of law in Mexico then it would be feasible to think about minor changes that could be formulated and implemented to strengthen such a system. Because there has never been a rule of law in the country, the job is not a question of modifying, substituting, and tweaking rules, procedures and behaviors. It amounts to bringing to life a system from its inception: constructing a criminal justice system by teaching children in schools about the importance of equality before the law and impartiality irrespective of power, money and influence; strengthening the many civil society organizations, universities and social media outlets which have, happily, become a thorn on the side of official impunity and corruption; not cleaning but clearing the Augean stables to a clean slate by getting rid of Mexico’s police forces, prosecutors’ offices, courts, judges, and their many accomplices, those who bribe them and give them incentives via promises of promotions or threats of setbacks.

Such a Herculean task will not be carried out in the short term either by Mexico alone or Mexico with the help given to it by the United States. However, this is by far the most important positive medium to long-term contribution that American taxpayers’ money can bring about not only to secure the US southern border, but also to ensure that a basic sense of justice and fairness is set up and can work effectively in one of the United States’ most important economic and diplomatic partners. If Mexico prospers the United States prospers. If Mexico is mired in social

---

<sup>1</sup> Ana Laura Magaloni Kerpel, “Context and Positive Implications of the Mexican Judicial Reform,” paper presented at the Challenge of Reforming Mexico’s Justice System Seminar, *Woodrow Wilson Center’s Mexico Institute*, Washington, D.C., May 4, 2007.

<sup>2</sup> Layda Negrete and Roberto Hernández, “‘I don’t remember’: Police Accountability and Due Process in Mexico City Criminal Courts,” paper presented at the Challenge of Reforming Mexico’s Justice System Seminar, *Woodrow Wilson Center’s Mexico Institute*, Washington, D.C., May 4, 2007

conflict, lack of economic opportunity, and lawlessness, where invocation of the law means an opening to negotiation and extortion rather than the impartial application of rules and procedures that help to dispense fair punishment and rewards, the United States will feel a significant drag to its own well-being because the two countries are joined at the hip.

One of the reasons why the early years of the Merida Initiative ended up surrounded by controversy was the focus on helping the Calderón government to fight drug trafficking organizations (DTOs) by providing means to strengthen Mexico's military and police forces to carry out this mission. Given the absence of a rule of law in Mexico, complaints of serious abuses started piling up regarding the conduct of Mexico's military and police forces against innocent civilians. I have attended dozens of official meetings between Mexican and US government officials and the defense line on both sides invariably was "the death toll is unfortunate, but as around 90% of the dead are individuals connected to drug trafficking organizations or officers and troops who fell in the line of duty, the strategy is working." By the time the number of violent deaths due to drug-related operations hit 60,000 in 2012, the said invocation was used less frequently given the hideous implications of at least 6,000 innocent civilians killed as a result of President Calderón's strategy and the backing by the United States.

### **Worsening General Perception of US Operations in Mexico**

The US Congress struck the right cord by conditioning the disbursement of some of the resources under the Merida Initiative subject to State Department confirmation that human rights were not being violated through the use of US taxpayers' money. To its credit, the State Department has at least twice stopped disbursement of such resources temporarily given the worsening of human rights' violations in Mexico carried out by both police and military forces.

A turning point for Mexican public opinion occurred after a whistleblower uncovered the 'Fast and Furious' operation, carried out by the Arizona field office of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) between 2006 and 2011. The operation, which allowed more than 2,000 AK-47 weapons "to walk" into Mexico to try to reach highly placed drugs kingpins for arrest, unraveled after the death due to one of these weapons of U.S. Border Patrol Agent, Brian Terry, in Arizona on December 15, 2010. Mexicans expressed their sadness

and solidarity for agent Terry and his family's irreparable loss. Mexican news outlets and social media also expressed their concern given that it had taken the loss of life of an American public official to bring this inexplicably macabre episode to the public attention of Americans. The Mexican Attorney General office confirmed that some of these weapons had been recovered in crime scenes where at least 150 Mexicans were maimed or lost their lives, but few officials from either the US or Mexico even blinked an eye. As of February 2012, more than 1,000 of these weapons remained 'walking' around Mexico.

Another incident that acted as a significant eye-opener for both Mexican society and the US government was the ambush of a US vehicle with diplomatic plates carrying two CIA agents, and a third individual, which came under attack by Mexican Federal Police forces on the road between Mexico City and Cuernavaca on August 24, 2012. The incident was deeply embarrassing for President Calderón but he decided to retain his trusted head of Public Security in charge of the federal police. This event was an eye-opener to US government officials because it showed how well informed and brazen Mexican police could be regarding movements of US covert agents operating in the country. In turn, Mexican politicians of all stripes, including some in president Calderón's PAN complained in public about the shambolic lack of control of police forces. The incident helped to fuel those voices among the left Partido de la Revolución Democrática (PRD) and the center, recently victorious in presidential elections Partido Revolucionario Institucional (PRI), who considered that Calderón's strategy had gone berserk.

Mainstream media and social media fed the perception that Calderón had ended up giving US law enforcement, intelligence, and military forces no-strings-attached access in Mexican territory, and this led to a significant backlash against this strategy. The fact that close collaborators of President Calderón were left in ignorance regarding the extent of US-Mexico cooperation led to a call for a new approach. Moreover, weeks before Calderón stepped down on December 1, 2012, leaks purported to show that the president had also allowed US unmanned planes to operate in Mexican territory to gather information and help continue building the strategy to clampdown on the DTOs. Again, a majority in the political class, including prominent members of the president's party was taken by surprise, and the backlash against his way of doing things was sealed.

## **A New Approach to Fighting DTOs and Procuring Lower Levels of Violence and Homicides**

When President Enrique Peña Nieto assumed power in Mexico on December 1, 2012, he reiterated his intention to change some of the underlying principles that underpinned Calderón's 'war on drugs.' The change in strategy was thought necessary given not only some of the high visibility, high impact events and the effect they had on Mexican public opinion described above. Throughout the presidential campaigns in the run-up to the July 1, 2012 elections, candidates and their pollsters were told time and time again that the concerns about basic individual and family security, and the climate of violence that had taken over many cities as well as big swathes of the Mexican countryside, were electors' top concerns.

Polled citizens expressed a positive opinion about President Calderón's courage to confront the DTO's but gave him low marks and expressed fear about the effects his 'war on drugs' had in the everyday life of countless cities, towns, and villages. Many citizens came to feel harassed, threatened and in many cases were mentally and physically abused by both competing DTOs as well as local, state and federal police forces and military convoys sent to their localities.

My own position, after having heard many family, friends, working colleagues, and acquaintances scattered around the country – Mexico City, Morelos, Michoacán, Jalisco, Coahuila, Nuevo León – recount their perception of everyday living conditions during the last six years is decidedly pessimistic. Extortion, almost unheard of among the backbone of middle class Mexico – doctors, lawyers, economists, and engineers – into the early 2000s has become endemic in the last few years. A case that helps to illustrate the climate of intimidation that society is under given the collusion between DTOs and high ranking members of local, state, federal governments and police and military officers occurred to someone my family knows well. The individual in question is a prestigious heart surgeon who is well known for his involvement with good causes in his city. A military platoon was sent to take over his house without a search warrant. His crime: his daughter's mother-in-law was a state attorney general who resigned and threatened to go public about systematic corruption and close links between the military stationed in the area and DTOs. The military ransacked, robbed, destroyed, and defecated in the doctor's house. The doctor, an influential individual in the city, went to see the

general in charge of the garrison stationed there. He was told that the action had been just a taste of what could happen to him and his family if his daughter's mother-in-law opened her mouth. The doctor and his family decided not to pursue the matter further and thought about emigration to another country. Stories like this one have been reported in their hundreds both in mainstream as well as social media.

As an academic, I was trained to be skeptical, to pursue lines of inquiry through the search for evidence that falsifies stated hypotheses and, above everything else, to always keep looking for angles that can yield relevant questions in search of the truth. I am unable to corroborate the hundreds of stories. I can vow for the one I have related from first-hand accounts by eye witnesses and the meeting between the general and the doctor.

### **The United States Can Make a Big Positive Difference: Contribute to the Birth of the Rule of Law in Mexico**

The micro-taste of hideous abuse of power described above is meant to raise awareness among the members of the Honorable US Congress about where American taxpayers' money could have or has been allocated in Mexico, and its consequences. US citizens and their political representatives deserve better. President Peña Nieto's decision to re-centralize law enforcement and intelligence functions under the Secretaría de Gobernación (Segob) is not necessarily bad. The restoration of basic oversight functions centrally is a necessary prerequisite to rein in the significant fragmentation, bordering on anarchy that Mexico has experienced during recent years.

For the record, I am not and have never been a member of any political party. Neither have I ever worked for any government or any public project. I am proud to be a teacher and my weapons are my reason and my independent voice. I think that the most important action that US representatives of taxpaying American citizens can take is to deepen their commitment to help Mexico create the rule of law. The US tradition of open, oral trials, presumption of innocence, trial by a jury of peers, and the basic notion of equality before the law are essential if Mexico is to consolidate its democracy and prosperity in the medium to long term.

The 2008 criminal justice system reform that President Calderón and the Mexican Congress enacted and which is supposed to be implemented between then and 2016 could be a significant enabling block in creating the basis for the birth of a true liberal democracy in Mexico. I urge the Honorable representatives of the great people of the United States to concentrate their economic, diplomatic, political and human capital efforts in helping Mexico carry out this major institution building and political culture change effort. It is no exaggeration to equate it with the clearing of the Augean stables, a Herculean task. I believe Mexicans with US help are up to the task but this requires good faith and a willingness to resist the temptation to resort to force as the solution. Instead, what is on offer is the less glamorous embrace of the arduous task of education, training, trial runs, monitoring, and moral support that may allow a fair, effective criminal justice system to be born in Mexico.