

# The New Migration Law Mexico's Continuing Failure To Protect Migrants

John Washington\*

Fredy had already died twice before I met him. The first time they hit him in the chest with the butt of an AK-47 while he was up against a wall. The man who killed him, he remembers, was tall and fat and put his weight behind the butt of the gun. Fredy's sternum was crushed, his heart stopped.

He didn't wake again until he was already in the morgue. They'd even put a tag on his toe.

That was back more than a year ago. In Guatemala.

Fredy chuckled about the fright that he must have given the mortician, waking up halfway inside a body bag.

Fredy is thin, short, has big eyes, dark hair, and smiles frequently and widely. Everything about him seems sweet. He has a sweet, soprano voice and a sweet bright-toothed smile. He has a little bit of acne on his cheeks and forehead and he likes to sing to himself: sweet, high, slow songs. The few nights we slept on the same floor in the shelter, he even sang himself to sleep.

I met Fredy at the "Hermanos en el Camino" (Brothers on the Road) migrant shelter in Ixtepec, Oaxaca. He was overstaying the maximum three-day reception because it was in the shelter that he died for the second time.

Maybe he had a premonition that some bad was coming to him. Maybe he saw the bandits with their machetes working their way down the train. Maybe he had dozed off and had no idea what was coming to him. Maybe he was in the middle of song. It's unclear exactly what happened. What he remembers is that there was a group of them, and that they knew or suspected that he had family in the U.S. They secured his arms. They secured his head. Then they forced a bottle into his mouth. He couldn't scream. He could either drink or suffocate.



Courtesy of the author

He drank.

I asked him what it tasted like. Was it water or soda? Milky or sweet? He doesn't remember.

As his assailants waited for the drug to take effect, they dropped their guard. Fredy didn't want to get hit in the chest again. He didn't want to wake up in another morgue. So he ran. And he made it, cutting a few corners and crashing into the bushes. A few minutes later he made it to the shelter. He was sweating like he had never sweated before. And yet he felt cold. He was starting to tremble. One of the volunteers at the shelter saw him. Tried to lay him down. That's when Fredy started vomiting.

But it was too late. The poison, or the drug, was already in his bloodstream.

---

\* Visiting researcher at CISAN, johnbwashington@hotmail.com.

By the time the ambulance arrived Fredy's heart had stopped again. The paramedics got him in the ambulance and, on the ride to the hospital, defibrillated him three times before his heart kicked back in.

I met Fredy three days later.

If you want to see legislative evidence of the poor treatment of migrants on the North American continent you could start as far back as the United States Naturalization Act of 1790, which established limitations to citizenship based on color of skin. That is, only white people ("free white people... of good moral character") could be citizens. In Mexico the laws weren't as explicitly racist, but, in 1854 with the Decree on Foreign Citizenship and Nationality of Inhabitants, still limited nearly all benefits, even fishing on Mexico's coasts, exclusively to Mexican citizens.

In the last century and a half since this decree, in both the United States and Mexico, migrants have been wanted, put to work, granted amnesty, hated, oppressed, expelled, and just about everything in between. The only thing that has remained constant has been the migrants. They keep moving. And the trend on behalf of both the U.S. and Mexican governments has been to pass legislation, including those laws that purport to protect, that makes migrants vulnerable. Vulnerable and exploitable.

They renewed their commitment to forging new and realistic approaches to migration to ensure it is safe, orderly, legal, and dignified, and agreed on the framework within which this ongoing effort is based...respecting the human dignity of all migrants, regardless of their status; recognizing the contribution migrants make to enriching both societies; shared responsibility for ensuring migration takes place through safe and legal channels.<sup>1</sup>

The quote is from a Wikileaks document detailing Mexican President Vicente Fox's September 2001 visit to Washington. The meeting between Presidents Fox and Bush launched the so-called "Partnership for Prosperity," in which the matter of migrants, their safety and dignity, was a primary concern. A few days after the meeting, however, the September 11 terrorist attacks dramatically changed the way U.S. Americans viewed undocumented migrants. The hope for "safe, orderly, legal, and dignified" migration was buried under the rubble of the Twin Towers. Since 9/11, the U.S. government, besides building more walls and funding more Border Patrol agents, has only taken steps, whether state-by-state or federally (as with the Secure Communities program),

Migrants keep moving.  
And the trend on behalf of the U.S.  
and Mexican governments has been  
to pass legislation that makes migrants  
vulnerable. Vulnerable and exploitable.

to hound, catch, scare, and deport undocumented migrants (see, for example, for evidence of systematic federal abuse, No More Death's recent report, "A Culture of Cruelty"). In the past 11 years, the U.S. government has done effectively nothing to ensure the dignity or safety of undocumented migrants.

But what about Mexico?

Though Mexico is also a destination country for migrants, primarily it is a migrant stepping-stone for an estimated one million Central Americans who annually channel through its cargo-rail and highway systems toward the United States. And, ostensibly heeding the 10-year old clarion for the "safe, orderly, legal and dignified" passage of migrants, in May 2011, Mexican legislators passed the new Migration Law.

Fredy is from a small town outside of Mazatenango, Guatemala. After his father died when he was a boy, he grew up in a small house with his five brothers and sisters. He went to school until he was 14, when, after his eldest brother died and his impoverished, desperate mother started drinking, Fredy moved into the streets, begging for bread and pocket change. After his mother cleaned up a few years later, Fredy moved back in with her, working on the large corporate farm, the *fincas*, the family both lived and worked on. Then, at 19, Fredy married his childhood sweetheart. A year later (one year ago) the young couple had a child, a little girl named Iris.

The story is as sweet as Fredy telling it: his soft, singsong voice, his wide, bright smile, his misting, distance-drawn eyes. I asked him why they named their daughter Iris. Because, he explained, there are a lot of rainbows where they live, and the little girl reminded him and his wife of a rainbow. In Spanish rainbow is "*arcoiris*." The story is almost too sweet.

But the thought of raising his daughter in the same nearly destitute conditions he himself was raised in cut all the sugar and didn't give Fredy much hope. And then, one day, his elder sister was threatened by a local gang in the city. When Fredy went to go help, they put him against a wall and a large, fat man hit him in the chest with the butt of a rifle, crushing his sternum, stopping his heart. He woke up later, in a morgue, a tag on his toe. When he recovered, a few months later, he

It is on cargo trains where migrants are particularly easy targets for “criminals without scruples.” The UN recently estimated that as many as 18 000 migrants are kidnapped annually.

and his wife decided that he should go north, find his cousin in Los Angeles and work for a year so he could move his family off the farm, to somewhere safer, to somewhere with more opportunities for little Iris.

The Mexican Migration Law was passed in order to, in rhetoric reminiscent of the 2001 Fox-Bush meeting, ensure the “legal and orderly flow of migrants” across the country. For years, especially since the fractioning of the cartels and the spike in narco-violence in the country, migrants in Mexico have been especially vulnerable to extortion, robbery, beatings, kidnappings, rapes, and murder. There is no doubt that something needed to be done to protect migrants from, in current President Calderón’s words, the “criminals without scruples.”<sup>2</sup> But in the past 10 months since the implementation of the new law, have things actually changed for the better? Are migrants safer in Mexico? Do they feel safer? The answer, sadly, seems to be a resounding no.

One of the most concrete policy changes in the new law is the promise of temporary (180 day) visas for migrants to cross the country safely. In theory, the visas give the migrants the chance to take public transportation instead of having to illegally cross the country on top of cargo trains in fear of migration checkpoints. It is on these cargo trains where migrants are particularly easy targets for the “criminals without scruples.” The United Nations recently estimated that as many as 18 000 migrants are kidnapped annually.<sup>3</sup> Alejandro Solalinde, one of the best-known migrant rights voices in the country and the founder of the shelter where I met Fredy, recently estimated that seven out of ten undocumented migrant women are raped on their journey north.<sup>4</sup> The trails of the undocumented are, without doubt, incredibly dangerous. The opportunity to skip these trails where “rape is part of the cost of the ticket” would be an incredible improvement for a journey that more than a million take each year.<sup>5</sup>

But, in practice, the visas promised by the new law are effectively impossible to obtain. There are three basic requisites a migrant must meet to procure the visa: 1) proof that the migrant plans to return to his or her country of origin;

2) proof that the migrant will be economically solvent during his/her passage through Mexico; and 3) a letter of invitation from the employer or organization that is inviting the migrant to the United States. Not only are these three requisites almost insultingly impossible for an overwhelming number of migrants to meet, but, due to fear of authorities and the daunting bureaucratic runaround, these temporary visas are not even being requested.

In my two weeks at the shelter where I met Fredy, I saw hundreds of migrants in their transit north. If we broached the topic of security, many —nearly everyone I spoke with— told me they were scared of what might happen to them on the remainder of their journey. Not one of them mentioned even the possibility of a visa. I asked long-term volunteer, Karla Miranda, who was temporarily in charge of the shelter, how many migrants succeed in obtaining a visa. Miranda explained to me that volunteers only help migrants procure visas who have suffered some type of violence (usually rape, assault or kidnapping). But if —I pressed— if they haven’t suffered an abuse, can they still get a visa? She told me she’d never heard of a single case. “The reality,” she said, “is that a lot of these people are extremely vulnerable.”

But isn’t that why the law was passed, to help these vulnerable people? I asked her what they had to be scared of in applying for a visa. She hesitated, and then repeated herself. “Look, they are vulnerable. And they are very scared.”

The aforementioned United Nations report also described that investigators have received “concrete, detailed, and credible information of cases of forced disappearances at the hands of public authorities (as well as by criminal groups working closely with public authorities).”<sup>6</sup> According to Mexico’s own congressional report in 2011, more than a fifth of all kidnappings in the country involve police officers or soldiers.<sup>7</sup> That is to say, since in practice a migrant needs to have already suffered some type of abuse to obtain a visa, one-fifth of the time that same migrant would be appealing to a representative of a system that has committed the very crime they are being asked to denounce.

I asked Wilmer, a young Honduran who had been beaten by bandits and threatened with being handed over to the notoriously brutal criminal group Los Zetas if he didn’t pay a fee to a band of less organized bandits, how he felt during the application process volunteers at the shelter were helping him with. He said that he was nervous. I asked him what he was nervous about. “Los Zetas,” he responded. I asked him to clarify.

“You were nervous about Los Zetas when you were giving your interview at the Migration Office?”

“That’s right.”

“And were Los Zetas there?”

“No.”

“And how did the agents treat you?”

“They were fine at first.”

“And then?”

“Now they’re not very nice.”

I asked him to explain.

“They are,” he hesitated, then repeated, “not very nice.”

Again, I asked him to explain. They hadn’t done anything to him, he assured me, but they simply weren’t very kind. Despite the unclear implications of the “not very nice” treatment by the immigration officials (and Wilmer’s hesitancy to elaborate), one fact is clear, the migration officials weren’t going out of their way to change the common perception of a corrupt government in Mexico.

And yet the fear involved in obtaining a temporary visa is not the only difficulty.

After denouncing the crime (which, as in Wilmer’s case, usually involves multiple interviews with both police and migration officials), the migrant then needs to provide an official form of identification. For many, this is another potentially insurmountable hurdle. Many migrants from rural parts of Central America don’t have birth certificates, or official IDs. Wilmer, for example, had to wait two weeks for volunteers at the shelter to send a letter to the Municipal District in Honduras where he was born so that they could send him back a birth certificate. And it doesn’t always happen so quickly.

To continue with the visa process, once a migrant does finally have his or her papers, he or she then has to prove that they have a place of temporary residence while awaiting a verdict on the visa. This, of course, unless the migrant is able to find the support of an aid group or a shelter, costs money. Then, once the multiple interviews are over and the proofs of identity provided, it usually takes 45 days to process the paperwork. That is 45 days, at least, that the migrant is usually not working. During this month-and-a-half-long wait the migrant also has to report to the Migration Office and sign a paper to prove that he/she hasn’t continued his/her intended journey north, leaving themselves vulnerable to another potential kidnapping, to further violence, to more “not very nice” treatment, and, commonly, to incredible boredom. Wilmer spent most of his days, when not lending a hand to the volunteers at the shelter, sitting in patches of shifting shade

or playing bottle-cap checkers on a piece of cardboard with other passing migrants.

I left Fredy before he had made his decision as to whether he would wait the (at least) 45 days for a potential visa, continue the trip on the top of a train, or head back south to his wife and child. He wanted to go north, I could tell. A cousin, who I talked to a few times on the phone, was expecting him in Los Angeles and had a job lined up for him. If he waited out a visa for at least 45 days, as he saw it, he’d be losing money. But he didn’t want to get back on the train either, which has taken and mutilated so many lives. He didn’t want to die for a third time. Before I said goodbye to him, I asked what he was leaning toward. He told me that his heart was still weak, from the poison, from his second death, and that he wanted to recover his strength another day or so and talk to his wife before deciding what to do.

The question remains: what has the Mexican government effectively done to ensure the promise of “safe, orderly, legal, and dignified” migration? The new Migration Law is more of a bone thrown to migrant aid advocates than an actual step forward. If Mexico or the U.S. wants to take any steps toward what was promised back in September 2001, lawmakers need to not skirt around trying to appease one political faction and not offend another. They need to model laws based on the needs of the actual migrants.

I later discovered that Fredy, instead of continuing the trip north, decided to go back to his wife and little Iris in Guatemala, where he is as of the finishing of this article. ■■■

---

## NOTES

<sup>1</sup> Colleen W. Cook, Foreign Affairs, Defense, and Trade Division, Wikileaks Document Release, “Mexico-United States Dialogue on Migration and Border Issues 2001-2006,” <http://wikileaks.org/wiki/CRS-RL32735>, February 2, 2009, p. 9.

<sup>2</sup> Jorge Ramos, “Calderón promulga Ley de Migración,” May 24, 2010, *El Universal* (Mexico City), <http://www.eluniversal.com.mx/notas/767626.html>.

<sup>3</sup> Human Rights Watch, “World Report 2012: Mexico,” January 2012, <http://www.hrw.org/world-report-2012/mexico>.

<sup>4</sup> Jon Sistiaga, “La violación como precio del pasaje,” *El País*, January 16, 2012, [http://internacional.elpais.com/internacional/2012/01/16/actualidad/1326673727\\_748856.html](http://internacional.elpais.com/internacional/2012/01/16/actualidad/1326673727_748856.html).

<sup>5</sup> Ibid.

<sup>6</sup> Víctor M. Quintana S., “Ahora ni candil de la calle...,” *La Jornada*, (Mexico City), March 16, 2012, <http://www.jornada.unam.mx/2012/03/16/opinion/027a1pol>.

<sup>7</sup> Damien Cave, “In Mexico, Kidnapping Ignored as Crime Worsens,” *The New York Times*, March 17, 2012.