

As Latin Nations Treat Gays Better, Asylum Is Elusive

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Byline: Ceci Connolly

Washington Post Staff Writer

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Body

Quietly over the past 14 years, gay men and lesbians from Mexico have sought -- and received -- political asylum in the United States based on their sexual orientation and the argument that the culture of "machismo" in their country has sometimes put homosexuals there in danger.

But as Mexico and other Latin American countries begin to liberalize laws regarding homosexuality, hold gay pride events and expand treatment for people with AIDS, it is becoming increasingly difficult to win such cases, say asylum applicants, U.S. lawyers and Latino activists.

"For a time, it seemed like it was a slam-dunk if you were gay, from Mexico and filed for asylum in the United States," said Arthur S. Leonard, a professor at New York Law School. "But there's been a turning point. The gay rights movement has started to make progress in Mexico, and it's a little harder to show" that asylum is warranted, he said.

The subtle, unofficial shift in immigration policy has significant public health implications, say leaders throughout the region who view asylum as a path to better treatment of people with HIV. Though many applaud the progress on gay rights and AIDS care, they caution that it may take decades to reverse deeply ingrained attitudes toward homosexuality that are closely connected to the spread of HIV in the region.

Figures for asylum decisions are unavailable, but immigration lawyers hazard a guess that in the past, dozens were granted every year to gay Mexicans. The Department of Homeland Security does not track asylum by categories such as religious affiliation or sexual orientation. But Leonard and other experts report that applications by gay men and lesbians from throughout Latin America are encountering more hurdles.

Last fall, U.S. circuit courts rejected asylum requests by two gay Mexican men, and a recent policy requires that every asylum request from Mexico undergo a separate review by homeland security officials in Washington. Those developments have raised alarm in immigrant-heavy communities in San Diego and elsewhere.

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Officials at the Department of Homeland Security, speaking on the condition of anonymity, said there has been no policy change regarding asylum eligibility for gay men and lesbians. They said they have no way of knowing whether asylum officers or immigration judges have become more skeptical about requests from Latin American homosexuals because they do not track that data.

"We were winning cases left and right," said Antonio Munoz, an advocate in San Diego. "Then last year, it really tightened up."

No group in Mexico has been hit harder by AIDS than men who have sex with men -- and nothing has done more to fuel the epidemic than homophobia, said Jorge Saavedra, chief of Mexico's AIDS programs. In the nation where the International AIDS Conference convened last week, gay men are 109 times as likely to contract HIV as the general population, he said.

Across Latin America, men who engage in homosexual sex are 33 times as likely to be infected with HIV, according to a report released at the conference by the Foundation for AIDS Research, known as AmFAR.

"People think the homophobia is under control, which is not true," Saavedra said. "Homophobia in Mexico is really high."

Saavedra, who is openly gay and HIV-positive, has a unique perspective on the situation in Mexico. As a government official, he points to achievements, particularly Mexico's low overall infection rate of 0.3 percent of the population. But because the country routinely experiences medication shortages, discrimination and violence against gays, some still need asylum, he said.

It was not until the 1990s that sexual orientation was even considered a reason for political asylum. But in 1994, then-Attorney General Janet Reno issued an order allowing homosexuals to gain asylum if they could demonstrate that they faced persecution because of their sexual orientation. Many of the early applicants came from Latin America, with its conservative, strongly Catholic, macho culture. They were men such as Fernando Legy, an unemployed 26-year-old seeking asylum in San Diego.

While growing up in the state of Mexicali, Legy said he was raped by male friends of a brother-in-law. By the time he was a teenager, Legy and his boyfriend were often arrested by police who demanded money or insisted they perform sex acts on men in the jail, he said.

"It was like a show to them," he said. When an employer gave him a random blood test and discovered he had HIV, Legy lost his job. At one point, he was so depressed that he tried to drink a mix of toxic chemicals. But the bitter brew burned his mouth.

"I kind of hide here in the United States because the men who raped me have made threats," he said, noting that two are involved in drug trafficking. "I'm afraid to go back."

Between 1995 and 2006, about 1,200 Mexicans were killed because of their sexual orientation, according to estimates by the Mexican gay rights group Letra S. Two years ago, after Mexico City enacted same-sex civil union laws, many -- including U.S. immigration and asylum officials -- expected life to improve for Mexico's gay community, said Alejandro Brito, editor of the Letra S magazine.

"Instead, this has provoked aggressions by some in the society and especially some police," he said. "It would be a terrible shame to close this door to asylum."

Stigma and a lack of education have complicated prevention efforts, health workers say. At the private Mexico City hospital where Martin Martinez Sanchez works, patients and employees are routinely screened for HIV without their permission, he said.

"If they test positive, they are not admitted," said Martinez, who has not told his employer that he is gay. A friend was fired because he contracted HIV.

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Discrimination, or in many cases low self-esteem, leads many gay Mexicans to take health risks.

"They have sexual encounters in clandestine areas, and in parts of the city that are just horrible and dangerous," he said. "Later they go home and have unprotected sex with their wives. Many gays feel they have to have a wife for appearances."

Said Saavedra: "They can be fired from their job. It is not right, but we know it happens."

That is what happened to Alejandro Torres.

Six months after beginning a coveted medical residency slot with the Mexican Navy in 2002, he tested positive for HIV.

"They told me I had two options: fire me immediately, or finish the year but don't touch another patient," said Torres, 29.

Navy Capt. Arturo Lopez said Torres was ordered to stop seeing patients under a policy curtailing the work of anyone with a contagious disease. The policy does not distinguish between illnesses such as influenza that are transmitted through casual contact and HIV, which is spread through sexual contact, shared needles or blood transfusions.

For the rest of his internship, Torres filled out paperwork and endured efforts by Navy superiors to "cure" his homosexuality by lining up dates with female nurses. He tried working in Puerto Vallarta and Mexico City, both home to large gay communities.

Even in the capital, Torres said, he was harassed. One night, police rounded up Torres and his friends as they emerged from a gay bar in the Zona Rosa. His bosses would not let him counsel patients about HIV protection. He was shuttling to San Diego for treatment.

"The doctors in Mexico don't have training to deal with HIV patients," he said. His condition deteriorated, and he lost 15 pounds in two weeks. Finally, his doctor urged him to move to the United States for good.

"He said the stress of being in Mexico and making the trip for care every two or three months made my immune system fall down," Torres said. "I was going to live in Tijuana and just drive across for my treatment, but I realized if something terrible happened and I went to the hospital there, they wouldn't be able to care for me."

Torres has spent \$8,000 on attorney fees and has worked odd jobs in construction, plumbing and at a local clinic. When an immigration officer first heard his case, Torres was told that his life was not in imminent danger and was turned down.

"If you're expecting me to wait until somebody kills me or the police beat me up, I'm not going to do that," he said.

His appeal is set for February 2009.

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Graphic

IMAGE; Photos By Nikki Kahn -- The Washington Post; Fernando Legy, an HIV-positive man seeking asylum in San Diego, comforts his mother, Mercedes Espinoza, who recently visited from Mexico.

IMAGE; Alejandro Torres was told to move rather than traveling for treatment.

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IMAGE; Legy tries on a costume that his mother made for him to wear in a **gay** pride parade.

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