

# General Declaration of Unconstitutionality of Articles 98 and 111 of Mexico's Immigration Law.

By Gerardo Reyes



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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

## General Declaration of Unconstitutionality of Articles 98 and 111 of Mexico's Immigration Law.

By Gerardo Reyes

Since June 2021, the General Declaration of Unconstitutionality proceeding has existed in its current form. This article will focus on analyzing the ongoing General Declaration of Unconstitutionality currently under review by the Mexican Supreme Court of Justice (SCJN). The case is being handled by Mrs. Justice Margarita Ríos Farjat<sup>1</sup>, who will determine whether Articles 98 and 111 of the Immigration Law violate Article 21 of the Mexican Constitution. If the proposed ruling is approved, these articles will no longer have full force and effect within the United Mexican States.

On the one hand, the referenced immigration legislation stipulates that the National Institute of Immigration must resolve the immigration status of detained foreign nationals within a maximum period of fifteen business days, counted from the date of their presentation.

Furthermore, the stay in immigration detention centers may only exceed the fifteen-business day limit to sixty-business days, if any of the following circumstances apply:

- Lack of verifiable information regarding the individual's identity and/or nationality, or difficulty in obtaining identity and travel documents.
- Delays by consular authorities, where the consulates or consular sections of the individual's country of origin or residence require additional time to issue identity and travel documents.
- Obstacles to travel arrangements, including restrictions on transit through third countries or difficulties in establishing a final travel itinerary.
- Medical conditions, such as a certified physical or mental illness or disability that prevents the detained migrant from traveling.

In contrast, Article 21 of the Mexican Constitution establishes that administrative detentions imposed by authorities may under no circumstances exceed thirty-six hours.

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The General Declaration of Unconstitutionality proceeding applies when the SCJN, in amparo proceedings, determines that a general legal norm is unconstitutional. The proceeding is as follows: Once such a ruling is issued, the Supreme Court must notify the authority responsible for issuing the norm within fifteen days. If, after notification, ninety calendar days pass without the norm being modified or repealed, the Plenary of the Supreme Court will issue the corresponding General Declaration of Unconstitutionality, provided that the decision has been approved by a qualified majority of at least eight votes.

The General Declaration of Unconstitutionality proceeding, which will determine whether Articles 98 and 111 of the Immigration Law violate Article 21 of the Mexican Constitution, is legally admissible because it is based on a prior ruling. Specifically, in Amparo Proceeding 388/2022<sup>2</sup>, Mr. Justice Juan Luis González Alcántara Carrancá determined that the aforementioned articles of the Immigration Law contravene the provisions set

1.- <https://www.scjn.gob.mx/ministra/ana-margarita-rios-farjat>

2.- Amparo en Revisión 388/2022. [https://www.scjn.gob.mx/sites/default/files/listas/documento\\_dos/2022-10/AR-388-2022-20102022.pdf](https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2022-10/AR-388-2022-20102022.pdf)

forth in Article 21 of the Constitution.

This prior ruling serves as the necessary foundation for initiating the General Declaration of Unconstitutionality, as it establishes a precedent confirming the unconstitutionality of the legal provisions in question.

The judgment of the Amparo 388/2022 explains that the Inter-American Court of Human Rights (CoIDH) defines migration policy as any institutional act, measure, or omission—including laws, decrees, resolutions, directives, or administrative acts—that pertains to the entry, exit, or stay of nationals or foreign nationals within a country's territory. The CoIDH has also affirmed that it is lawful for states to establish measures regarding the entry into and exit from their territory concerning individuals who are not their nationals, provided that these policies are in compliance with human rights protection standards. Furthermore, such measures must be objective, proportional, and reasonable.

Accordingly with the decision of Mr. Justice González Alcántara Carrancá, any form of detention or administrative custody within the immigration context must be applied as an exceptional measure—that is, as a last resort, for the shortest possible period, and only if justified by a legitimate purpose. Such purposes may include:

- 1.- Documenting an individual's entry.
- 2.- Registering any complaints made by the individual.
- 3.- Verifying the individual's identity if there is doubt regarding it.

In this framework, immigrants who enter a state's territory illegally may be temporarily deprived of their liberty for an initial period, to allow for the documentation of their entry, the recording of their statements, and the determination of their identity in case of doubt. However, extending the deprivation of liberty while addressing their claims would be considered arbitrary unless specific reasons are presented for that individual, such as: a concrete risk of flight, a danger of committing a crime, or a threat to national security.

In this context, to assess the reasonableness of the duration of a migrant's detention within an immigration proceeding, two key principles recognized both in international law and constitutional law must be considered:

- A. Necessity: Detention must be strictly necessary. The competent immigration authority must justify and provide reasoning for its decision to detain the individual, based on the legal grounds set out in the Immigration Law and, in turn, guarantee the migrant's essential procedural rights, considering their vulnerable status.
- B. Temporal Limitation: The competent immigration authority must ensure that the detention does not exceed the time limit established by Article 21 of the Constitution: 36 hours.

In light of these principles, the First Chamber of the SCJN maintains that, in accordance with the exceptionality principle for the deprivation of liberty, detention cannot exceed the temporal limit established by Article 21 of the Constitution. Both the "fifteen business days" and the "sixty business days" prescribed in the relevant legislation contradict the maximum time limit set by the Federal Constitution for legitimizing a person's deprivation of liberty for administrative reasons: thirty-six hours. Moreover, when immigrants are deprived of their liberty for more than thirty-six hours, this not only obstructs their right to personal freedom but also hinders their right to an effective judicial remedy, as recognized in Article 17 of the Mexican Constitution and in the American Convention on Human Rights, specifically Articles 8° and 25.

Thus, the SCJN argues that extending detention beyond the constitutionally established time frame infringes on the migrant's right to an effective legal process, potentially violating their human rights protections.

It is essential to emphasize that the judgment issued in Amparo Proceeding 388/2022 by Justice Juan Luis

González Alcántara Carrancá was recognized as the most significant judicial decision in Immigration Law during the Ninth Regional Forum: "The Detention of Persons in Mobility: Reflections from the Americas." Furthermore, the Extraordinary Protection Action No. 249,621, issued by the Constitutional Court of Ecuador, was awarded second place, while Judgment No. 5-9-195-997, rendered by the Ninth Review Chamber of the Constitutional Court of Colombia, which addresses the right to due administrative process, received third place<sup>3</sup>.

The deliberation on the draft ruling concerning the General Declaration of Unconstitutionality was postponed during the first session of 2025 at the request of the presiding Mrs. Justice, Margarita Ríos Farjat. In justifying her request, Mrs. Justice Ríos Farjat stated:

*"I would like to announce that I will be withdrawing the draft ruling in order to review certain related documents and address some concerns that have arisen in connection with the case. I would prefer to discuss it at a later date."<sup>4</sup>*

This decision indicates that the ruling process remains open, allowing for further analysis and discussion before a final determination is made. However, unless an unexpected development occurs, the final decision regarding the General Declaration of Unconstitutionality by Justice Ríos Farjat is likely to align with the ruling issued by Justice González Alcántara Carrancá in Amparo Proceeding 388/2022.

**"Such a decision would reflect the Mexican legal system's commitment to ensuring that migration policies comply with human rights standards and constitutional safeguards, further contributing to the integrity of the rule of law in the country."**

This expectation arises from the fact that the prior judgment has already established a legal precedent, making it reasonable to assume that the outcome of the current case will follow the conclusions reached in the earlier ruling, barring any unforeseen circumstances.

In conclusion, the General Declaration of Unconstitutionality represents a critical legal process that evaluates the constitutionality of specific provisions within Mexican law. In this case, the SCJN is tasked with determining whether Articles 98 and 111 of the Immigration Law violate Article 21 of the Mexican Constitution, which governs the administrative detention of individuals. The ruling on this matter will have significant implications for the legal framework surrounding migration control, ensuring that any measures taken by the state align with constitutional rights, particularly the protection against arbitrary detention. A decision in favor of the unconstitutionality of these articles would reaffirm the supremacy of constitutional principles over legislative provisions that may infringe on fundamental human rights.

Ultimately, this case underscores the importance of maintaining a delicate balance between a state's right to regulate migration and the protection of individual rights. If the General Declaration of Unconstitutionality is upheld, it would not only limit the scope of the Immigration Law's provisions regarding detention but also reinforce the principle that detention must be exceptional, brief, and justified by clear, legitimate reasons. Such a decision would reflect the Mexican legal system's commitment to ensuring that migration policies comply with human rights standards and constitutional safeguards, further contributing to the integrity of the rule of law in the country.

3.- <https://justiciatv.mx/noticias/detalle/reconocen-sentencia-primera-sala-retencion-migrantes-debe-mayor-36-horas>

4.- <https://www.jornada.com.mx/noticia/2025/01/07/politica/scjn-pospone-discusion-sobre-la-inconstitucionalidad-de-la-ley-de-migracion-6672>

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