



# **TRIBUNAL**

**APRIL 11, 1981  
SAN DIEGO, CA.**

RESUMEN

DEL

TRIBUNAL NACIONAL CHICANO SOBRE INMIGRACION

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SUBMITTED

TO

RONALD REAGAN, PRESIDENT OF THE UNITED STATES OF AMERICA

AND

JOSE LOPEZ PORTILLO, PRESIDENTE DE LA REPUBLICA MEXICANA

BY

HERMAN BACA, CHAIRMAN OF THE COMMITTEE ON CHICANO RIGHTS

ON BEHALF OF THE



## PANELISTS

**RUDY ACUNA**

PROFESSOR CAL STATE NORTHRIDGE  
CALIFORNIA

**HERMAN BACA**

CCR  
CALIFORNIA

**VICTORIA CASTRO**

STATE PRESIDENT AMAE  
CALIFORNIA

**RUBEN SANDOVAL**

CIVIL RIGHTS LITIGATION CENTER  
TEXAS

**JUAN SOLIS**

LEGAL CENTER FOR IMMIGRANTS  
ILLINOIS

**RODOLFO GONZALEZ**

CRUSADE FOR JUSTICE  
COLORADO

**GILBERTO JASSO**

NATIONAL OFFICE OF CIVIL RIGHTS  
G.I. FORUM

**MANUEL LOPEZ**

MEXICAN AMERICAN NATIONAL  
ORGANIZATION  
CALIFORNIA

**LUPE SANCHEZ**

ARIZONA FARMWORKERS  
ARIZONA

**JOSE "PEPE" MEDINA**

INTERNATIONAL CONFERENCE FOR THE FULL  
RIGHTS OF UNDOCUMENTED WORKERS  
U.S./MEXICO

THE CHICANO NATIONAL IMMIGRATION TRIBUNAL WAS MANDATED IN A RESOLUTION PASSED AT THE MAY 24, 1980 CHICANO NATIONAL IMMIGRATION CONFERENCE HELD IN SAN DIEGO CALIFORNIA BY THE FOLLOWING ORGANIZATIONS.

AMAE South Bay San Diego/American G.I. Forum National, California & San Diego/AMIGOS, San Diego/ August 29 Chicano Moratorium Coalition / Arizona Farm Workers/Barrio Station San Diego/Bishop Gilberto Chavez/Brown Berets/ California Statewide MECHA/Centro Adelante Campesinos, Arizona/Centro de Inmigracion, Wash. D.C./ Chicano Health Coalition/San Diego/Chicanos Unidos, Texas/ Chicano Park Steering Committee, San Diego/Club Azteca, CB/ Congreso Para Pueblos Unidos, California/Crusade for Justice, Colorado/El Clarin, Chicago/El Movimiento Artistico, Chgo/El Pueblo, Texas/Federation Internationale Des droits de et Homme, Paris, France/Voz del Pueblo/ Farm Labor Organizing Committee, Ohio/Hermanidad Mexicana General de Trabajadores, L.A./Hispanic Community Ministry Lutheran Church, Arizona/International Chamber of Commerce/ National Chicano Monitorium Coalition / La Prensa, San Diego, Stockton/La Raza Legal Alliance, Houston, Texas/La Raza Health Alliance, California/Ladies Pride, San Diego/Las Hermanas, National/Los Perros, Los Angeles/Legal Aid Society, San Diego/ Legal Service Center for Immigrants, Chicago/Life Car Club, San Diego/MAPA, Imperial Valley /Marie Curie Defense Committee, Texas/MECHA CENTRAL, San Diego/Mexican American National Organization, Los Angeles/ Midwest Coalition in Defense of Immigrants, Chgo./National Federation of Priests/National Lawyers Guild/LULAC NATIONAL/National Mexican American Correctional Association/National Center for Immigrants/ Organizational Feminist/PADRES, National/Padre Hidalgo Center, San Diego/Office of Civil Rights, G.I. Forum, San Jose/MANZO Area Council, Arizona/REACT CB club, San Diego/Bishop Patricio Flores, Texas/Black Berets, San Jose/ San Diego City College, MECHA/Speciala, San Diego/Spanish Speaking Executive Catholic Commission, San Diego, County/Sherman Unidos, San Diego/San Diego Low Rider Car Council/ San Antonio Human Rights Council/ Spanish Speaking Political Association, San Diego/Teatro Urbano, L.A./Tucson Coalition for Justice, Arizona/United California Mexican American Association, California/ National Coalition On The Hernigan Case



Committee on Chicano Rights, Inc

STATEMENT OF PURPOSE

WE HAVE GATHERED HERE IN SAN DIEGO, CALIFORNIA TODAY, APRIL 11, 1981 TO PARTICIPATE IN THE CHICANO NATIONAL IMMIGRATION TRIBUNAL AND TO DECLARE TO ALL THOSE WHO RECOGNIZE THE INHERENT DIGNITY AND INALIENABLE RIGHTS OF FREEDOM, JUSTICE AND EQUALITY OF THE HUMAN RACE THAT ON BEHALF OF OUR PEOPLE WE CONDEMN THE VIOLATION OF HUMAN, CIVIL, AND CONSTITUTIONAL RIGHTS BY THE IMMIGRATION AND NATURALIZATION SERVICE, BORDER PATROL AND OTHER LAW ENFORCEMENT AGENCIES ACTING ON BEHALF OF THE U.S. GOVERNMENT'S INHUMANE, DEGRADING, AND IR-RATIONAL IMMIGRATION POLICY.

THE TRIBUNAL, MANDATED BY LAST YEAR'S CHICANO NATIONAL IMMIGRATION CONFERENCE, ATTENDED BY 1000 PEOPLE FROM 200 ORGANIZATIONS HAS BEEN ORGANIZED TO:

- (1) GIVE THOSE WHO HAVE BEEN VICTIMIZED BY THE INS/BORDER PATROL A FORUM TO PRESENT TESTIMONY AND CASES TO A PANEL OF DISTINGUISHED NATIONAL LEADERS.
- (2) NATIONALLY DOCUMENT THE MASSIVE VIOLATIONS OF HUMAN RIGHTS AGAINST UNDOCUMENTED PERSONS AT THE U.S./ MEXICO BORDER AND ALSO THE VIOLATIONS OF CIVIL AND CONSTITUTIONAL RIGHTS OF THE 20 MILLION CHICANOS/ LATINOS IN THE U.S. BY THE INS/BORDER PATROL, BECAUSE OF THE IMMIGRATION ISSUE.
- (3) DRAFT A CHICANO POSITION PAPER BASED ON THE DOCUMENTED CASES AND POSITION WHICH HAVE BEEN TAKEN BY OUR COMMUNITY ON THE IMMIGRATION ISSUE, AND THE INS/BORDER PATROL, TO BE PRESENTED TO PRESIDENT REAGAN AND PORTILLO.

(4) TAKE THE TRIBUNAL'S DOCUMENTATION TO MEXICO CITY,  
WASHINGTON D.C. AND OTHER INTERNATIONAL GROUPS.

IN CONCLUDING WE WISH TO STATE THAT IT IS FITTING TO REMEMBER  
THE WORDS OF ANOTHER INDIVIDUAL WHO WAS OPPRESSED BY A POLICY  
SIMILIAR TO TODAY'S IMMIGRATION POLICY, A MAN BORN INTO SLAVERY  
WHO ROSE ABOVE HIS CHAINS AND OUTLINED CLEARLY WHAT WE MUST DO  
TO END OUR OPPRESSION. THAT INDIVIDUAL WAS FREDERICK DOUGLASS  
AND HIS WORDS WERE THE FOLLOWING.

"THOSE WHO PROFESS TO FAVOR FREEDOM, YET DEPRECATE AGITATION,  
ARE MEN WHO WANT CROPS WITHOUT PLOWING UP THE GROUND; THEY WANT  
RAIN WITHOUT THUNDER AND LIGHTNING; THEY WANT THE OCEAN WITHOUT  
THE AWFUL ROAR OF ITS MANY WATERS.

POWER CONCEDES NOTHING WITHOUT DEMANDS-IT NEVER DID AND IT  
NEVER WILL. FIND OUT JUST WHAT ANY PEOPLE WILL SUBMIT TO AND  
YOU HAVE FOUND OUT THE EXACT AMOUNT OF INJUSTICE AND WRONG WHICH  
WILL BE IMPOSED UPON THEM; AND THESE WILL CONTINUE TIL THEY HAVE  
RESISTED WITH EITHER WORDS OR BLOWS OR WITH BOTH. THE LIMITS OF  
TYRANTS ARE PRESCRIBED BY THE ENDURANCE OF THOSE WHOM THEY SUP-  
PRESS."

COMMITTEE ON CHICANO RIGHTS

A. DENIAL OF MEDICAL SERVICES TO UNITED STATES  
CITIZENS, PERMANENT RESIDENT ALIENS AND UN-  
DOCUMENTED PERSONS.



Committee on Chicano Rights, Inc

APRIL 20, 1981

Presidents Ronald Reagan and Jose Lopez Portillo,

The Committee on Chicano Rights on behalf of the Chicano National Immigration Tribunal which was held in San Diego, California on April 11, 1981 wishes to formally request a response to the enclosed documents outlining specific cases of violations of human, civil, and constitutional rights of persons of Mexicano/Latino ancestry by the INS/Border Patrol and other law enforcement agencies. The enclosed documentation proves beyond a shadow of a doubt that these rights violations which have been perpetrated under the color of the law, are widespread and commonplace. It is our position that the cases in this packet represent nothing but the "tip of the iceberg" of immigration abuses. These abuses have recently included:

- 1) The death of two children at the U.S. Mexico international border;
- 2) Children forcibly separated from their parents;
- 3) Children incarcerated in federal prisons;
- 4) Women being raped;
- 5) The killing and wounding of two individuals while handcuffed;

The continued escalation of violence and rights violations within the last ten years has been totally ignored by both United States and Mexican policy-makers. Because of this we are urging you to include the following in your upcoming binational talks:

- 1) Call for an immediate end to the escalating violence and violations of the human, civil, and constitutional rights of the undocumented and also the rights of the twenty million Chicano, Latino citizens and legal residents of the U.S.
- 2) Establish a binational commission to investigate immigration-related violence and rights violations to be composed of representatives of the United States and Mexico; and to hold hearings in those areas most affected by immigration abuses.
- 3) Include the positions and recommendations herein in any discussions of the immigration issue.

It is our position that the social, economic, and political interdependency between United States and Mexico demands that these actions be taken immediately. It is the hope to the Chicano community that the violations of human life, rights, and dignity described herein will end and that we can see the beginning to a swift, just and humane resolution of the immigration issue .

Gracias,

*Herman Baca*

Herman Baca, Chairman  
Committee on Chicano Rights



CASO: LOS 13 DE VOUGE COACH

FECHA: abril 13 de 1977

DESCRIPCION DEL CASO:

El 13 de abril, 1977, la gerencia de la empresa Vouge Coach, constructor de vehiculos recreacionales localizado en el Valle de San Fernando, California, llamaron al INS para que se llevara a los trabajadores indocumentados. Trece de aquellos trabajadores que apelaron el orden deportivo eran los lideres del esfuerzo de establecer un sindicato en la presa. El caso ha procedido a la corte de apelaciones de trabajadores y el de ser protegido contra ser exculcado y detenido ilegalmente.

PROCESO: Juan Diaz Chaidez

FECHA: 24 de agosto de 1979

DESCRIPTION DEL CASO:

El 24 de agosto de 1979, Juan Diaz Chaidez fue detenido en su negocion en Naperville, Illinois por los agentes de INS de Chicago. Fue interrogado por un investigador criminal y obligado a firmar la Forma I-274 autorizando su salida para Mejico y renunciando a su derecho a una audiencia sobre deportacion. El abogado de Diaz Chaide apelo al Distrito de Chicago INS por su practica de rutina de obligar a las personas de origen mejicano a firmar la Formal I-274, autorizando la deportacion y sin derecho a la consulta legal.

CASO: Marcos Espinosa, et. al.

FECHA: 8 noviembre 1979

DESCRIPCION DEL CASO:

Todos los reclamantes son victimas de redadas conducidas ilegalmente por la policia y la migra en el condado Angelina de Texas . El 8 de noviembre de 1979, en el condado de Angelina de Texas , la migra arresto a Juan Antonio Mendoza y Arturo Mendoza sin fianza (esto en violacion del codigo legal de los EE.UU., seccion 1325), y en violacion del primer, tercer, cuarto, quinto, noveno y catorce enmiendas, Estas redadas fueron conducidas porque los reclamantes aparecieron ser extranjeros y eran de decendencia latina, esto en violacion del quinto enmienda de las constituciones de texas, EE.UU. Todos los reclamantes fueron negados la proteccion de acuerdo con sus derechos civiles.

PROCESO: Chema Ramos, et al.

FECHA: 26 de diciembre de 1979 a 23 de enero de 1980

DESCRIPCION DEL CASO:

El Senor Chema Ramos, dueno de la Tienda de Descuentos y de Electronicos, declara que durante el periodo del 26 de diciembre de 1979 al 23 de enero de 1980, la Vigilancia de Frontera de Indio fue culpable de abusos poco comunes con "los individuos de aspecto mejicano" que compraban en su negocio y asistian al Teatro Mejicano. El ha documentado quince ocasiones en las cuales fueron violados los derechos civiles de algunas personas. El ha escrito a los senadores Kenney y Cranston protestando.

PROCESO: Camilo Ramos Gallegos

FECHA: 3 de enero, 1980

DESCRIPCION DEL CASO:

Aproximadamente el dia 26 de enero, 1979, un areglamento de trato colectivo fue firmado por Goldmar, Inc, y los empleados. Aproximadamente el mismo dia, el Sr. Gallegos fue empleado como agostero citrico con Goldmar, Inc. Durante el curso de redada entre la propieda de Goldmar, agentes de la Patrulla Fronteriza el dia 31, 1979, el Sr. Gallegos fue forzosamente golpeado por la espalda con un barrote, golpeado y patiado mientras en el pavimento. Fue transportado a la oficina de Phoenix, Arizona, entrevistado y encarcelado en Chandler City, donde fue detenido por siete diaz. No se permitio comunicarse con abogado, llamada telefonica, y fue negado asistencia medica cuando solicito el Sr. Gallegos. Despues fue traslado a El Centro, California y fue libre aproximadamente el dia 9 de febrero, 1979. El Sr. Gallegos subseguientmente fue arestado de nuevo y institutaron procedimiento de deportacion contra el. Presentemente el Sr. Gallegos se encuentra encarcelado en Winslow, Arizona y solamente puede comunicarse con su abogado por llamada telefonica por cobrar, y de larga distancia. Camilo Ramos Gallegos peticiono a la corte del distrito que prosumera jurisdiccion y que lo transporten a la carcel de Avondale, para falicitir comunicacion con su abogado y que conceda permiso quedarse en Avondale pendiente el resultado del juicio. El demandante se puso de acuerdo de suspender los cargos en ves de un pago de \$850.

CASO: Rafael Garcia

FECHA: 29 de Enero, 1981

DESCRIPCION DEL CASO:

Rafael Garcia, mientras trabajaba de cantinero, fue abusado por un agente de la Policia de San Diego y un agente de la Patrulla Fronteriza. Entraron a su lugar de negocio y procedieron a revisar los sanitarios y demandar la identificacion de su clientela. Alegaron que "siendo agentes federales, tenian la autoridad de hacer lo que querian". Desde Junio 29 de 1981, cada noche, un agente de la Policia de San Dieo y un agente de la Patrulla Fronteriza, se estacionan fuera del bar y revisan la clientela que entra y sale del bar. A las once de la noche, entran y demandan indentificacion de toda la clientela dentro del bar.

CASE: Jorge Olmos

DATE: April, 1979

DESCRIPTION OF CASE:

Jorge Olmos was seriously injured and taken to Community Hospital. Because of the type of injury, he was to be transferred to University Hospital where the needed neurosurgeon was available. The University Hospital neurosurgeon, learning that Olmos had no identification with him, refused to authorize his transfer partly in the belief that he might be an "illegal alien" or Mexican citizen unable to pay for his medical care. Following a complaint to the Civil Rights Commission and substantial community pressure, the University Hospital policy that permitted the action was changed.

CASE: Maria Carmen Ordonez and Luis Platon Ordonez

DATE: March 6, 1981

DESCRIPTION OF CASE:

Maria Carmen Ordonez and Luis Platon Ordonez, both residents of Laredo, on January 13, 1980 were denied access to the Mercy Hospital of Laredo, Texas and taken by force to a hospital in Mexico. Attorney for the Ordonez' filed suit against Mercy Hospital and Delta Ambulance Service for denial of services and unlawful practices against the Ordonez'. Mrs. Ordonez was in labor and about to give birth to her fifth child. The Ordonez' were forcibly taken to Mexico's Hospital Civil without lawful authority and against their consent. Before arrival at Hospital Civil, Mrs. Ordonez gave birth to her child. Mrs. Ordonez suffered emotional distress, embarrassment and fear for her physical safety and that of her child.

B. USE OF DEADLY FORCE BY LAW-ENFORCEMENT  
OFFICIALS.

CASE: Hanigan Brothers

DATE: 1976

DESCRIPTION OF CASE:

Three undocumented Mexican farmworkers, Manuel Garcia, Eleazar Ruelas and Bernabe Herrera, were robbed and tortured. All three were stripped of their clothes, tied, tortured, beaten, wounded by shotgun blast, and hanged by the Hanigan Brothers. The Hanigan family was charged for violation of the Hobbs Act of Arizona. During the trial the father of the Hanigan's died, one brother was found guilty and the second was found innocent.

CASE: Jose Sinohui

DATE: July 2, 1977

DESCRIPTION OF CASE:

Jose Sinohui, Jr. was killed by a shot fired from former South Tucson Police Officer Christopher Dean's .45 calibre weapon. He was shot in the back while proceeding away from the scene of a disturbance in which he had no involvement. Dean was cleared by an all white State Court jury on homicide charges in January of 1978. The Sinohui family requested Federal Government intervention. The Grand Jury in August of 1979 ruled in favor of the Sinohui family, awarding them \$150,000.00 compensatory damages. The Grand Jury further ruled in favor of the Sinohuis and against Dean in the amount of \$50,000.00 in punitive damages as a result of Dean's extreme misconduct.

CASE: Stella Salazar

DATE: 2/27/80

DESCRIPTION OF CASE:

On 2/27/80 two Mexican aliens were killed and twelve others injured as the Border Patrol of Jim Hogg County, Texas shot at their truck during a chase and crashed. U.S. Border Patrol agents denied any shots were fired at the truck. Deputy Onofre Serna, however, saw Border Patrol agent pull out a shotgun from their unit. Photos taken of the truck reveal multiple bullet holes. The case will be taken to court charging the Border Patrol with unlawful enforcement of civil rights laws.

CASE: Gilbert Jasso

DATE: January 3, 1980

DESCRIPTION OF CASE:

Accounts state that at 3:00 a.m. the San Jose Police Department, dressed in riot gear, without search warrant, broke into the Lopez home. Frank Lopez, 57, Tomasa Garcia, 61, and Angel and Evelyn Ramirez were sitting inside talking when the San Jose Police Department entered, kicked and punched the adults, struck them with batons and handcuffed them. Frank Lopez received cuts, bruises, and three broken ribs. Tomasa Garcia received a broken wrist, was grabbed by the hair, pinned to the floor, and received cuts and bruises to her arms and legs. The case was presented to the court. A misconduct suit was won on February 27, 1981, by Alejandro Contreras, attorney. Named in the suit were SJPD Sgt. Robert Grant, Sgt. William Mitchell and Officers Jaime Saldivar, David Hendrix, Robert Pine and James Wagner.

C. ABUSE OF CHILDREN

CASE: Frank Amaro

DATE: 1971 through 1979

DESCRIPTION OF CASE:

Mr. Frank Amaro, representing the Mexican American National Organization (MANO), described cases in which children were abandoned and left alone when parents were deported. Families were broken up, children forcibly separated from parents and no assistance was provided in locating family members and reuniting the affected families. Many of those families that were separated were never reunited. Over 300 children have been assisted by MANO in the Los Angeles area between 1971-1979. MANO has assisted children to avoid their being placed in foster homes. Placement in foster homes would make it more difficult for parents to be reunited with their children.

CASE: Pedro Velazquez Gonzales

DATE: September 4, 1979

DESCRIPTION OF CASE:

A Mexican citizen working in the U.S. was deported and sent to Guatemala by the INS under the premise that he looked like a "Guatemalan alien".

CASE: Christopher Enciso Robles

DATE: September 17, 1979

DESCRIPTION OF CASE:

Mr. Enciso Robles was stopped at San Onofre on September 17, 1979 and was hand-cuffed for suspicion of being an undocumented person. Enciso-Robles showed his birth certificate and other documentation which was not accepted by the Border Patrol, and was physically assaulted. The "alien looking principle" was applied by the Border Patrol and the civil rights of Enciso-Robles were violated through three hours of interrogation, sixteen hours of incarceration. He was forced to sign an involuntary departure form waiving his rights to an attorney, and was emotionally harrassed by the Border Patrol agents.



D. INFLECTING UNNECESSARY PHYSICAL VIOLENCE  
AND ABUSE ON SUSPECTED UNDOCUMENTED ALIENS,  
UNITED STATES CITIZENS AND PERMANENT RES-  
IDENT ALIENS.

CASE: Elvia Murphy de Davalos

DATE: February 4, 1978

DESCRIPTION OF CASE:

Mrs. Murphy, accompanied by her husband Enrique Davalos Cerda, left work to make a short trip to Disneyland. At the San Ysidro Port of Entry they were issued one SW-434 form for both of them. At the San Onofre checkpoint, they were pulled over by a Border Patrol Officer. He demanded to check their SW-434 form. He informed them that they needed one more form and that numbers were missing from the SW-434 form they had. The Border Patrol Officer then proceeded to order Mr. Davalos to leave. There was resistance but, ultimately, Mr. Davalos was forced to leave. Mrs. Davalos was then ordered to enter a room and told to remove her clothing. The room was dirty and the officer had dirty hands when she conducted a vaginal cavity check on Mrs. Davalos. Later, after not having anything to eat or drink since her departure from Tijuana, she was returned to Mexico.

CASE: Rogelio Adolfo Mendez-Diaz

DATE: March 17, 1979

DESCRIPTION OF CASE:

Adolfo Mendez-Diaz testified that Efren Reyes and Benito Rindon, while sitting on a paved road fifty feet inside the United States territory, witnessed the incident in which a senior Border Patrol agent shot and killed a Mexican alien and wounded another on March 17, 1979. The two men were attempting to escape while handcuffed together.

CASE: Emiliano Zapata Coleman, et. al.

DATE: June 29, 1978

DESCRIPTION OF CASE:

Albert Garcia filed a complaint on June 29, 1978 against Border Patrolman Donald Heidt and others on behalf of Emiliano Zapata Coleman. The complaint alleges that Patrolman Heidt drove his vehicle into Zapata-Coleman and then shot him. It also denounces the U.S. Border Patrol for the inhumane and unlawful treatment of Spanish-speaking and Black persons.

E. SYSTEMATIC VIOLATIONS OF HUMAN, CIVIL, AND  
CONSTITUTIONAL RIGHTS.

CASE: Daniel Cardona

DATE: September 8, 1977

DESCRIPTION OF CASE:

Daniel Cardona, mentally incompetent and a U.S. citizen, lacking I.D. and documentation, was stopped by police without probable cause of a criminal offense, was not advised of his rights, was not allowed to communicate with his family, nor brought before a magistrate. He was incarcerated in Clovis City jail on September 8, 1977 and on September 9, 1977 was turned over to Immigration Service agents and taken to Fresno to the Border Patrol Station. After the interrogation, he was forcibly returned to Mexico. He was not allowed to return to the U.S. until January 15, 1978 at which time he was admitted to the psychiatric ward at Valley Medical Center.

CASE: Jose Plancarte

Date: November 3, 1977

DESCRIPTION OF CASE:

An immigration official questioned Jose Plancarte at the San Diego International Airport as to his legal status in the United States. Plancarte showed his green card and was questioned as to its validity and authenticity. Plancarte was forced to sign an involuntary departure form and was deported to Tijuana without a hearing or an opportunity to contact his attorney. Deportation resulted in the loss of his employment in the United States.

CASE: Eliazar Escamilla-Montoya

DATE: April 9, 1979

DESCRIPTION OF CASE:

Eliazar Escamilla-Montoya was arrested and taken into custody by an agent of the INS in Chicago, Illinois, while en route to meet his fiancée. He was interrogated by criminal investigators and coerced into signing an involuntary departure form (I-274), waiving his right to a deportation hearing. No explanation was ever given as to the significance of signing Form I-274. A U.S. attorney challenged the INS' routine practice of coercing persons of Mexican decent into signing involuntary departure forms.

CASE: Abel Galvan Zavala

DATE: July 21, 1979

DESCRIPTION OF CASE:

Mr. Zavala, a legal resident of the U.S., filed a complaint against the San Ysidro Border Patrol for unlawful incarceration, verbal abuse and harassment. On July 21, 1979 the Border Patrol refused to accept his self identification and U.S. military card as proof of legal residency in the U.S.

CASE: Terry Lujan

DATE: September, 1979

DESCRIPTION OF CASE:

On the morning of September 28, 1979 Mr. Lujan was apprehended at Las Cruces bus terminal after asking INS officers why he was harrassing his people. Mr. Lujan was subsequently beaten by at least two INS officers and detained for three and one half hours. The only reason given for the beating was that he was getting "smart" with an INS officer. He was detained on the grounds that he had allegedly assaulted a Federal agent.

CASE: Margarita N. Gutierrez

DATE: February 9, 1981

DESCRIPTION OF CASE:

Mrs. Gutierrez, while walking home with her son Carlos, was accosted by a Border Patrol Officer. They continued walking home and were then physically pulled by the agent. Mrs. Gutierrez and her son identified themselves as U.S. citizens but were called "liars". She decided to return to the office to file a complaint and got the agent's name and license plate number of his jeep. They then observed the agent approach their home, which they had pointed out, and returned home. The agent claimed he could "go into any property within 25 miles of the border". He said he'd been transferred from Canada and that they should get used to him coming around.

F. RAIDS OF COMMUNITY AND WORK PLACE BY INS/BOR-  
DER PATROL AND LAW-ENFORCEMENT AGENCIES.

CASE: Los 13 de Vogue Coach

DATE: April 13, 1977

On April 13, 1977 the Vogue Couch factory, makers of Vogue Coach Recreational Vehicles located in the San Fernando Valley, called the INS to take many of its union-organizing workers. Thirteen of the apprehended workers have since filed an appeal on this deportation. The 13 were the main leadership in an organizing effort at this plant. The case is presently in the 9th Circuit Court of Appeals. Appeal is based on the equal right to unionize and to be protected against illegal search and seizure.

CASE: Juan Diaz Chaidez

DATE: August 24, 1979

DESCRIPTION OF CASE:

Juan Diaz Chaidez, on August 24, 1979, was arrested at his place of employment at Naperville, Illinois by agents of the Chicago INS. He was interrogated by one criminal investigator and ordered to sign Form I-274 authorizing departure to Mexico and waiving his right to a deportation hearing. Attorney for Diaz Chaidez challenged the Chicago District INS as to its routine practice of coercing persons of Mexican descent to sign Form I-274, authorizing deportation without rights to legal counsel.

CASE: Marcos Espinoza, et. al.

DATE: November 8, 1979

DESCRIPTION OF CASE:

Five plaintiffs were victims of immigration raids conducted on November 8, 1979 in Angelina County, Texas. In this case, the INS, working with police officers, detained and unlawfully arrested Juan Antonio Mendoza and Arturo Mendoza without a warrant (in violation of ZUSC Section 1325, and in violation of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution). These raids were conducted because the plaintiffs "looked alien" and of Latin ancestry. The Dibole and Lufkin police and the INS also violated the Civil Rights Act 42 U.S.C. thereby denying the victims the equal protection of their rights.

CASE: Chema Ramos, et. al.

DATE: December 26, 1979 to January 23, 1980

DESCRIPTION OF CASE:

Mr. Chema Ramos, owner of Alamo Discount Store and Electronics, claims that during the period of December 26, 1979 to January 23, 1980 the Indio Border Patrol was guilty of unusual harassment of "Mexican looking individuals" who shopped at his business and frequented the Mexican Theatre. He has documented fifteen occasions in which people have had their civil rights violated. He has written to Senators Cranston and Kennedy and other officials to complain.

CASE: Camilo Ramos Gallegos

DATE: January 3, 1980

DESCRIPTION OF CASE:

On or about January 26, 1979 a collective bargaining agreement was signed between Goldmar, Inc., a citrus grower in Arizona, and its employees. On or about that date Mr. Gallegos was employed as a citrus harvester at Goldmar. During the course of a raid on Goldmar property by Agents of the Border Patrol on January 31, 1979, Mr. Gallegos was forcefully struck from behind by a billy club and beaten and kicked while on the ground. He was taken to the Phoenix office, interviewed, and sent to the Chandler City Jail, where he was incarcerated for seven days. He was not allowed to contact his lawyer, make a telephone call, and was refused medical assistance when he requested it. He was transferred to El Centro and released on or about February 9, 1979. Mr. Gallegos was subsequently rearrested and deportation proceedings were instituted. He is currently in the Winslow City Jail and can communicate with counsel only through collect, long distance phone calls. Camilo Ramos Gallegos asked that the U.S. District Court assume jurisdiction, that he be transferred to Avondale Jail to facilitate communication with counsel, and that he be granted a permit to stay pending the outcome of the suit. The plaintiff agreed to drop all charges in return for payment of \$850.

CASE: Rafael Garcia

DATE: January 29, 1981

DESCRIPTION OF CASE:

Rafael Garcia, while tending bar, was harassed by one San Diego Police Officer, badge # 1019, and one Border Patrolman. They came into his place of business and proceeded to check bathrooms as well as demand identification of the patrons. They claimed that, because they were Federal officers, they had the authority to do as they wished. Since January 29, 1981, every night, a Border Patrol Officer, together with a San Diego Police Officer, station themselves outside the bar and check persons entering and leaving. At 11:00 p.m., they enter and demand identification from patrons inside the bar.



CASE: Marcos Espinoza, et. al.

DATE: March 18, 1981

DESCRIPTION OF CASE:

On March 18, 1981, pursuant to the Marcos Espinoza, et. al. case, the Immigration and Naturalization Service by and through a duly authorized employee made the following admissions of fact:

1. That during the month of November, 1979 agents of the INS entered Angelina County, Texas for the purpose of identifying, arresting and deporting persons who were not lawfully residing in the United States of America.
2. That during the month of November, 1979, agents of the INS entered Nacogdoches County, Texas for the purpose of identifying, arresting and deporting persons who were not lawfully residing in the United States of America.
3. That on or about the 6th day of November, 1979 in Angelina County, Texas, Defendant, its agents and employees took into custody persons in Angelina County, Texas, for being in this country without proper documentation.
4. That in carrying out its operations in Angelina County, Texas in November of 1979, Defendant did not obtain any search warrants authorizing them to enter any residence.
5. That in carrying out its operations in Nacogdoches County, Texas, in November of 1979, Defendant did not obtain any search warrants authorizing them to enter any residence.
6. That in carrying out its operations in Angelina County, Texas in November of 1979, agents of Defendant did enter into commercial businesses for the purpose of locating persons who were not lawfully residing in the United States.
7. That in carrying out its operations in Nacogdoches County, Texas in November of 1979 agents of Defendant did enter into commercial businesses for the purpose of locating persons who were not lawfully residing in the United States.

In addition, other admissions were made by the INS with regard to illegal practices for the purpose of locating persons who are unlawfully residing in the U.S.

G. ILLEGAL ENFORCEMENT OF IMMIGRATION LAWS BY  
LAW-ENFORCEMENT AGENCIES.

CASE: Raul Gonzales, et. al.

DATE: September 13, 1977

DESCRIPTION OF CASE:

Police Officers of Peoria, Arizona surrounded Saliba's Park and Shop Market on September 13, 1977 and demanded from persons of Mexican descent that they produce identification and documentary proof of the legality of their presence in the U.S. They had come to arrest "illegal aliens" who were shopping in the store. Four persons were arrested. On February 18, 1978, another seven persons were arrested. All persons of Mexican descent suffered loss of their constitutional rights to be free from unreasonable searches and seizures and the right to due process and equal protection as well as shame, humiliation and mental suffering. Additional incidents of unlawful arrest of persons of Mexican descent by the Peoria Police Department took place on February, 1978 on Bodine's Ranch; April 15, 1978 in front of Bodine's Market; and on June 26, 1978 at the Peoria Post Office.

CASE: San Diego Police Department Undocumented Aliens Policy

DATE: June 29, 1978

DESCRIPTION OF CASE:

Partial wording of the San Diego Police Department Policy on Undocumented Aliens. A probable cause to arrest for a criminal offense does not exist, the individual (undocumented alien) may nevertheless be turned over to Border Patrol Officers at the location where the detention takes place. Officers should use good judgement in determining how long it is practical to await the arrival of a border patrol unit, keeping in mind the nature of the offense and the impact on field strength associated with prolonged delays.

CASE: Angel Hernandez

DATE: May 15, 1979

DESCRIPTION OF CASE:

Mr. Hernandez, an undocumented worker, was severely injured while unloading bales of hay on May 15, 1979. He fell off the truck he was unloading, hit his head and broke his neck. Mr. Hernandez is now a quadraplegic as a result of the accident. Since no monies were available to pay for Mr. Hernandez' medical treatment, the Albuquerque hospital wanted him removed and called the INS. Lt. Gov. Mondragon intervened and had Mr. Hernandez moved to the State Hospital. INS has set a deportation hearing for July 29, 1981. Since New Mexico laws failed to protect him, Angel Hernandez will not receive compensation for his severe injury and is now facing deportation.

CASE: Luis Arquer

DATE: August, 1979

DESCRIPTION OF CASE:

Luis Arquer, a Puerto-Rican and United States citizen, was stopped by a West Chicago Police Officer while driving his 1963 Chevrolet in West Chicago in September, 1979, and was requested to present his immigration papers. On September 1979, he was again stopped by another West Chicago Police Officer and his immigration papers requested. Three other times, the same procedure occurred while he was en route to work. Upon proof of his driver's license on each occasion, Arquer was allowed to proceed to his destination. As a result of the actions by the West Chicago police, Arquer has suffered mental distress, humiliation and embarrassment. The attorney for Arquer challenged the West Chicago Police Department's practice of routinely detaining, interrogating and harrasing Latinos to inquire about their immigration status.

CASE: Algimiro Gomez

DATE: September, 1979

DESCRIPTION OF CASE:

Algimiro Gomez, while driving his 1969 Chevrolet in West Chicago, Illinois, was stopped by a female West Chicago police officer on September, 1979. The officer demanded his "green card". He challenged the right of the officer to ask for alien registration on the grounds that he was a U.S. citizen. Algimiro Gomez has suffered mental distress, humiliation and embarrassment. Attorney for A. Gomez challenged the West Chicago Police Department's practice of routinely detaining, interrogating and harrasing Latinos to inquire about their immigration status.

CASE: Pedro Cervantez and Juan Lozano

DATE: August 10,1979 and August 15,1979

DESCRIPTION OF CASE:

Pedro Cervantez, a U.S. citizen, on August 10,1979, was stopped by the Texas Department of Public Safety (DPS) and asked to produce his visa or birth certificate. Cervantez informed the officers that he was a U.S. citizen. He was handcuffed and taken to jail and remained there for three days. Cervantez was never brought before a judge, a court, or magistrate nor informed of his right to legal counsel. Juan Lozano, a U.S. citizen, on August 15,1979, stopped at the offices of the DPS in Hereford, Texas to request directions, was ordered to produce his birth certificate and detained for two hours. Lozano was arrested without probable cause of a violation of any law. Both Lozano and Cervantez suffered humiliation, embarrassment, mental anguish and loss of earnings by reason of being unlawfully arrested and detained by the Texas DPS. Attorney for Cervantez and Lozano charged DPS with a pattern of conduct and policies that violate the civil rights of Hispanics under the Fourth, Sixth and Fourteenth Ammendments of the U.S. Constitution.

CASE: Alfonso Guzman Hernandez

DATE: July 24, 1980

DESCRIPTION OF CASE:

Mr. Guzman Hernandez was involved in an accident in Azusa, California. He was arrested for violating 8 U.S.C. Section 1325--entry into the U.S. without inspection, a misdemeanor. Alfonso Guzman Hernandez has been held without bail in Azusa Police Department City Jail since his arrest on July 24, 1980. Mr. Guzman is being held for immigration officers because it is alleged that he is an "illegal alien". Alfonso Guzman Hernandez is unlawfully being held in custody because the police of the City of Azusa have no authority to make a warrantless arrest for a violation of 8 U.S.C. Section 1325 or to hold him without bail for said charge.

CASE: Jose Luis Borja vs. George Teague, et. al.

DATE: March 1, 1980

DESCRIPTION OF CASE:

Jose Luis Borja was arrested on December 26, 1979 in Denver City, Texas by a Lea County Deputy Sheriff, upon information that he was a material witness in a criminal case. Mr. Borjas is being held indefinitely on the basis that an INS "hold order" is sufficient to hold him. Mr. Borja contended that his detention was illegal in that no warrant of arrest was issued. New Mexico laws do not provide for the detention of material witnesses to civil actions and that no certificate from the New Mexico District judge was ever issued that permits an out of state witness in a criminal case to be held by the authorities. Mr. Borja's continued detention violates New Mexico and Federal laws. He requested a writ of habeas corpus to bring him before a U.S. District judge to determine the legality or illegality of his detention.

CASE: Antonio Montes

DATE: August 27, 1980

DESCRIPTION OF CASE:

Antonio Montes was arrested August 16, 1980 by a San Bernardino County Sheriff's deputy for allegedly reckless driving and locked into the San Bernardino County Jail. No charges were filed but Mr. Montes was not released until August 22, 1980. He believes that he was incarcerated because of a "hold order" placed on him by the INS even though he was born in Buckeye, Arizona. The "Hold Order" was placed because employees of the San Bernardino County Sheriff's Department believed Mr. Montes to be an illegal alien. He has requested monetary damages due to deprivation of civil rights and resulting emotional distress.

H. OTHER CASES.

CASE: Fred Drew

Date: 1966

DESCRIPTION OF CASE:

Fred Drew testified on the inadequate training provided to Border patrol agents and the derogatory indoctrination as to how to handle Mexicans. Commentary on the negative attitude and incidents of brutality towards undocumented persons was presented. Incidents of brutality were in the form of physical abuse, inhumane treatment, and rape.

Complaints were filed by Mr. Drew to INS, but Washington has never responded to date.

CASE: Maria Elena Esquivel

DATE: November 26, 1979

DESCRIPTION OF CASE:

Complaint against inspector A.J. Rodriguez, U.S. Customs Badge No. 12353 of the Port of Entry, San Ysidro, California for abusive attitude and unprofessional conduct and harassment against Maria Elena Esquivel on November 26, 1979.

CASE: Lorenzo Rodriguez

DATE: March 7, 1980

DESCRIPTION OF CASE:

Lorenzo Rodriguez was charged with Driving While Intoxicated on March 7, 1980 and received a five day sentence. Although he served his sentence, he is being detained because the sheriff's office misplaced his money. In applying for writ of Habeas Corpus, Mr. Rodriguez asked that he not be detained in jail after serving his sentence, that his money be returned, and that he be set free pending the sherriff's internal investigation. The writ was granted on March 11, 1980.

CASE: Alicia G. Rodriguez

DATE: October 24, 1980

DESCRIPTION OF CASE:

Alicia G. Rodriguez, Certified Public Accountant, appeared before Ms. M.S. Harris, IRS examiner, who abusively forced her to sign form 5816 and thereby accept to pay a penalty of \$100.00 because Ms. Rodriguez did not check the immigration status nor residence of clients Zenaido and Jovita Rodriguez. Alicia Rodriguez states that Ms. M.S. Harris charged her with negligence or intentional disregard for rules and regulations and instructed Alicia to investigate immigration and residence status of her clients. Ms. Rodriguez is appealing the withdrawal of her signature.

CASE: Robert A. Acero

DATE: October 31, 1980

DESCRIPTION OF CASE:

Complaint filed against Jack A. Choppin, Badge No. 10781 and Supervisor Bill Shoney of the Port of Entry, San Ysidro, California for abusive treatment and harrassment against Robert A. Acero on October 17, 1980.

CASE: Antonio and Eloy Chavez

DATE: November 28, 1980

DESCRIPTION OF CASE:

Complaint filed against Kenneth Altman, Customs Inspector, Badge No. 12344 of the Port of Entry, San Ysidro, California for abusive unprofessional conduct and treatment like criminals against Antonio and Eloy Chavez on November 28, 1980.



CASE: Inhuman Violations Against Children, Women and Violence at  
the Border

DATE: April 11, 1981

DESCRIPTION:

Herman Baca, Chairperson of the Committee on Chicano Rights, presented testimony on the incarceration of children, violations against women, and border violence. Cases presented by Baca included:

- a. Manolo Alberto. June 13, 1979. An 18 month-old baby, a U.S. citizen, being rushed to medical care in the U.S., was denied entry at the border by precipitous, arbitrary decisions of INS agents. The child died as a result.
- b. Mario Canedo. March of 1979. A four-year old heart patient being treated in a U.S. hospital was denied multiple entry visa and was delayed by INS personnel when being taken across to a U.S. hospital in an emergency. The child died in an INS waiting room.
- c. Marta Elena Parra Lopez. May 31, 1972. Marta Elena was detained and raped by a Border Patrol agent.
- d. A husband and wife with proper forms were traveling to Disneyland. The husband was deported to Tijuana and the woman was subjected to a vaginal cavity check.
- e. Reyes and Rincon Case. Two Mexican nationals were apprehended inside U.S. by Border Patrol. The two were handcuffed, and the Border Patrol shot each in the back, killing Reyes and wounding Rincon. The Border Patrol characterized the incident as "self-defense".
- f. Balderas Case. February, 1979. The Border Patrol opened fire on an unarmed man. He was shot in both arms, and the agent slashed him deeply with a knife.
- g. Zarate Case. A sixteen year old Mexican youth was shot by Border Patrol in helicopter. They opened fire and filled the youth with shotgun wounds in both legs.
- h. Ortiz Case. A native-born American citizen of Puerto-Rican descent was seized without probable cause and beaten unconscious to force him to sign papers.
- i. Davalos Case. A Mexican woman traveling as a tourist with the correct visa was detained, separated from her husband, stripped naked and subjected to a vaginal cavity search, all without any facts establishing reasonable cause.
- j. Bustamante Case. The home of Mexican American U.S. citizens was broken into by Border Patrol agents without warrant or probable cause, terrorizing mother and children within.

- k. Vasquez Case. A native-born U.S. citizen was stopped and detained for hours at the San Diego airport which caused him to miss his plane. Although he presented his driver's license, business card and other identification, and is highly articulate in English, the sole reason for his detention was that he appeared to be of Mexican descent.

CASE: International Chamber of Commerce of San Ysidro

DATE: February 23, 1981

DESCRIPTION OF CASE:

Complaint in the form of a letter to President Reagan, dated February 23, 1981, by the International Chamber of San Ysidro with regard to government interference that seriously hampers the free enterprise system, over the lack of respect for private property, of excessive and arbitrary regulation, of repressive spawning policies that make it even harder to operate or own a business.

The International Chamber of Commerce condemns the deliberate actions of the San Diego Police, the U.S. Border Patrol and the Immigration Authorities in making their business difficult to operate.

CASE: Editorial, KGTV 10 San Diego

DATE: March 9, 1981

DESCRIPTION OF CASE:

An Editorial by KGTV 10 of San Diego aired by McGraw-Hill Broadcasting Company Vice-President Clayton Brace on the 5:00 p.m. and 11:00 p.m. news of March 9, 1981, calling for "top officials" of the Border Patrol to insist that their men working closely to the border treat everyone they meet with respect and sensitivity. If they don't, the Border Patrol might find itself without the broad based community support it needs to enforce the law.

A. DENIAL OF MEDICAL SERVICES TO UNITED STATES  
CITIZENS, PERMANENT RESIDENT ALIENS AND UNDOC-  
UMENTED PERSONS.

- Affidavits and/or Declarations
- Formal Complaints
- Official Documents
- Transcripts
- Fact Sheets
- News Articles

S.D. 4-20-79

## ADMITTED TO MERCY

# Badly Burned Child Denied Hospital Bed

Hospital emergency rooms must  
treat poor aliens — Page B-1

By GREG GROSS

Staff Writer, The San Diego Union

A badly scalded 6-year-old boy from Tijuana was denied admittance to University Hospital yesterday because his family could not pay for his treatment.

Neighboring Mercy Hospital, at the request of University Hospital administrators, agreed to admit the child, who has burns over approximately 65 percent of his body and is said to be in poor condition.

University, the county general hospital, houses the major burn-treatment center for San Diego County. It sent a medical team to Tijuana to pick up the child and take him to Mercy, where he was placed yesterday afternoon in its intensive-care unit.

Mercy officials identified the child as Juan Gutierrez. He suffered his injuries last Sunday, they said, but the exact circumstances were not immediately known.

Mercy doctors described Juan's condition as critical and his prognosis as guarded. He had been in a Tijuana clinic since Sunday, prior to being transferred to Mercy.

University Hospital came under criticism this week when it was learned that a neurosurgeon there refused to authorize the transfer of a critically wounded Logan Heights youth from Community Hospital to University, partly in the belief that he might be an illegal alien or Mexican citizen unable to pay for his medical care.

George Fernando Olmos, 16, accidentally shot himself in the head last Sunday with a friend's pistol. Later found to have been born in University Hospital, he too was admitted by Mercy, where he remains unconscious and in critical condition.

(Continued on A-10, Col. 1)

## Burned Child Refused Transfer To Hospital

(Continued from Page A-1)

Olmos was first taken by a police ambulance crew to Community Hospital of San Diego, which has no neurosurgeon on its staff. University Hospital neurosurgeon Dr. Randall Smith refused to authorize his transfer to University after learning that Olmos had no identification with him.

Mexican-American community groups have since called for Smith's dismissal and are seeking an investigation by the state Department of Medical Quality Assurance.

University Hospital officers said the decision not to authorize the transfer of Olmos violated hospital policy, and they promised a review of the incident with Smith.

A University Hospital spokeswoman said yesterday that the "problem of payment" compelled University not to admit the Gutierrez boy.

"We have to be frank about it," she said. "We're completely out of clinical teaching funds (used to reimburse the hospital when patients cannot pay their bills).

"It's a \$5 million fund and it's out, it's completely gone. There was no money, we couldn't accept (him). Mercy has a lot of money.

"To me," she said, "this shows great cooperation between hospitals."

University called a number of other San Diego hospitals before calling Mercy, which agreed to accept Gutierrez, she said.

Mercy spokesman Bailey Gallison confirmed that University administrators had called Mercy's executive director, Sister M. Joanne, asking that they admit Gutierrez. Although Mercy has no special burn-treatment center, there is nothing unusual in Mercy treating burn victims, Gallison said.

# Racism charge leveled at University Hospital

By DARLA WELLES

Charges of "racism and blatant disregard for human life" have been leveled at University Hospital by a member of the hospital's own community advisory board.

Norma Freeman, who is also administrator of the Chicano Community Health Center, made the allegation following an incident Sunday night in which a neurosurgeon at the hospital refused to accept the transfer of an injured Mexican-American youth from Community Hospital.

"I realize this puts me in an unusual position since I am on the advisory board," she said. "But I can't stand by and let this go.

"In my view, this was a matter of racism and a blatant disregard for human life."

Freeman said yesterday that she wants the incident investigated by the local Medical Quality Review Board, of which she is also a member.

University Hospital director Sheldon S. King said he is "astounded" by Freeman's allegations.

"That we didn't take the patient is a reality," King said. "The patient should have been brought here. That he wasn't, I'd say, was a matter of an error in physician's judgment. But to say it was a matter of racism astounds me.

"I don't see how after 13 years of community service on a totally non-discriminatory basis, one incident can be interpreted as representing a hospital policy of discrimination. And I'm totally astounded at this

coming from Norma Freeman, who is on our advisory board and knows our policies."

The patient, George Olmos, 16, was in "very critical" condition today at Mercy Hospital, where he was taken after a sharp exchange between physicians at Community and University.

Dr. Tony Haftel of Community Hospital claims that Dr. Randy Smith of University refused the patient on the grounds that the hospital was "tired of being a dumping ground for illegal aliens." Smith denies that race was an issue.

"Randy Smith is not a racist," King said. "He has told me that he was concerned about accepting re-

See RACISM, B-6

## ★ Racism

CONTINUED FROM B-1

sponsibility for the patient during transport. He referred to the situation as practicing neurosurgery by telephone."

While King denied that race was an issue in the incident, he conceded that what he termed "history" may have been a contributing factor. That is, University officials feel that other hospitals in the area sometimes transfer patients not for medical reasons, but because the patients are determined to be unable to pay for their care.

He stressed that the hospital is not a "charity hospital," but that it delivers care to patients who have no other means of paying. The care is provided under contractual agreement with the county and through special state funds distributed to the University of California teaching hospitals by the UC system's board of regents.

The county contract, King said, does not provide coverage for transfer patients. It is limited to emergency care, he said, and treatment at another hospital prior to arrival at University precludes coverage.

But the county policies, King said, do not preclude the delivery of care to patients who have no means of paying for their care.

All patients brought to the hospital in need of emergency care, he said, are treated.

And the cost for providing that treatment runs into the millions each year, he said.

He said that the hospital has provided \$5 million worth of care from the special state funds during the past fiscal year. In addition, the cost for treatment not reimbursed by Medicare and Medi-Cal programs is expected to run to about \$8 million. And bad debts to about \$2 million.

King said the hospital does not break those figures down according to ethnicity or nationality.

But he said that he has no doubt that the hospital meets its responsibility for providing care to members of the minority community, regardless of ability to pay.

Figures contained in a report prepared by the hospital at the request of the community advisory board indicate the hospital's minority patient load exceeds the minority population in the community at large.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

*Filed 3-6-81*

MARIA CARMEN ORDONEZ and  
LUIS PLATON ORDONEZ  
and all Similarly Situated,

Plaintiffs

VS.

MERCY HOSPITAL OF LAREDO, INC.,  
DELTA AMBULANCE SERVICE,  
GILBERTO VIERA, ERNESTO FLORES,  
and MARY ADELE FUCHS

Defendants

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

CIVIL ACTION NO:

*L-81-14*

I.

INTRODUCTION

1. This action is brought pursuant to the Hill-Burton Act (Title VI, Hospital Survey and Construction Act of 1964, 42 U.S.C. §§291 et. seq. and Title XVI, National Health Planning and Resources Development Act of 1974, 42 U.S.C. §300 et. seq.); the Civil Rights Act of 1871, 42 U.S.C. §§1981, 1983, and 1985(3); the Fifth and Fourteenth Amendments to the U.S. Constitution; the Alien Torts Act, 28 U.S.C. §1350; the Immigration and Nationality Act and the U.S. Constitution, Article VI, Clause 2, Article I, Section 9; and the laws of the State of Texas. Plaintiffs were denied access to the defendant hospital and taken by force from Laredo, Texas to a hospital in the Republic of Mexico.

II.

JURISDICTION

2. This court has jurisdiction pursuant to 28 U.S.C. §1331 (federal question); 28 U.S.C. §1343 (civil rights); and 28 U.S.C. §1350 (alien torts). The amount in controversy exceeds \$10,000, exclusive of costs.

3. Declaratory and injunctive relief is authorized by 28 U.S.C. §§2201 and 2202. Plaintiff further invokes this Court's pendant jurisdiction to hear State claims.

III.

PARTIES

PLAINTIFF

4. Plaintiff MARIA CARMEN ORDONEZ is a citizen of Mexico. On

January 13, 1980, plaintiff was a resident of Laredo, Webb County, Texas.

5. Plaintiff LUIS PLATON ORDONEZ is a citizen of the United States and is the minor child of plaintiff MARIA CARMEN ORDONEZ.

#### CLASS ACTION

6. Plaintiff MARIA CARMEN ORDONEZ brings this cause as a class action pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure on behalf of herself and all others similarly situated; as follows:

1. All indigent foreign born residents of Webb County, Texas eligible for Hill-Burton or emergency hospital care and denied such care because of the unlawful practices of defendants MERCY HOSPITAL, FLORES and FUCHS;

2. All foreign born persons admitted to defendant MERCY HOSPITAL for emergency care and similarly transferred without notice and informed consent to the Republic of Mexico.

7. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the named plaintiff are typical of the claims of the class and plaintiff MARIA CARMEN ORDONEZ will fairly and adequately protect the interests of the class.

8. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

#### DEFENDANTS

9. Defendant MERCY HOSPITAL OF LAREDO is a publicly supported hospital which serves Laredo, Webb County, Texas.

10. Defendant MARY ADELE FUCHS is a member of the Governing Board of Mercy Hospital of Laredo. She is a resident of Laredo, Webb County, Texas.

11. Defendant ERNESTO M. FLORES, JR., is the administrator of Mercy Hospital of Laredo and is responsible for managing and directing the affairs of the hospital. He is a resident of Laredo, Webb County, Texas.

12. Defendant DELTA AMBULANCE SERVICE is an ambulance company which provides ambulance service to residents of Laredo, Webb County, Texas. It is located in Laredo, Webb County, Texas.

Service. He resides in Laredo, Webb County, Texas.

IV.

STATEMENT OF THE CASE

14. On January 13, 1980, plaintiff MARIA CARMEN ORDONEZ was taken by a City of Laredo Fire Department ambulance to defendant MERCY HOSPITAL OF LAREDO, hereinafter referred to as HOSPITAL. Plaintiff was in labor and was about to give birth to her fifth child.

15. Upon arrival at defendant HOSPITAL, plaintiff MARIA CARMEN ORDONEZ was examined by nurses employed by the HOSPITAL. Plaintiff's mother and aunt, Elvira Gonzalez and Horencia Guerrero, who accompanied plaintiff, were directed to the admitting office. Plaintiff's mother and aunt informed defendant HOSPITAL employees that plaintiff was indigent and an undocumented citizen of Mexico, residing in Laredo, Texas.

16. Despite the imminent birth of their child, plaintiff was denied further admission to defendant HOSPITAL. Defendant HOSPITAL employees called defendant VIERA and DELTA AMBULANCE SERVICE and ordered such defendants transport plaintiff to the Hospital Civil, Nuevo Laredo, Tamaulipas, Mexico.

17. Without notifying plaintiff of the transfer and without her permission, plaintiff MARIA CARMEN ORDONEZ was carried by defendant HOSPITAL employees to defendant DELTA's ambulance and was forcibly taken from defendant HOSPITAL to the Hospital Civil by defendants DELTA and VIERA. Without lawful authority and against the consent of plaintiff ORDONEZ, defendants willfully detained plaintiff until defendants had actively and forcibly transported plaintiff from the United States. In carrying out their unlawful detention of plaintiff, defendants willfully and maliciously assaulted plaintiff MARIA CARMEN ORDONEZ.

18. During the course of the transfer and before arriving at the Hospital Civil, plaintiff delivered her child, plaintiff LUIS PLATON ORDONEZ. Plaintiff MARIA CARMEN ORDONEZ has suffered emotional distress, embarrassment, and fear for her physical safety and that of her child. Because of defendant's conduct, plaintiff LUIS PLATON ORDONEZ has suffered and will suffer injury in establishing and proving his United States citizenship.

19. Pursuant to Title VI, Hospital Survey and Construction Act of 1964 (Hill-Burton Act), 42 U.S.C. §§291 et. seq., and the National Health Planning and Resources Act of 1974, 42 U.S.C. §§300 et. seq., defendant



HOSPITAL has received federal funding from the United States Department of Health, Education and Welfare in excess of \$4,979,000. In return for such funds, defendant HOSPITAL made assurances that it would provide a reasonable level of uncompensated care to needy persons and assure that hospital services would be made available to the entire community.

20. Defendant HOSPITAL has received during 1979 \$85,000 from the City of Laredo, Texas. Defendant HOSPITAL, in return for such contribution has promised to provide hospital care for persons unable to pay. In addition, defendant HOSPITAL has received during 1979 \$135,000 from the County of Webb, Texas for indigent care in Webb County, Texas. Defendant HOSPITAL, FLORES and FUCHS are obligated pursuant to Article 4434a of the Texas Civil Statutes to provide hospital care and treatment in all emergency cases.

21. During all times mentioned herein, defendants HOSPITAL, FLORES and FUCHS have separately and in concert, acted under color of state law, custom, ordinances, usages, and regulations of the State of Texas and County of Webb. Said defendants, separately and in concert engaged in conduct to the injury of plaintiffs, depriving plaintiffs of the rights, privileges, and immunities secured plaintiffs by the Fourteenth Amendment to the U.S. Constitution and the Civil Rights Act of 1871. Furthermore, defendants conspired to detain and forcibly transport plaintiffs for the purpose of depriving plaintiffs of equal protection and due process of the laws.

22. Defendants have violated the intent and purposes of the Immigration and Nationality Act, 8 U.S.C. §§1101 et. seq., and the treaties of the United States, by forcibly taking plaintiffs from the United States to the Republic of Mexico.

23. Plaintiff MARIA CARMEN ORDONEZ filed an administrative complaint with the United States Department of Health and Human Services on April 8, 1980. The Attorney General has not brought suit for compliance.

V.

CLAIMS FOR RELIEF

FIRST CLAIM

24. By forcibly detaining plaintiffs and transporting them to the Republic of Mexico without plaintiffs' consent, defendants have deprived plaintiffs of their right to due process of law.

25. This action, taken by the defendants HOSPITAL, FLORES, AND MARY ADELE FUCHS, under color of state law, deprived plaintiffs of their rights as protected by the Fifth and Fourteenth Amendments to the U.S. Constitution and the Civil Rights Act, 42 U.S.C. §1983.

#### SECOND CLAIM

26. Defendants' action was taken to deny medical care and treatment to plaintiff MARIA CARMEN ORDONEZ and force her from the United States solely because of her alienage. Defendants have thereby denied plaintiff her rights to equal protection of the laws.

27. Defendants have violated plaintiff's rights as protected by the Fourteenth Amendment to the U.S. Constitution and the Civil Rights Act, 42 U.S.C. §1981.

#### THIRD CLAIM

28. By conspiring one with the other to deny medical services and treatment to plaintiff MARIA CARMEN ORDONEZ and forcibly taking plaintiff to Mexico, solely because of plaintiff's alienage, defendants have deprived plaintiff of her rights to equal protection of the laws and equal privileges and immunities under the laws.

29. Defendants have violated plaintiffs rights as protected by the Fourteenth Amendment and the Civil Rights Act, 42 U.S.C. §1985(3).

#### FOURTH CLAIM FOR RELIEF

30. Defendants wrongfully detained plaintiff MARIA CARMEN ORDONEZ against her will until defendants had succeeded in transporting plaintiff to the Republic of Mexico.

31. Defendants have violated plaintiff's rights under the laws of the State of Texas in that she was falsely imprisoned by defendants.

#### FIFTH CLAIM

32. In carrying out their wrongful detention of plaintiff, MARIA CARMEN ORDONEZ, defendants further violated plaintiff's rights as protected by the laws of the State of Texas in that defendants assaulted plaintiff.

#### SIXTH CLAIM

33. By forcibly taking plaintiffs to the Republic of Mexico, defendants

have violated the intent and purpose of the Immigration and Nationality Act, 8 U.S.C. §§1101, et. seq., and the Constitution of the United States, Article VI, Clause 2 and Article I, Section 9.

SEVENTH CLAIM

34. Defendants HOSPITAL, FLORES, and MARY ADELE FUCHS, were required to comply with the requirements of the Hill-Burton Act and the federal regulations promulgated thereunder. Such defendants have violated the Act and its regulations by:

- a. Failing to provide hospital services to all persons residing in the service area;
- b. Denying services to indigents residing in the service area because of alienage;
- c. Denying emergency services to indigent aliens; and
- d. Taking emergency patients to facilities in the Republic of Mexico without prior consent of the patient and a medical determination of the risk to the patient.

35. Plaintiff MARIA CARMEN ORDONEZ suffered great physical and mental injury as a result of the violations and is entitled to redress pursuant to the Hill-Burton Act.

VI.

WHEREFORE, plaintiffs respectfully pray for the following relief:

A. That the court enter a declaratory judgment that defendants' acts, policies, and practices complained herein violate the rights of plaintiffs secured by the Civil Rights Act of 1871, 42 U.S.C. §§1981, 1983, 1985(3); the Fifth and Fourteenth Amendments to the United States Constitution; the Immigration and Nationality Act and the U.S. Constitution, Article VI, Clause 2 and Article I, Section 9; the Hill-Burton Act; and the laws of the State of Texas;

B. That the Court issue an injunction permanently enjoining

1. defendants MERCY HOSPITAL, FLORES, and FUCHS from denying hospital care to foreign born residents of Webb County, Texas;
2. defendants from transporting foreign born persons taken and or admitted to defendant MERCY HOSPITAL to the Republic of Mexico without notice to such persons, without their informed consent; and without a prior medical determination as to the risk to the person.

- C. That plaintiff MARIA CARMEN ORDONEZ have judgment for damages in the amount of \$100,000.00;
- D. That plaintiff LUIS PLATON ORDONEZ have judgment for damages in the amount of \$50,000.00;
- E. That plaintiffs be awarded reasonable attorneys fees pursuant to 42 U.S.C. §1988; and
- F. That the Court grant any and all relief deemed just and appropriate.

Respectfully submitted,

LEE J. TERAN  
TEXAS RURAL LEGAL AID, INC.  
1719 MATAMOROS  
P.O. BOX 888  
LAREDO, TEXAS 78040  
512-727-5191

LINDA R. YANEZ  
TEXAS RURAL LEGAL AID, INC.  
1154 E. ELIZABETH, SUITE 501  
BROWNSVILLE, TEXAS 78520  
512-546-5558

VILMA S. MARTINEZ  
MORRIS J. BALLER  
MEXICAN-AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND  
28 GEARY STREET, 6TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94108

JOAQUIN G. AVILA  
JOSE GARZA  
NORMA V. SOLIS  
MEXICAN-AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND  
201 N. ST. MARY'S STREET  
517 PETROLEUM COMMERCE BUILDING  
SAN ANTONIO, TEXAS 78205  
512-224-5476

BY:

Lee J. Teran  
LEE J. TERAN  
ATTORNEY FOR PLAINTIFFS

B. USE OF DEADLY FORCE BY LAW-ENFORCEMENT  
OFFICIALS.

- Affidavits and/or Declarations
- Formal Complaints
- Official Documents
- Transcripts
- Fact Sheets
- News Articles

**EXECUTIVE COMMITTEE**

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Tucson Coalition for Justice
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Major, USAF (Ret.)  
President, Retired Hispanic  
Military Officers Association
- Wesley Young, Vice President  
National Alliance of Postal  
and Federal Employees



**NATIONAL COALITION ON THE HANIGAN CASE**

1332 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 347-2407

CONTACT:

Antonio Bustamante  
(602) 884-5820 (day)  
623-9461 (night)

FOR IMMEDIATE RELEASE

March 7, 1981

MEMBERS

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La Raza National Bar Association
- Herman Baca, Chairman  
Committee for Chicano Rights (CCR)  
San Diego, California
- Fr. Virgil Blum, S.J., President  
Catholic League for Religious  
and Civil Rights
- Ruben Bonilla, Esq  
President, League of United  
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- Jose A. Bracamonte, Esq  
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Political Action (CCPA)
- Jose Saldaña, Chairman  
American G.I. Forum
- Dr. Irving Warner  
National Steering Committee  
Equal Rights Congress (ERC)

HANIGAN SENTENCE MUST COMPORT WITH JUSTICE

Tucson, AZ--Today's press conference was called to address our concerns over the upcoming sentencing of Patrick Hanigan, who on February 23, 1981, was convicted of violating the Hobbs Act by robbing and torturing three undocumented Mexican farmworkers, Manuel Garcia, Eleazar Ruelas and Bernabe Herrera. U.S. District Court Judge Richard Bilby will sentence Hanigan in Tucson on April 6, 1981.

Violations of the Hobbs Act carry a maximum penalty of 20 years imprisonment and a \$10,000.00 fine. However, the defendant was found guilty on three counts (one for each victim) and the maximum penalty in this case would actually be 60 years and \$30,000.00.

We have no way of knowing what kind of sentence Judge Bilby is inclined to prescribe. Moreover, we do not deem it appropriate to invade his judicial province by advocating a specific term of years or fine. However, because of the unfortunate history underlying similar brutality cases,

--MORE--

COORDINATING COMMITTEE

- Antonio Bustamante
- Angie Cano
- Maria Cano
- Samuel Delgado
- Daniel Haro
- Landace Kattar
- Tom Kilbride
- Gerardo Lopez
- Patricia Peña

LEGAL COUNSEL

- Burton Wechsler, Professor of Law  
American University (Wash., D.C.)
- Edward Morgan, Professor of Law  
Antioch School of Law (Wash., D.C.)
- Ruben Sandoval, Director  
Civil Rights Litigation Center  
(San Antonio, Texas)

we feel compelled to speak out. We hope, in the name of justice, that the sentence meted out is commensurate with the extreme gravity of the atrocities committed.

No event in recent history more accurately justifies our apprehensions than the the Jose Campos Torres case of Houston, Texas. On May 5, 1977, Torres, a Vietnam veteran, was arrested for a simple disturbance in a local bar. Instead of routinely booking and holding him, six Houston police officers decided to teach Torres some "respect" for the law and sadistically beat him unconscious. Not satisfied with the brutal punishment they administered, the cowardly assailants threw their victim's body into the bayou where he drowned.

Three of the policemen were indicted for this senseless murder in state court only because one young officer who witnessed the incident refused to continue covering up for his veteran colleagues. This rookie broke the "buddy code" by turning state's witness and testifying against his fellow officers. As a result, three of Torres' killers were convicted on misdemeanor charges of criminally negligent homicide instead of the actual crime committed: first degree murder.

An all white state jury assessed a one year term of incarceration--not in the penitentiary--but in the local jail. In addition, the officers were each fined the ludicrous amount of \$1.00. Adding insult to injury, the jurors then proceeded to probate both the sentence and the fine, with the result that Torres' murderers were released without ever serving a day in jail.

The sense of outrage endured by the Hispanic community over the state jury's "sentence" defies articulation. The community demanded federal intervention, because as so many times in the past, the state proved callously unwilling to protect the human rights of Chicanos. Ruben Sandoval, a reputed San Antonio civil

--MORE--

rights attorney, was enlisted to lead the fight, and finally in December, 1977, the Justice Department announced it would prosecute four of Torres' murderers for violating his civil rights.

Federal prosecutors succeeded in securing a conviction of three policemen. However, racism still prevailed. Ross Sterling, the presiding U.S. District Court Judge, unconscionably sentenced the three to one and ten year sentences--all of which he also probated. In other words, the convicted officers were spared having to serve any time in the penitentiary.

Not only did the federal judge endorse the bigotry of the Texas state jury, he also broke the law. The officers were convicted of a felony carrying a maximum penalty of life in prison. In such circumstances, the law requires a sentence of more than one year. Justice Department lawyers appealed the illegal sentence and ultimately prevailed upon the U.S. Court of Appeals for the Fifth Circuit to reverse the sentence and remand to the federal trial judge with orders to impose a new sentence. The appeals court judges expressed grave concern over Judge Sterling's lenient sentence.

Notwithstanding the Fifth Circuit's express manifestation of concern, and in one of the most shameful episodes of American criminal jurisprudence, Judge Sterling announced a new sentence of one year and ONE DAY! Given an opportunity for parole, this meant the officers would probably serve only three months or so in a minimum security, "country club" facility.

We could cite example after example of similar sentencing shams which rather than vindicate our civil rights, serve as judicial approval of the violence visited upon not only our community, but other minority groups in this country.

We wish to direct Judge Bilby's attention to the abuse of discretion for which some of his brethren are responsible. We ask that he be sensitive to the destructive racism which has shamed and tarnished an otherwise magnificent legal system.

--END--



1 IN RE THE MATTER OF

2 THE KILLING OF:

3 JOSE SINOHUI, JR.

4 REQUEST FOR NEW GRAND JURY

5 SUBMITTED TO

6 HONORABLE CHARLES B. RENFREW

7 DEPUTY ATTORNEY GENERAL

8 U.S. DEPARTMENT OF JUSTICE

9 BY

10 AMERICANS FOR DEMOCRATIC ACTION

11 LA RAZA LEGAL ALLIANCE

12 LA RAZA NATIONAL BAR ASSOCIATION

13 MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

14 NATIONAL BAR ASSOCIATION

15 NATIONAL CONFERENCE OF BLACK LAWYERS

16 NATIONAL JURY PROJECT

17 NATIONAL LAWYERS GUILD

18 NATIONAL WOMENS LEGAL DEFENSE FUND

19 THE GRAND JURY PROJECT

20 THE JOSE SINOHUI NATIONAL SUPPORT COMMITTEE

21 OCTOBER 31, 1980

22 WASHINGTON, D. C.

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The attached is a Memorandum in support of convening a new Grand Jury in the matter of the death of JOSE SINOHUI, JR. on July 2, 1977 at the hands of then South Tucson Police Officer CHRISTOPHER DEAN. This request was discussed at a meeting between Justice Department Officials, including Judge Renfrew and the undersigned Sinohui family attorney and others representing the Justice Department, members of Congress, and groups interested in justice in this case. At that time, it was agreed by Judge Renfrew that he would make the final decision on the question of convening a new Grand Jury, and that that decision would be given top priority within the Justice Department and would be resolved upon an expedited basis.

MEMORANDUM OF POINTS AND AUTHORITIES

HISTORY OF THE CASE

1  
2 Jose Sinohui, Jr. was killed by a shot fired from former  
3 South Tucson Police Officer Christopher Dean's 45 caliber weapon  
4 on July 2, 1977. The deceased was, in accordance with police  
5 orders, proceeding away from the scene of a disturbance in which  
6 he had no involvement when he was shot in the back by Christopher  
7 Dean. Dean fired seven shots in the direction of Sinohui's  
8 vehicle, including the fatal shot, but later testified that he  
9 was merely shooting at the tire of the vehicle. Eyewitness testimony  
10 revealed that there was no justification for Dean's actions in  
11 firing the shots and that, furthermore, the fatal shot was fired  
12 at close range and was carefully aimed at Jose Sinohui's back.

13 Immediately after Dean was cleared by an all white  
14 state court jury on homicide charges in January of 1978, the  
15 Sinohui family requested that the Federal Government intervene  
16 to see that justice was done in this case which had become a  
17 highly visible case of police brutality in the State of Arizona,  
18 the Southwest and the nation.

19 It was not until July of 1979 that the Federal Government  
20 finally announced that a Grand Jury would be convened in the case  
21 to consider whether Civil Rights charges should be filed against  
22 Dean, who had been terminated from the City of South Tucson's  
23 Police Force by that time. Evidence was produced in front of the  
24 Grand Jury in the form of live testimony from eyewitnesses and  
25 experts involved in the investigation of the case. Many documents  
26 were shown to the Grand Jury. At least one expert witness, Mr.  
27 Larmour, was cross-examined by the government prosecutors involved  
28 in the proceeding. It can be assumed that the voluminous eye-  
29 witness testimony concerning the incident was contradictory since  
30 it included, presumably, Dean's testimony and that of his fellow  
31 officer, David Novotny. Since the Justice Department announced  
32

1 that the purpose of the Grand Jury at the time it was convened was  
2 not to render an indictment but merely to investigate the totality  
3 of the circumstances, it is assumed that there was no attempt by  
4 the Justice Department to marshal the evidence in such a way as  
5 to explain the contradictions involved in the testimony of the  
6 numerous eyewitnesses, including Dean and Novotny and those who  
7 had no motive to falsify who had previously gone on record as  
8 indicating there was no justification for Dean's actions. This  
9 gives rise to the question, why after the Justice Department had  
10 the case under consideration for a year and a half did it deem  
11 it appropriate to convene an investigative Grand Jury? It should  
12 be noted that it is the general practice of the United States  
13 Attorney's Office in Arizona to provide grand juries with the  
14 testimony of only one witness, usually a border patrol agent or  
15 F.B.I agent. This fact leads one to the conclusion that the  
16 Justice Department had no intention to obtain an indictment for  
17 civil rights violations in this case when it announced that the  
18 Grand Jury would "investigate" the case. This abundance of  
19 prosecutorial caution has led to a belief that the Justice Depart-  
20 ment is acting as a defense attorney in this matter rather than a  
21 vigorous prosecutor. It is well known that there are plenty of  
22 qualified defense attorneys in the United States who would be  
23 willing to represent police officers charged with Civil Rights  
24 violations. It is submitted that the Justice Department should  
25 have taken a much more vigorous role in the prosecution of this  
26 case from the very early stages.

27           After many months of delay in obtaining an indictment  
28 from the Grand Jury which heard the evidence in August of 1979,  
29 the civil wrongful death action which had been filed by the Sinohui  
30 family resulted in a Judgment in their favor and against Christopher  
31 Dean and the South Tucson Police Department in March of 1979. The  
32 state court judge, Judge Ben Birdsall, who tried the case, found

1 in favor of the Sinohui family in the amount of \$150,000.00  
2 compensatory damages against both Dean and South Tucson, and  
3 further found in favor of the Sinohuis and against Dean in the  
4 amount of \$50,000.00 in punitive damages as a result of his  
5 extreme misconduct. Further, the judge made specific findings  
6 of fact and conclusions of law which made it clear that Dean was  
7 guilty of violating Jose Sinohui's Civil Rights when he unjustifi-  
8 ably shot him in the back. Notwithstanding this clear and  
9 unambiguous finding by a respected member of the Arizona judiciary,  
10 the Justice Department delayed until October 17, 1980, to come back  
11 before the Grand Jury, some fifteen months after the evidence had  
12 been presented, to close out the case. It is our understanding  
13 that witness summaries were presented to the Grand Jury at that  
14 time, and the proceedings lasted a total of four hours, which  
15 represents only a fraction of the time that was taken to present  
16 the voluminous eyewitness testimony fifteen months earlier. The  
17 proceedings which took place on October 17th came days before the  
18 final transcripts of the civil trial were completed by the court  
19 reporters who had worked that case.

20 It was understood by those close to the case, in light of  
21 Judge Renfrew's statements in May of 1980, that the department  
22 would not appear before the Grand Jury to close out the case until  
23 the civil transcripts had been fully considered. Thus, the  
24 appearance before the Grand Jury, only days before important  
25 evidence was readied for consideration, has perplexed the under-  
26 signed as well as others who are knowledgeable of the case. The  
27 appearance made by the Justice Department in turning its back upon  
28 relevant and important evidence, in the form of civil trial  
29 testimony from Dean, Novotny, a respected toxicologist named Ray  
30 Morano, and Sergeant Olsen, chief homicide investigator, has  
31 confirmed that the Justice Department is not interested in Civil  
32 Rights cases concerning minorities.

1           The civil trial testimony of Dean and Novotny revealed  
2 numerous contradictions in their prior testimony and brings out  
3 the important point that Dean and Novotny had spent hours together  
4 immediately after the shooting working on their police reports  
5 back at the South Tucson Police Station. Indeed, Novotny drove  
6 Dean back to the South Tucson Police Station immediately after  
7 the shooting. Mr. Morano has conducted thousands upon thousands  
8 of tests of blood-alcohol readings. He works with the City of  
9 Phoenix Police Department and was independent of both the Tucson  
10 Police Department crime lab and the Tucson coroner, who worked  
11 together in analyzing the ocular fluid taken from the deceased  
12 after his death. Mr. Morano testified that the blood sample  
13 which he obtained from the Coroner's Office indicated that at the  
14 time of Jose Sinohui's death, there was no alcohol in his blood-  
15 stream. This finding contradicted the findings of the Tucson  
16 Police Department, a police department whose conduct had been  
17 called into question by the incident. Mr. Morano was not able  
18 to understand why the Coroner's Office sent the ocular fluid  
19 to the Tucson Police Department without testing it at its own  
20 facility and was further perplexed by the failure of the Tucson  
21 Police Department and the Coroner to test the deceased's blood  
22 for its alcohol content, which is a much more common test than  
23 the ocular fluid test which was administered. Mr. Morano's  
24 testimony was given pursuant to an offer of proof made by the  
25 plaintiffs after the civil judge ruled that the other parties were  
26 not given adequate notice that Mr. Morano would testify. As the  
27 state criminal trial transcripts reveal, Dean's defense includes  
28 a heavy attack on Jose Sinohui personally for being "drunk" at  
29 the time of the shooting, and his attorneys have used the tainted  
30 Tucson Police Department ocular fluid evidence to convince the  
31 triers of fact that Dean's highly improbable story of self-defense  
32 and fleeing felon must be true. This highly prejudicial evidence

1 was not countered in front of the Federal Grand Jury by Mr. Morano's  
2 findings, and it is believed that his findings must be considered  
3 in order for the Federal Grand Jury to render a credible decision.

4 The conclusion that the Federal Grand Jury forgot relevant  
5 evidence by the time it received its briefing by United States  
6 Attorney Michael Hawkins, is inescapable. Mr. Hawkins' attempts  
7 to summarize the testimony of the witnesses clearly prejudiced  
8 the proceedings inasmuch as the Grand Jurors had heard live eye-  
9 witness testimony previously, had been allowed to forget that  
10 testimony in the intervening fifteen month time period, and then  
11 had been confronted with less than verbatim accounts of the  
12 witness testimony.

13 At the time that the Sinohui case was placed before the  
14 Federal Grand Jury, the Hanigan case was set for Grand Jury  
15 consideration. In a very short period of time, in contrast to the  
16 treatment of the Sinohui case, the Justice Department obtained  
17 indictments of the Hanigan brothers. These indictments and the  
18 ensuing trial were accompanied by highly prejudicial publicity  
19 from sources including the local Tucson media, which in large  
20 part attacked hispanics for having sought indictments in the  
21 Hanigan case, and to a fairly substantial extent, the Sinohui  
22 case as well.

23 Further adverse publicity followed the Sinohui civil  
24 Judgment awarded by Judge Birdsall when the punitive damages  
25 portion of the Judgment was paid through Dean's deeding of his  
26 home over to the Sinohuis. The local press treated this collec-  
27 tion process as something that should give rise to great sympathy  
28 in favor of Mr. Dean and made the story front page news. No  
29 mention was made of the fact that Dean's insurer did not cover  
30 the punitive damages by reason of the fact that punitive damages  
31 arise out of the willful, wanton, extreme misconduct of a defendant.  
32 It is our understanding that the Grand Jurors were in no way

1 insulated from this extremely prejudicial publicity, and the entire  
2 process was thereby tainted.

3           The decision to obtain the transcripts of the civil trial  
4 testimony was not made by the Justice Department until July of  
5 1980, nine months after the first portion of the civil trial  
6 transcripts became available, and four months after the final  
7 decision was reached by Judge Birdsall in the case. It is unknown  
8 to the undersigned why the Federal Government, in a case of this  
9 magnitude, was not able to obtain all of the civil trial trans-  
10 cripts during the period of July, 1980, through October 17, 1980.  
11 This inability to accomplish obtainable goals has also led to the  
12 belief that Justice Department has not vigorously sought justice  
13 in this case. Then, after waiting four months for transcripts  
14 which should have been obtained immediately, the Justice Department  
15 decided to go back before the Grand Jury after a fifteen month  
16 lag, only a few days before all of the relevant civil trial  
17 transcripts were completed. Even discounting the four month delay  
18 in obtaining the transcripts, there is no reasonable explanation  
19 for the eleven month delay that preceded the decision to obtain  
20 the transcripts. While it has become a cliché to say that justice  
21 delayed is justice denied, no formulation of words is more descrip-  
22 tive of the history of this case when the role of the Justice  
23 Department is considered.

24  
25                                   BASIS FOR PROSECUTION

26           The elements of the case for prosecution for the depri-  
27 vation of Jose Sinohui's Civil Rights can be made out in a very  
28 substantial way under the facts and law relevant in this case.  
29 Dean's defense that he shot to stop a fleeing felon is not only  
30 totally unsubstantiated by any of the credible witnesses but is  
31 not available to him even under his version of the facts. Dean  
32 testified at the civil trial that he was aware that he could only



1 fire upon a fleeing felon as a last resort if absolutely necessary.  
2 See, transcript of Dean's civil trial testimony at pages 98 and 99.  
3 Accord, former Arizona Revised Statutes Section 13-461 which was  
4 in effect as of the date of the subject killing and which can be  
5 found in the Appendix to former Title XIII, which is located in  
6 Volume 5(a) of the Arizona Revised Statutes, at page 716. A copy  
7 of that section is attached for your easy reference as Exhibit "A".  
8 It is clear that the state law provided that only those homicides  
9 which are "necessarily committed" can be justified under Arizona  
10 law. Dean further testified that the absolutely necessary standard  
11 was a part of his departmental regulations in existence as of the  
12 date of the killing. It seems clear that the words "absolute"  
13 and "last resort" add nothing to the word "necessary" when the  
14 words are used together. However, even if it is assumed for the  
15 sake of argument that there are two different standards which  
16 come into play depending on which word or combination of words  
17 is used, it is clear that under the circumstances of this case,  
18 all of the credible witnesses indicate that Jose Sinohui could  
19 have run former Officer Dean down if he had so desired but  
20 stopped in order to save Dean's life and therefore could not have  
21 been a fleeing felon as Dean alleged, and secondly, that the  
22 police helicopter overhead and the half dozen or more police and  
23 police vehicles were in a better position to apprehend Jose  
24 Sinohui than was Dean. Dean's killing of Jose Sinohui was neither  
25 necessary nor absolutely necessary, and certainly was not a "last  
26 resort".

27 Jorge de la Garza, an Arizona State Corrections Officer  
28 at the Arizona State Prison, who observed the events in question,  
29 leaves no doubt that Dean's story to the effect that he never  
30 shot to kill but always shot at the tire of the vehicle was manu-  
31 factured after the events. De la Garza's testimony at page 9  
32 of the civil trial transcript indicates that Dean fired a "well

1 aimed shot at the back of the cab with his arm held horizontal."  
2 Later on in that transcript, de la Garza testified at page 13  
3 that after the truck had already passed Dean, Dean took a well  
4 aimed shot at the cab and only after that did he lower his arm  
5 to shoot at the tires. This leaves the very distinct impression  
6 that Dean attempted to cover up his well aimed shot with the  
7 shots at the tires. At page 16 of de la Garza's testimony, he  
8 testifies that the truck stopped to avoid hitting Mr. Dean.  
9 At page 17, de la Garza testifies that Dean did not check the  
10 traffic before he entered the streets. At page 19 de la Garza's  
11 testimony conflicts again with Dean's when he points out that the  
12 truck made no sharp turning movements at all, whereas Dean testi-  
13 fied that the truck turned sharply more than once in an attempt  
14 to run Dean down. At page 21, de la Garza testifies that the  
15 distance between Dean and the truck at the time he fired his well  
16 aimed shot at the cab was five to seven feet.

17 It is well settled that 42 U.S.C. §1983 is the civil  
18 counterpart of 18 U.S.C. §242. Greenwood v. Peacock, 484 U.S. 808,  
19 16 Law. Ed. 2d 944, 86 Sup. Ct. 1800 (1966); Robinson v. Bergstrom,  
20 579 F.2d 401 (1978 7th Cir.Ct.App. Ill.); Wegwart v. Eagle Movers,  
21 Inc., 441 F.Supp. 872 (1977 Dist.Ct. Wisc.) Judge Birdsall, in  
22 the civil case against Dean, found expressly, in his findings of  
23 fact and conclusions of law, that Dean had violated Jose Sinohui's  
24 Civil Rights under 42 U.S.C. §1983. This finding, supported by  
25 overwhelming evidence at the civil trial, was on basically the  
26 same issues which must be dealt with under 18 U.S.C. §242. In  
27 the eyes of many, the lack of diligent prosecution by the Federal  
28 Government, even in the face of Judge Birdsall's ruling directly  
29 on point, gives rise to a belief that the Justice Department is  
30 not interested in the Civil Rights of minorities. Certainly, the  
31 standard of probable cause which must be met to justify criminal  
32 prosecution is quite similar to the civil standard of preponderance

1 of the evidence by which Judge Birdsall was bound. His finding  
2 indicates that the evidence showed that it was more probable  
3 than not that Dean violated Jose Sinohui's Civil Rights. In fact,  
4 the punitive damages which were ordered against Dean gives reason  
5 to believe that the judge was satisfied beyond any reasonable doubt  
6 that extreme misconduct had occurred.

7 The important case of Screws v. U.S., 89 Law. Ed. 1495,  
8 65 Sup.Ct. 1031, 325 U.S. 91 (1945), has been used by some in the  
9 Justice Department as authority for the proposition that the burden  
10 of specific intent in a Federal Civil Rights case is nearly  
11 impossible to meet. The assertion is false. At 225 U.S. 105, the  
12 court states in pertinent part:

13 "...When they act willfully in the sense in which  
14 we use the word, they act in open defiance or  
15 in reckless disregard of a constitutional require-  
16 ment which has been made specific and definite.  
When they are convicted for so acting, they are  
not punished for violating an unknowable something."

17 Even actions taken in reckless disregard of the rights  
18 of the victim are punishable under the Screws' standard. Here,  
19 as in the Screws case, the basic right to trial in a court of law,  
20 not a "trial by ordeal", was terminated by the actions of  
21 Christopher Dean in slaying Jose Sinohui. At page 106 the court  
22 says in pertinent part:

23 "...Those who decide to take the law into their  
24 own hands and act as prosecutor, jury, judge,  
25 and executioner plainly act to deprive a prisoner  
26 of the trial which due process of the law guarantees  
him. And such a purpose need not be expressed;  
it may at times be reasonably inferred from all  
the circumstances attendant on the act. [citation  
of authority]

27 The difficulty is that this question of intent  
28 was not submitted to the jury with the proper  
29 instructions. The court charged that petitioners  
30 acted illegally if they applied more force than  
31 was necessary to make the arrest effectual or  
32 to protect themselves from the prisoner's alleged  
assault. But in view of our construction of the  
word "willfully" the jury should have been further  
instructed that it was not sufficient that petitioners  
had a generally bad purpose. To convict it was

1 necessary for them to find the petitioners had  
2 the purpose to deprive the prisoner of a con-  
3 stitutional right, e.g. the right to be tried  
4 by a court rather than by an ordeal. And in  
5 determining whether that requisite bad purpose  
6 was present the jury would be entitled to con-  
sider all the attendant circumstances--the  
malice of petitioners, the weapons used in the  
assault, its character and duration, the provoca-  
tion, if any, and the like."

7 Thus it is clear that the Screws' standard requires  
8 that all of the attendant circumstances to the act be taken into  
9 account to determine whether the requisite intent can be found.  
10 Secondly, reckless disregard of the rights of the victim to a  
11 trial in a court of law is sufficient to bring the act within  
12 the constitutionally required level of intent.

13 The "attendant circumstances" revealed by eyewitness  
14 testimony reveal that Officer Ford, of the Department of Public  
15 Safety, was expediting traffic and moving it along at the time  
16 Jose Sinohui's pickup truck proceeded out into the street on  
17 South 6th Avenue. See, the civil trial transcript of Robert Ford  
18 at page 14. Officer Ford testified that there were many cars  
19 proceeding on South 6th Avenue during the times he was directing  
20 traffic on that thoroughfare. This directly contradicts Dean's  
21 testimony that there was no traffic on South 6th Avenue at the  
22 time he entered the Street. As earlier indicated, Corrections  
23 Officer Jorge de la Garza testified that Dean did not even bother  
24 to look for traffic when he entered the street. Officer Ford  
25 was surprised to hear shots being fired even though he was  
26 directly across from Dean and next to the truck when Dean opened  
27 fire. As his testimony indicates at page 18 of the civil trial  
28 transcript, Ford was not in fear for his life by reason of Jose  
29 Sinohui's truck, but was in fear after the shooting started. As  
30 the passenger in the truck Mario Corrales testifies at page 26  
31 of the civil trial transcript, after Dean started firing on the  
32 vehicle, Jose Sinohui then proceeded away from Dean and towards

1 the Veteran's Administration Hospital which was only a few blocks  
2 away from the scene of the shooting. Officer Daykin, in his civil  
3 trial testimony also reveals that he was surprised when Dean opened  
4 fire on the vehicle. Neither Daykin, an officer with the Tucson  
5 Police Department, nor Ford saw any justification for firing upon  
6 the vehicle.

7 Eyewitness Charles Holland, an employee of Tucson  
8 Newspapers, at page 13, confirms de la Garza's testimony to the  
9 effect that Dean did not look for oncoming traffic as he stepped  
10 off the curb and onto the street. Holland also confirms de la  
11 Garza's testimony as to the horizontal level of Dean's arm and  
12 the fact that the deceased did nothing of a provocative nature  
13 at the point it came near, and then proceeded past, defendant  
14 Dean. See, the civil trial transcript of Charles Holland at  
15 pages 22 and 25 respectively. Norma Munoz at page 31 of her civil  
16 trial transcript, also testifies that when Dean was firing at  
17 the vehicle from the back of it, he was firing with his arm and  
18 weapon held straight and steadily held out horizontally with the  
19 street.

20 There was no contention by anyone at any of the proceed-  
21 ings held with respect to this matter to this date that Jose  
22 Sinohui or his passenger Mario Corrales were involved as partici-  
23 pants in any disorderly conduct at the scene of the shooting.  
24 Pursuant to police instructions at the scene, Sinohui and Corrales  
25 decided to move away from the scene and the law enforcement  
26 activities which were taking place there.

27 Robert Ford testified at page 19 of his civil trial  
28 transcript that at the time of the shooting, a police helicopter  
29 was overhead with searchlights focused on the people at the scene  
30 and was an available alternative which could have been used to  
31 pursue the Sinohui vehicle rather than the use of deadly force  
32 which Dean chose to use. As Norma Munoz testified at page 35 of

1 her civil trial transcript, as soon as the shots were fired by  
2 Dean, a number of officers immediately left the area of the  
3 shooting in pursuit of the vehicle using police vehicles which  
4 were readily available for them as a reasonable alternative to  
5 the use of deadly force chosen by Dean.

6           Officer Olsen, the Chief Homicide Detective dispatched  
7 to investigate the slaying of Jose Sinuhoi, found no evidence  
8 of any marijuana use by either Sinohui or his passenger Corrales,  
9 as his civil trial testimony reflects. However, the fact that a  
10 few marijuana seeds were found under the seat of the pickup truck  
11 has been used by Dean's attorneys to put the victim on trial,  
12 just as the intoxication evidence was used to put the victim on  
13 trial. Neither Olsen's civil trial testimony nor Ray Morano's  
14 civil trial testimony concerning the marijuana and alcohol intoxi-  
15 cation issues had been reviewed by the Justice Department as of  
16 the date this case was closed out on October 17, 1980. These  
17 transcripts and all other available evidence must be reviewed by  
18 the Justice Department and the new Grand Jury at the earliest  
19 practicable date.

20           There can be no lag between the time that the new  
21 Grand Jury reviews the evidence in the case and the time that it  
22 is requested to make a decision on indictment. Vigorous prosecu-  
23 tion must be had on this case in order to restore faith in the  
24 system of justice in this country. The taint brought on by the  
25 fifteen-month lag in the Grand Jury decision and the failure to  
26 consider the civil trial transcripts which were, by all indications,  
27 to be considered by the Department of Justice, must be removed  
28 by the convening of a new Grand Jury and a vigorous prosecution  
29 vindicating the Civil Rights of Jose Sinohui, Jr.

30  
31 -----  
32 -----

§ 13-461. Justifiable homicide by officer

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance either:

1. In obedience to any judgment of a competent court, or
2. Necessarily committed:
  - (a) In overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.
  - (b) In retaking felons who have been rescued or who have escaped.
  - (c) In arresting persons charged with felony who are fleeing from justice or resisting arrest.

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EXHIBIT "A"

# The New York Times

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—NEW YORK, THURSDAY, OCTOBER 9, 1980—

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## Prayers Seek Action in Tucson Slaying

Special to The New York Times

TUCSON, Oct. 8—A dozen people gathered in the front yard of the modest two-bedroom house of Joe and Lupe Sinohul on this city's predominantly Mexican-American South Side last Thursday evening. The group, friends and Sinohul family members and a friendly priest, celebrated mass as they had every Thursday evening for 108 weeks and vowed to continue until the Justice Department takes action in the case of a police officer who fatally shot 24-year-old Joe H. Sinohul Jr. three years ago.

Christopher Dean, then a 29-year-old officer with the city of South Tucson, a mile-square municipality within Tucson's city limits, was acquitted on a charge of involuntary manslaughter. Since then the Sinohul family has won damages in a civil suit and the Federal Justice Department has begun an investigation, but the family and its supporters have lost faith that the Government will come through for them.

Their reaction has been to mount an extraordinary effort to pressure the Justice Department into acting, including persuading 34 members of Congress to write letters on their behalf. And they continue to hold the weekly prayer vigils.

Mr. Dean had responded to a call to help Tucson police quell a late-night disturbance on South Sixth Avenue on July 2, 1977. According to court testimony, Officer Dean was about to escort a prisoner across the street to a police vehicle when Mr. Sinohul drove by in a 1953 pickup. According to the testimony, this is what happened next:

The truck, which passed close to Officer Dean, came to a halt as directed by Mr. Dean, drifted backwards slightly, and proceeded forward again. As the truck passed closely by Officer Dean a second time, he drew his handgun and began shooting at it. After the truck had passed him, Mr. Dean fired a few more shots, one of which pierced the cab of the pickup and struck Mr. Sinohul in the back, killing him.

### An Argument of Self-Defense

Five weeks later, a Pima County grand jury indicted Officer Dean on a charge of involuntary manslaughter. Testifying at his trial six months later, Mr. Dean told an eight-person all-Anglo jury that he had thought the pickup truck was aimed at him and that he had shot at it in self-

defense. His shots were intended for the pickup's tires, Mr. Dean said. He added that he had been trying to stop a fleeing felon, the felony having been the attempt to run him over.

"I never intended to kill anyone," he testified. His account was backed up by a fellow officer, David Novotny. Others witnesses gave varying accounts of the truck's speed and its position in relation to Officer Dean, but most who testified said that they saw no apparent reason for Mr. Dean to fire at the vehicle. The jury found Mr. Dean not guilty.

The Sinohul family immediately petitioned the Justice Department to review the case for possible civil rights violations.

When the department did not respond by the following November, Mrs. Sinohul, traveled to Phoenix to meet with then-Deputy Attorney General Benjamin R. Civiletti. In June 1979, the Justice Department announced that it would begin a grand jury investigation of the shooting. Despite intermittent assurances from Washington that a decision was forthcoming, the grand jury, whose term expires at the end of 1980, has not acted.

### \$200,000 Award in Civil Suit

The Sinohuls were heartened when a judge ruled in their favor in a civil suit against Mr. Dean and the City of South Tucson, awarding them \$200,000 in punitive and compensatory damages.

In that case, Judge Ben C. Birdsall of Pima County's Superior Court concluded that the shot that killed Mr. Sinohul was "willfully and intentionally aimed" and that Mr. Dean "violated the civil rights of the decedent by killing him in the performance of his duties as a police officer without justification." The City of South Tucson has agreed to pay \$150,000, and Mr. Dean has agreed to turn his house over to the Sinohul family.

Justice Department officials familiar with the case have said, however, that they consider it unlikely that Federal charges would be brought, partly because of the difficulty in resolving the

contradictory testimony. They added that there was a problem in showing "willful intent" on the part of Mr. Dean.

One department official said that the investigation had been kept open largely because of fears about how Hispanics in the Southwest would react to an announcement that there would be no prosecution in the case.

### Role of Civil Rights Movements

The growing Hispanic-American civil rights movement has brought numerous allegations of police brutality in the Southwest to the attention of the Justice Department. The Sinohul case is one of the most prominent, because of the activities of sympathizers in Arizona and in Washington, where Daniel A. Haro, a graduate of the Antioch School of Law, has lobbied on Capitol Hill, convincing members of Congress that the circumstances of the case deserve close review.

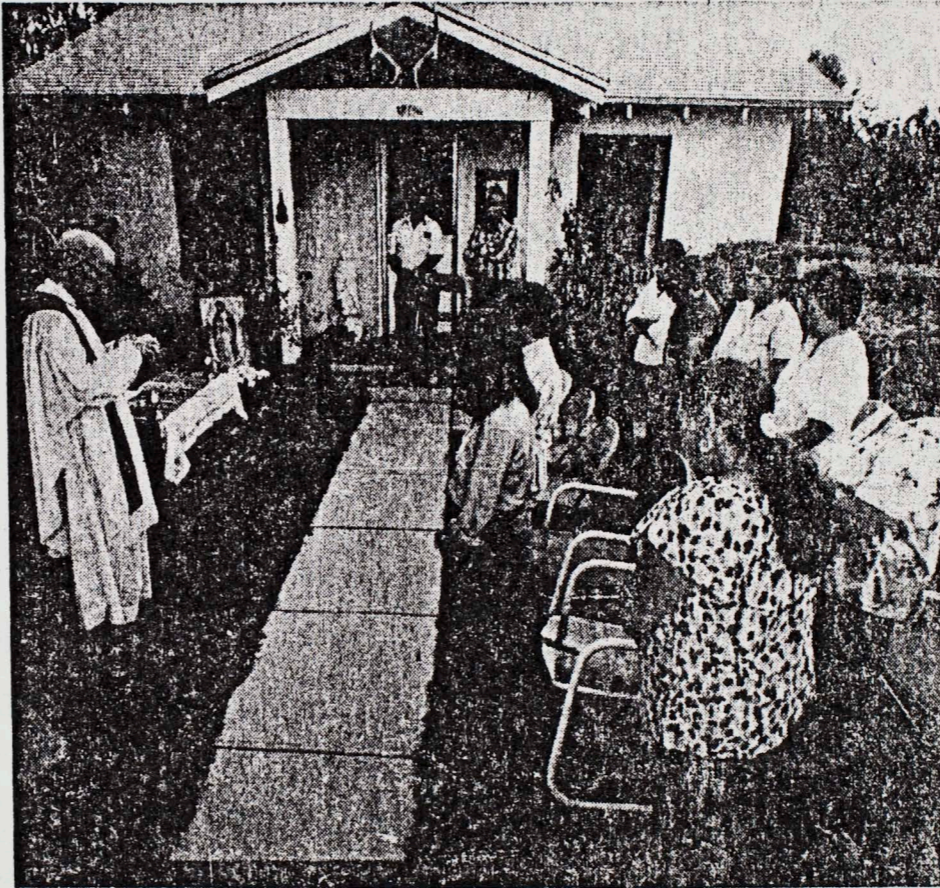
A spokesman for Mr. Civiletti said today that the Justice Department "is energetically prosecuting civil rights cases concerning Hispanics, but we have to have sufficient facts to prove a civil rights violation."

Mr. Dean, who was dismissed from the South Tucson police force as a result of the shooting, has left Tucson and cannot be reached. His attorney, James E. Quigley, maintains that any Federal trial would result in another acquittal. "The stories supporting Sinohul would dissolve like a puff in the wind," he said.

### Sympathy or Justice?

The Sinohuls have become embittered. "When I met with Civiletti he told me I didn't need his sympathy, that I needed justice," Mrs. Sinohul said after a recent front-yard prayer service. "So far he hasn't given us either."

Her husband, Joe, a mechanic who works with heavy machinery at a nearby mine, added, "When we asked for justice, we thought we'd get it. I've lost faith in this country. I used to encourage boys to join the service, like when my Joe entered the Navy. I don't do that any more."



The New York Times / Terrence Moore

Friends of Joe and Lupe Sinohul attend mass in their front yard of their Tucson, Ariz., home every Thursday evening to commemorate the shooting death, three years ago, of their son Joe.



November 6, 1980

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
Washington, D. C.

Dear Judge Renfrew,

We, the leaders of major civil rights organizations, religious denominations and labor unions in this nation, call upon you once again to review the status of the celebrated Jose Sinohui case.

We have recently learned of the grand jury's decision to return a no-bill on the question of Mr. Christopher Dean's indictment for the deprivation of Jose Sinohui's civil rights. After reviewing the incredible series of violation of rights which have transpired involving the Jose Sinohui case, we feel that injustice has once again prevailed over the Hispanic community.

We ask you to consider the following improprieties in this case, as we have, and ask you to join with us in seeking a just resolution of this matter.

First: The fifteen (15) months delay between the presentation of evidence before the grand jury, and a four hour summary prior to a decision being made, is both morally and legally inexcusable. This practice did not allow for an adequate familiarity of witnesses' testimony, and other detailed information vital for establishing the burden of proof-probable cause-necessary for securing an indictment from a grand jury.

The delay can be attributed to the negligence of the Tucson State Court, in their slow response in meeting your request for a copy of all the transcripts. If a simple request for a transcript could only be accomplished as quickly as the taking of an Hispanic's life, there would have been no delay. We feel that the delay was based on administrative negligence in meeting a simple request.

The long delay also allowed members of the grand jury to develop a negative attitude because of events taking place in Tucson, Arizona. At this time, many people in the Tucson area were being influenced by the negative publicity and high emotions being generated by the Hanigan case.

As you can imagine, Judge Renfrew, allowing this criminal investigation to languish so incredibly long with the results ending in only a no-bill by the grand jury, can only add credence to the speculation that the Justice Department does not consider the civil rights of minority people to be of any priority.

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 2

Second: The Sinohui case went before the grand jury without considering all of the evidence. Portions of the transcripts from the state civil suit trial for wrongful death, which contained vital testimony that may have helped the grand jury in its' deliberations, were not even evaluated. You had promised members of the Jose Sinohui national support committee that all the evidence which the support committee deemed essential to the case would be considered.

Third: The prosecutor's effort in seeking the indictment against police officer Christopher Dean does not appear to have been pursued vigorously. This brings into question the Justice Department's commitment in this case, and the commitment of the U. S. Attorney's office in Arizona. Given the apparent lack of aggressiveness in the prosecution, it may be necessary to appoint a special prosecutor.

Fourth: The grand jury which heard the case was not sufficiently representative of the racial, ethnic, and social-economic composition of the Tucson community.

The inadequate, still incomplete investigation of the circumstances surrounding the death of Jose Sinohui, has caused the surviving family and members of the community, untold pain and anguish.

It is our recommendation to you now that the Justice Department convene a new grand jury which represents a true cross section of the Tucson community, and that this new grand jury be presented with all of the evidence, including relevant civil suit transcript testimony, without delay.

We appreciate your taking the time to meet with a group of Hispanic leaders in Washington, D. C., on October 21, 1980, to discuss their concern over the Justice Department's handling of the case and to hear their recommendation that another grand jury be convened.

At that meeting, you stated that if for any reason you felt that the formation of a new grand jury was not the appropriate action to take, you would advise the group in advance and meet with them once again allowing them to present their full arguments.

We certainly hope that such a meeting will not be necessary, but are desirous of participating if it is necessary.

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 3

The Sinohui case has now been dragged on for three years by the Justice Department. The Department's reluctance to act flies in the face of Attorney General Benjamin Civiletti's promise to make the enforcement of Hispanic American civil rights a high priority during this administration.

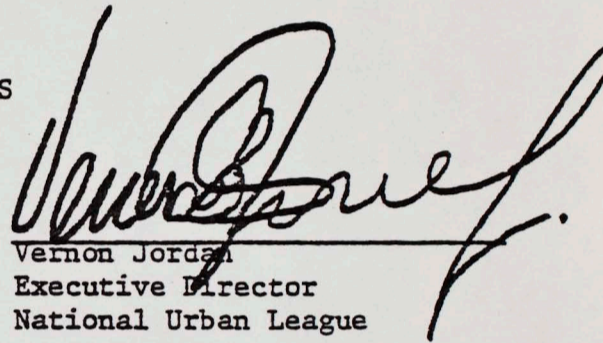
To avoid further suffering on the part of the Sinohui family, to insure justice, and to provide all Hispanic Americans with renewed hope that the federal government is willing to act decisively when the human and civil rights of minorities are denied, we urge strong and aggressive leadership from you regarding this important matter.

Sincerely yours,

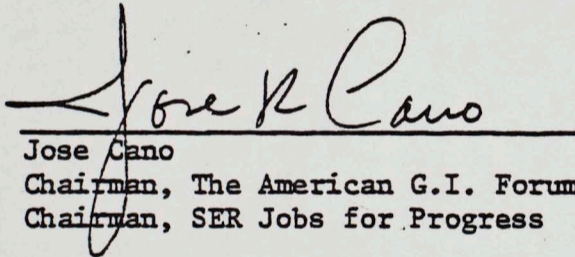
CIVIL RIGHTS ORGANIZATIONS



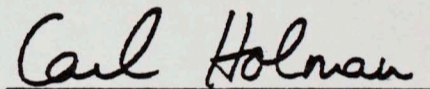
Ruben Bonilla, National President  
League of United Latin  
American Citizens (LULAC)



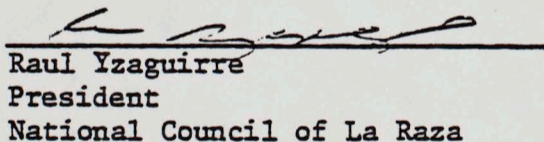
Vernon Jordan  
Executive Director  
National Urban League



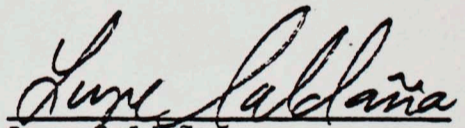
Jose Cano  
Chairman, The American G.I. Forum  
Chairman, SER Jobs for Progress



Carl Holman  
President  
National Urban Coalition



Raul Yzaguirre  
President  
National Council of La Raza



Lupe Saldaña  
Immediate Past President  
The American G.I. Forum

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 4

Dr. Ana Maria Perera

Dr. Ana Maria Perera  
President  
National Association  
of Cuban American Women  
Member Attorney General's Hispanic  
Advisory Committee

John P. Adams

Dr. John P. Adams  
Director  
Department of Law,  
Justice and Community Relations  
The United Methodist Church

David Montoya

David Montoya  
National President  
National Immage, Inc.

Leon Shull

Leon Shull  
National Director  
Americans for Democratic Action

Mary Alice Theiler

Mary Alice Theiler  
President  
National Lawyers Guild

Vilma S. Martinez

Vilma Martinez  
President, General Counsel  
Mexican American Legal Defense  
and Education Fund (MALDEF)

Benjamin Chavis, Jr.

Reverend Benjamin Chavis, Jr.  
Director  
United Church of Christ  
Commission for Racial Justice  
Washington, DC.

Benjamin Aranda

Judge Benjamin Aranda  
National President  
La Raza National Bar Association

Wylie Rogers

Wylie Rogers  
Executive Director  
Equal Rights Congress

Gary Potter

Gary Potter, President  
Catholics for Christian  
Political Action (CCPA)

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 6

CLERGY LEADERS

+ Robert Sanchez  
Most Rev. Robert Sanchez  
Archbishop of Santa Fe, New Mexico

+ Juan Arzube  
Most Rev. Juan Arzube  
Auxiliary Bishop of Los Angeles, CA

+ P. F. Flores  
Most Rev. Patrick Flores  
Archbishop of San Antonio, Texas  
Chairperson Texas Advisory Committee  
to the U.S. Commission on Civil Rights

+ William Skylstad  
Most Rev. William S. Skylstad  
Bishop of Yakima, Washington

+ Thomas A. Donnellan  
Most Rev. Thomas A. Donnellan  
Archbishop of Atlanta, Georgia

+ Rene A. Valero  
Most Rev. Rene A. Valero  
Auxiliary Bishop of Brooklyn, N.Y.

+ Rembert G. Weakland  
Most Rev. Rembert G. Weakland  
Archbishop of Milwaukee, Wisconsin

+ Joseph J. Madera  
Most Rev. Jose Madera  
Bishop of Fresno, California

+ James Rausch  
Most Rev. James Rausch  
Bishop of Phoenix, Arizona

+ John J. Fitzpatrick  
Most Rev. John J. Fitzpatrick  
Bishop of Brownsville, Texas

+ Gilbert Chavez  
Most Rev. Gilbert Chavez  
Auxiliary Bishop of San Diego, CA.

+ Roger Mahony  
Most Rev. Roger Mahony  
Bishop of Stockton, California

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 7

Raymond J. Peña

Most Rev. Raymond J. Peña  
Bishop of El Paso, Texas

Rev. Frank Ponce

Rev. Frank Ponce  
Associate Director  
Secretariat for Hispanic Affairs  
NCCB/USCC

Francis J. Green

Most Rev. Francis J. Green  
Bishop of Tucson, Arizona

Dr. Cyprian Lamar Rowe

Dr. Cyprian Lamar Rowe, F.M.S.  
Executive Director  
National Office for Black  
Catholics (N.O.B.C.)

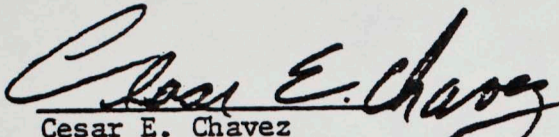
Pablo Sedillo

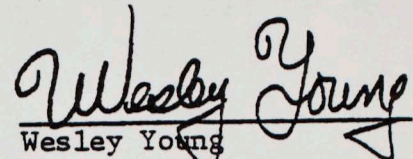
Pablo Sedillo  
Executive Director  
Secretariat for Hispanic Affairs  
NCCB/USCC

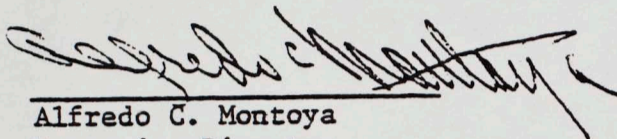
The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

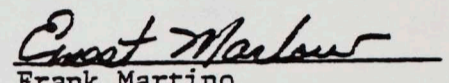
Page 8

LABOR UNIONS AND ORGANIZATIONS

  
Cesar E. Chavez  
President United Farm Workers  
of America, AFL-CIO

  
Wesley Young  
Vice President  
The National Alliance of Postal  
and Federal Employees

  
Alfredo C. Montoya  
Executive Director  
Labor Council for  
Latin American Advancement

  
Frank Martino  
President  
International Chemical  
Workers Union  
Ernest R. Marlow  
Washington Representative  
for Frank Martino

cc: President James Earl Carter  
  
Ambassador Esteban Torres, Special Assistant to  
the President for Hispanic Affairs  
  
Hon. Edward Kennedy, Chairman - Senate Judiciary Committee  
  
Hon. Dennis DeConcini, U. S. Senator, Arizona  
  
Hon. Benjamin Civiletti, Attorney General  
  
Hon. Drew S. Days III, Chief Civil Rights Division  
  
Hon. Michael Hawkins, U.S. Attorney, Arizona  
  
Bates Butler III, First Assistant U. S. Attorney, Arizona

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BLACK CAUCUS

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GOVERNMENT OPERATIONS

CHAIRWOMAN: MANPOWER AND  
HOUSING SUBCOMMITTEE

SELECT COMMITTEE ON  
NARCOTICS ABUSE AND CONTROL

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

PLEASE SEND REPLY TO:  
 2438 RAYBURN OFFICE BUILDING  
WASHINGTON, D.C. 20515  
SUITE 3880  
 230 SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60604  
(312) 353-5754  
 3851 WEST ROOSEVELT ROAD  
CHICAGO, ILLINOIS 60624  
(312) 522-2442

November 24, 1980

The Honorable Drew Days, III  
Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Sir:

The case of Jose Sinohui has become a concern among minority communities throughout the nation due to the severity of the violation of civil rights involved and what seems to be the reluctance of the Justice Department to expedite the case quickly and by recommending an indictment to the grand jury.

It has been brought to my attention that the grand jury recently met after 15 months and returned a decision of No-Bill on the question of Mr. Christopher Dean's indictment for the deprivation of Jose Sinohui's civil rights. That decision, in my opinion, is not surprising. I have been informed that the U.S. Attorney for Arizona has not presented any evidence during this 15 months to the grand jury and therefore it is difficult to comprehend why the members of the grand jury took over four hours to summarize the case. Fifteen months is a long time in which to try to remember witnesses' testimonies and other detailed information vital to establishing the burden of proof-probable, cause-necessary for securing an indictment in any case.

It has also been pointed out that the final decision to go before the grand jury was made without acquiring and considering all evidence. Vital testimony that may have aided the deliberations was not reviewed. Members of the Jose Sinohui National Support Committee have stated that they were assured that portions of the state civil suit trial transcripts for wrongful death would be considered.

Allowing this criminal investigation to languish so long with results ending in only a No-Bill by the grand jury can only add credence to the speculation that the Justice Department does not consider minority civil rights a priority.

A recent article in the "New York Times" accurately reflects the sentiment and concerns of many and outlines what could be a correct Justice Department view of reaction to showing "willful intent" on the



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GOVERNMENT OPERATIONS

CHAIRWOMAN: MANPOWER AND  
HOUSING SUBCOMMITTEE

SELECT COMMITTEE ON  
NARCOTICS ABUSE AND CONTROL

# Congress of the United States

## House of Representatives

Washington, D.C. 20515

PLEASE SEND REPLY TO:  
 2438 RAYBURN OFFICE BUILDING  
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SUITE 3880  
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(312) 353-5754  
 3851 WEST ROOSEVELT ROAD  
CHICAGO, ILLINOIS 60624  
(312) 522-2442

November 24, 1980

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Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice  
Washington, D.C. 20530

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The Honorable Drew Days, III  
Page 2  
November 24, 1980

part of Mr. Dean.

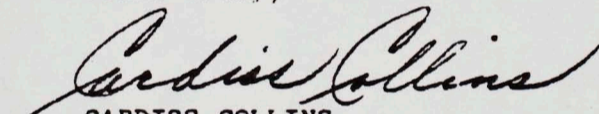
It is my belief that having reviewed all the circumstances surrounding the Sinohui case, justice can best be administered through convening a new grand jury and by having that jury adequately reflect a cross-section of the Tucson community which would include Mexican, Black and Native Americans. In addition, having that jury review and consider all pertinent evidence presented in a comprehensive manner with respect to the Sinohui case should allow justice under the judiciary system.

This effort would demonstrate to all Americans that the Justice Department of our nation is truly ready and willing to afford all people equal protection under the law through the judicial process and continues its effort to uphold this country's commitment to human rights and equal justice.

As you are aware, many of my colleagues of both Houses of Congress have expressed their concern regarding the Sinohui case in recent months as have many other organizations and coalitions. I join them in urging your full consideration of this significant case and of its impact on the Hispanic and other minority communities which involved police officials' treatment of those minorities.

It is my hope that you will favorably respond to the question of convening a new grand jury in the Sinohui case. Please keep me informed of the progress of this case should any action be forthcoming.

Yours truly,

  
CARDISS COLLINS  
Member of Congress

CC/CS/amp



# Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
202/667-1780

November 7, 1980

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National Association for the  
Advancement of Colored People

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Eleanor Smeal  
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Rev. Leon Sullivan  
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Honorable Charles B. Renfrew  
Deputy Attorney General  
Department of Justice  
Room 4111  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Deputy Attorney General Renfrew:

The case of Jose Sinohui is one that demands immediate attention.

I heartily concur with those who are seeking further consideration by the Department of Justice as stated in the letter sent to you on November 6 over the signatures of a number of religious, labor and civil rights leaders.

I strongly urge that a new grand jury be convened with all the evidence this time presented before it. Justice must be done.

Many persons of prominence and stature have questioned the manner in which the Department has handled the Sinohui case thus far. It is imperative that a new look at this pressing issue be carried out in such a manner as to leave no room for anyone to question the Department's fairness and commitment to the enforcement of civil rights. Faith in the legal system must be restored to the poor and disenfranchised of our society.

Thank you for your consideration of this most important civil rights case.

Sincerely,

Clarence Mitchell, Jr.  
Chairman

cc: President Jimmy Carter  
Hon. Benjamin R. Civiletti  
Hon. Drew C. Days, III  
Hon. Daniel Rinzel

*"Equality In A Free, Plural, Democratic Society"*

## Black Leadership Forum

1201 Connecticut Ave., N.W.  
Washington, D.C. 20036  
November 20, 1980

202 331-2400

**Chairman**  
**Benjamin L. Hooks**  
Executive Director  
National Association for the  
Advancement of Colored People

**Vice Chairman**  
**Dr. Joseph E. Lowery**  
President  
Southern Christian Leadership  
Conference

**Secretary-Treasurer**  
**M. Carl Holman**  
President  
The National Urban Coalition

**Julius L. Chambers, Esq.**  
President  
Legal Defense and Education  
Fund

**Hon. Cardiss Collins**  
Chairwoman  
Congressional Black Caucus

**Hon. Woody Etherly, Jr.**  
President  
National Black Caucus of Local  
Elected Officials

**Theodore R. Hagans**  
President  
National Business League

**Hon. Richard G. Hatcher**  
Mayor, City of Gary

**Dorothy I. Height**  
National President  
National Council of Negro  
Women, Inc.

**Rev. Jesse L. Jackson**  
National President  
Operation PUSH, Inc.

**Vernon E. Jordan, Jr.**  
President  
National Urban League

**Coretta Scott King**  
President  
Martin Luther King, Jr. Center  
for Social Change

**Imam Warith D. Muhammad**  
President  
American Muslim Mission

**Bayard Rustin**  
Chairman of the National Board  
A. Philip Randolph Institute

**Rev. Leon Sullivan**  
Chairman and Founder  
Opportunities Industrialization  
Centers of America

**Eddie N. Williams**  
President  
Joint Center for Political Studies

Honorable Judge Charles B. Renfrew  
Deputy Attorney General  
U.S. Department Of Justice  
Washington, D.C. 20530

Dear Deputy Attorney General Renfrew:

We have recently been made aware of the grand jury's decision to return a no-bill on the question of Mr. Christopher Dean's indictment for the deprivation of Jose Sinohui's civil rights.

We ask that you join with us and other members of major civil rights organizations, religious denominations, and labor unions in seeking a just resolution of this matter.

To avoid further suffering on the part of the Sinohui family and to provide renewed hope for minority Americans that the federal government is willing to act decisively when the civil rights of minorities have allegedly been denied, we urge strong and aggressive leadership from you regarding this important matter.

Sincerely yours,

Black Leadership Forum

Benjamin L. Hooks, Chairman  
Executive Director  
National Association for the  
Advancement of Colored People

November 20, 1980

M. Carl Holman, Executive Secretary  
President  
National Urban Coalition

Dorothy I. Height  
President  
National Council of Negro Women

Vernon E. Jordan, Jr.  
President  
National Urban League

Coretta Scott King  
President  
Martin Luther King, Jr.  
Center for Social Change

Eddie N. Williams  
President  
Joint Center for Political Studies

LK:lk

cc: President James Earl Carter  
Honorable Edward Kennedy, Chairman- Senate Judiciary Committee  
Honorable Dennis DeConcini, U.S. Senator, Arizona  
Honorable Benjamin Civiletti, U.S. Attorney General  
Honorable Drew S. Days III, Chief-Civil Rights Division



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.  
10 Columbus Circle, New York, N.Y. 10019 • (212) 586-8397

October 31, 1980

Hon. Charles B. Renfrew  
Deputy Assistant Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Re: Investigation into the shooting death of Jose Sinohui, Jr.

Dear Judge Renfrew:

I write in support of the request of the Sinohui family, of Tucson, Arizona, that a new and complete investigation be undertaken in the above noted matter. We would urge you to reconvene a grand jury on an expedited basis and present all the evidence for its consideration.

We are concerned with the continuing problem of police violence against minorities. Experience has shown that federal prosecution under 18 U.S.C. §242 is in most places the only realistic deterrent for this reprehensible conduct. Accordingly, we are disturbed by the delay and lack of aggressiveness that appears to have characterized the Justice Department's investigation into the Sinohui killing. Particularly in light of the findings in the state wrongful death suit, we urge that this case is ripe for prompt, aggressive, and effective Justice Department action.

We are sure that you share our concerns on this matter. Police violence against minorities, particularly in the South and Southwest, has been a persistent problem of significant dimension. We urge that the Department move expeditiously on this matter.

*Contributions are deductible for U.S. income tax purposes*

The NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 20 years a separate Board, program, staff, office and budget.

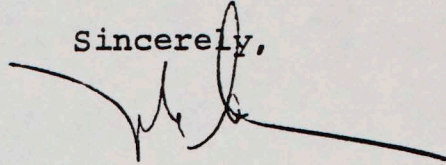
Judge Charles B. Renfrew

October 31, 1980

P.2

Thank you for your attention to this matter.

Sincerely,



Jack Greenberg  
Director-Counsel

JG/rh

cc: Hon. Benjamin R. Civiletti  
Hon. Drew S. Days, III  
Daniel Renzel, Esq.  
Linda Davis, Esq.  
Ambassador Stephen Torrez

bcc: Daniel Haro, Esq.

11/4/80

By Roger Langley

WASHINGTON—The feeling is growing among Hispanic leaders that the Justice Department has rubber teeth when it comes to prosecuting cases involving the violation of Hispanic civil rights.

"A pattern has developed," says Daniel Haro, a young Chicano activists who has been trying unsuccessfully to prod the Justice Department into action on a number of cases.

"First they do nothing. Then we form a committee, meet with them and they tell us they are also concerned. Later we meet again to convince them they must investigate. They agree, but the investigation drags on and on. We meet again to complain, but they explain they are working full speed, but that the case is difficult. Finally they decide to take no action. They time their announcement for a day when they have some positive civil rights news to announce so they can stick the bad news at the bottom of the good story."

Haro, a graduate of Antioch Law School, worked with other student activists to mobilize support for the Hannigan case that involved the alleged torture of undocumented aliens by Arizona ranchers. The Justice Department could find no legal grounds to prosecute the Hannigans, so the Antioch students volunteered to do the legal research. Eventually they supplied so many legal arguments that the Justice Department felt compelled to reopen the case.

-more-



"We're going to have to do the same thing again with the Jose Sinohui case," Haro said .

The Sinohui case involves the killing of a 24-year-old Mexican American. He was shot in the back while driving his pickup truck away from the scene of a riot in South Tucson. The police officer who shot Sinohui, Christopher Dean, was acquitted.

Pressure was applied by the Hispanic community and in June, 1979, the Justice Department announced that it would convene a grand jury to determine if Sinohui's civil rights had been violated.

On Oct. 17, 1980, the Justice Department announced that the grand jury returned a "no bill" and that the Sinohui case was closed. They made the announcement on the same day that the government had won an appeal in the Hannigan case.

Haro and others have since met with Deputy Attorney General Charles Renfrew, but the best they could get from him was a promise to "consider" reconvening the grand jury. However the grand jury's term expires in December and the Justice Department attorneys handling the case have announced they plan to retire at the end of the year.

Haro is convinced that the Justice Department did not try hard to win an indictment. "There was a 15-month delay between the time the evidence was presented to the grand jury and the time they voted," he said. "No one can be expected to remember details of a case this long. To refresh their memory, the U.S. Attorney, Michael Hawkins, read them the transcript for four hours! This is intolerable.

-more-

"Even more serious, the Justice Department did not present all of the evidence to the grand jury. The transcript from a civil trial involving the same people has testimony concerning the police officer's intention, which is the key to this case. We had to get the transcript for them and mark the places where the important testimony appeared. Still this vital information was not even evaluated, despite Judge Renfrew's promise that all the evidence would be considered.

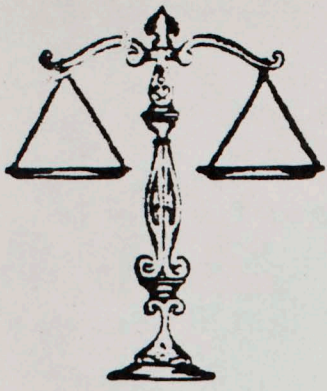
"Furthermore, there were no Hispanic members of the grand jury."

Lupe Sinohui, mother of the slain young man, went to Phoenix in November, 1978, to see Attorney General Benjamin Civiletti, who was then the deputy attorney general.

Mrs. Sinohui said, "When I met with Civiletti he told me that I didn't need his sympathy, that I needed justice.

"So far he hasn't given me either."

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## Tucson Coalition For Justice

P.O. Box 5279  
Tucson, Az. 85703

### EXECUTIVE COMMITTEE

● x M. Torres  
Co-Chair  
Sabino Lozano  
Co-Chair  
Kelly Greason  
Secretary  
Linda Martinez  
Treasurer

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Arizona Farmworkers  
Union  
Barrios Unidos  
Checker Board for  
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Coalition on the  
Hanigan Case  
El Rio Neighborhood  
Center  
IMAGE de Tucson  
La Raza Legal  
Alliance  
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M.E.Ch.A. U of A  
Migrant Opportunity  
Program (Statewide)  
National Coalition on  
the Hanigan Case  
Proyecto de Colores  
San Ignacio Yaqui  
Council  
Teatro de Pueblo  
Traditional Indian  
Alliance  
Tucson Lowrider  
Coalition  
Los Zapatistas  
Órale Grupo  
Juvenile

### LEGAL COUNSEL

William Risner, Esq.  
Hector Campoy, Esq.  
Fernando Fajardo, Esq.

Mr. Steve Neely, Esq.  
Pima County Attorney  
111 W. Congress - Ninth Floor  
Tucson, AZ 85701

Dear Mr. County Attorney,

We have taken notice that criminal trial of Walter M. "Bo" Burris has been scheduled for March 25, 1981. The Chicano and civil rights communities are at a loss as to why over five months will be allowed to lapse between the occurrence of the crime charged and the time the case is actually adjudicated. However, we are encouraged by the fact that the prosecution will go forward in the matter of the senseless human rights abuses suffered by Manuel Hernandez-Garcia when he was chained by the neck for over 24 hours without food or water.

We sincerely hope that the state's legal apparatus does not breakdown in this instance as it did in the state criminal trials of Christopher Dean and Patrick and Thomas Hanigan. The state's performance in the latter cases constituted a mockery of justice and gross insult to our people, who have historically turned to the legal system for the vindication of civil rights.

The County Attorney's Office has a solemn duty to protect our community from blind acts of Klan-like violence. Accordingly, we urge that you and your deputies pursue this matter aggressively and to the full extent of the law. The last thing we want to see is a reenactment of the Dean-Hanigan travesties, because this will only force us into a new national campaign for Justice Department dual prosecution. Nonetheless, our Coalition together with civil rights organizations across the country stand ready to seek redress at the federal level should there be no reasonable alternative.

We would also like to impress upon you the need for a jury which truly reflects the minority population of Pima County. By this, we do not intimate that enlisting one or two token ethnic group members to serve on the panel will comport with the proper dictates of the Constitution. The jury's composition should reflect the

Mr. Steve Neely, Esq.

Page 2

percentage of all minorities in the county, because the Sixth Amendment commands a jury of the defendant's peers. Mr. Burris' peers are not only middle class, middle aged Anglo Americans. His peers include Chicanos, Blacks, and Native and Asian Americans.

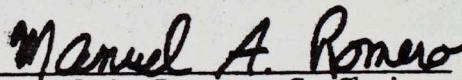
Regardless of whether it may strike a cord of indignation within you, we hope you understand that our community strongly believes the Hanigan Case was bungled at the state level by incompetent investigators and less than dedicated prosecutors. What's worse, with respect to the state prosecution of the Jose Sinohui killing, the community is convinced that the Pima County Attorney's Office virtually begged the grand jury to return a manslaughter indictment against Christopher Dean instead of the more appropriate charge of first degree murder. Given these perceptions, there exists considerable apprehension that justice will not be achieved in the trial of "Bo" Burris.

It is our hope that you can allay our justified fears. Unless the upcoming Burris trial is vigorously prosecuted, the state's legal system will in effect telegram an official message to racists and vigilants that the law condones the continued brutalization of the poor and undocumented.

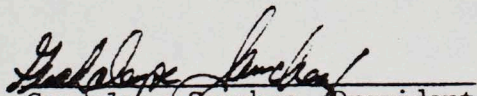
Sincerely,

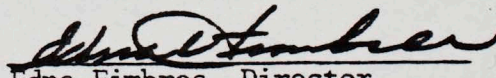


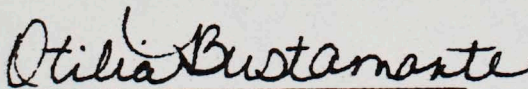
Sabino Lozano, Co-Chair  
Tucson Coalition for Justice

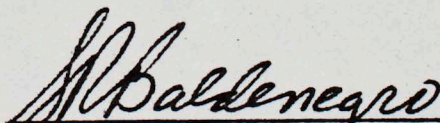


Manuel A. Romero, Co-Chair  
National Coalition on Hanigan

  
Guadalupe Sanchez, President  
Arizona Farmworkers Union

  
Edna Fimbres, Director  
Barrios Unidos

  
Otilia Bustamante, Chairperson  
Cochise County Committee for  
Justice

  
Salomon Baldenegro, Member  
Chicano Consortium for  
Public Issues

Mr. Steve Neely, Esq.

Page 3

Antonio Pazos  
Antonio Pazos, Asst. Director  
El Rio Neighborhood Center

Ernesto G. Escobedo  
Ernesto G. Escobedo, Secretary  
IMAGE de Tucson

Daniel Haro  
Daniel Haro, Arizona Chapter  
La Raza Legal Alliance

Lillian Lopez-Grant  
Lillian Lopez-Grant, President  
Arizona Chapter, L.U.L.A.C.

Jerry Baker  
Jerry Baker, Member  
Checker Board for Ex-Offenders

Roberto M. Godoy  
Roberto M. Godoy, Director  
Migrant Opportunity Program

Gilberto Estudillo  
Gilberto Estudillo, President  
University of Arizona, M.E.Ch.A.

Max M. Torres  
Max M. Torres, Director  
Proyecto de Colores

José Aponte  
José Aponte, Director  
Teatro del Pueblo

Ernesto V. Quiroga  
Ernesto V. Quiroga, Secretary  
San Ignacio Yaqui Council

Francisco Chavez  
Francisco Chavez, Representative  
Traditional Indian Alliance

Ruben "Rocky" Taylor  
Ruben "Rocky" Taylor, Trainer  
Los Zapatistas

Joe F. Borboa  
Joe F. Borboa, Chairman  
Tucson Lowrider Coalition

Cecilia Cruz  
Cecilia Cruz, Coordinator  
Orale Grupo Juvenile

cc: Randy Stevens, Esq.  
Criminal Division Chief

Geoffrey Cheadle, Esq.  
Deputy County Attorney

Sydney Davis, Esq.  
Deputy County Attorney

WILLIAM H. KENNEDY  
ASST. DISTRICT ATTORNEY  
RICHARD D. HUFFMAN  
CHIEF DEPUTY DISTRICT ATTORNEY  
WAYNE A. BURGESS  
CHIEF INVESTIGATOR

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO  
EDWIN L. MILLER, JR.  
DISTRICT ATTORNEY

COUNTY COURTHOUSE  
SAN DIEGO, CALIFORNIA 92101  
(714) 236-2329

MAY 17, 1979

William B. Kolender  
Chief of Police  
San Diego Police Department  
801 West Market Street  
San Diego, California 92101

Re: Shooting of Efren Reyes by Border Patrol  
Agent Daniel Cole, SDPD Case No. 79-23081

Dear Chief Kolender:

I have reviewed the reports prepared and submitted by your department with respect to this shooting. In addition, I have considered the results of interviews with the two surviving aliens apprehended by Agent Cole. Those men, Benito Rincon Hernandez and Rogelio Mendez Diaz, were interviewed by members of my staff.

Facts Disclosed by the Investigation

The reports and interviews reflect that on the night of March 17, 1979, Agent Cole apprehended three persons whom he believed to be guilty of the misdemeanor offense of illegal entry into the United States. Those persons were the decedent, Efren Reyes; Benito Rincon Hernandez, a citizen of the Republic of Mexico; and Rogelio Mendez Diaz, a citizen of Guatemala.

This apprehension took place a short distance from the International Border, along an embankment of the Rio Tijuana Canal, on American territory. Upon encountering the three aliens, Agent Cole, who was on patrol duty alone, arrested them and attempted to take them into custody. Reyes and Rincon Hernandez were handcuffed together with one pair of handcuffs, right hand to right hand. Mendez Diaz was not handcuffed. The three were then directed to the agent's patrol vehicle. The recollections of Cole, Mendez Diaz and Rincon Hernandez differ as to just how Cole had his hands on the arrested persons as they proceeded to the vehicle, but the discrepancies are not critical.

At the patrol vehicle, Mendez Diaz was told to enter the back, and he did. At that juncture, a scuffle ensued between the two handcuffed men and Agent Cole. By the account of Mendez Diaz, Reyes was the more vocal of the two protesting aliens, stating that he would not enter the patrol vehicle as ordered because he had done nothing wrong.

It is to be noted that the post mortem blood alcohol level of Reyes was .16%. This is consistent with the account of that evening given by Mendez Diaz, who related that Reyes had been drinking moderately earlier in the evening, and that the three men, Reyes most particularly, had been drinking as they sat on the American side of the border.

Mendez Diaz observed the encounter between Reyes and Rincon Hernandez on the one hand and Cole on the other from the back of the patrol vehicle. He describes this struggle as being of greater intensity and duration than do either Agent Cole or Rincon Hernandez. Further, it is his recollection that at the inception of the struggle the agent did not have the two persons still outside the vehicle restrained by a grasp upon the handcuff chain. He states that when the struggle began, Agent Cole removed his radio from his belt and spoke into it in English. This is at variance with what Cole reported, but it is more consistent with the amount of time that must have elapsed for all of the events to transpire of which we have knowledge. It may be that Agent Cole attempted radio contact with his headquarters but that the transmission was not received. I have been advised that there is but one communications channel available for those officers who were working in the area of this incident on the night in question. Further, I have been advised that persons monitoring the Border Patrol band on that night heard a transmission from Agent Cole that was not acknowledged.

As Mendez Diaz observed the struggle, he saw his opportunity to flee and he did so. As he got out of the back of the patrol vehicle, he saw Cole grasp the chain between the handcuffs, even as the agent was using the radio.

The two handcuffed men continued to push and pull in such a way as to result in the three men going over the edge and down the side of the levee in a circular motion. Neither of the handcuffed men made any move to strike or kick the agent, nor did either of them make any move to suggest that they were reaching for a concealed weapon. The agent had not, however, determined that neither of them were in possession of some weapon.

The struggle continued down the bank of the levee in the direction of the International Border. As is common, there were accumulations of persons all along the border fence that night.

Indeed, there was one such accumulation of persons within approximately thirty yards of where this struggle began.

In an attempt to subdue his prisoners, the agent took out his riot baton, but it came loose from his grip. He then withdrew his pistol and fired three times at the prisoners. One round resulted in the wounding of Rincon Hernandez. The other killed Reyes.

During his attempt to control the handcuffed men, Agent Cole became aware that the man who had been placed in the back of the patrol vehicle had gotten out, but he did not know where the man had gone or what he was doing. That man, who we now know as Mendez Diaz, reports that he ran directly to a large group of persons congregated at the border fence and joined the crowd by crawling under the fence and re-entering Mexico.

The two surviving aliens report that at the time of the shooting Reyes and Rincon Hernandez had their backs to Agent Cole. That contention is rejected on the basis of indisputable physical evidence that the shots entered both men from the front.

#### Criminal Liability

I will first address the question of whether the shooting was justifiable within the meaning of Penal Code section 196. Under the decisional law of this state, a state officer who has made an arrest for a misdemeanor offense would not be privileged to use deadly force in overcoming an attempt to escape by the suspected misdemeanant.

The facts of the case have been reviewed at length by the United States Attorney for this district. He advises me that it is his view that the activity in which Reyes and Rincon Hernandez were engaged at the time they were shot constitutes a chargeable felony under federal law. \* Further, he advised that his decision not to charge Rincon Hernandez was based on the fact that the man had already suffered substantially as a result of the confrontation with the officer. At the time of our initial discussions with the United States Attorney, a decision as to bringing federal felony charges had not yet been made.

My research fails to reveal any reported federal cases in which conduct of the type attributable to Reyes and Rincon Hernandez was found as justification for the use of deadly force. I must, however, be mindful of the manner in which federal law is understood in this district by the ranking federal legal authority in this district.



Certainly, this legal understanding on the part of federal authorities complicates an already difficult situation.

Viewed from the perspective of whether or not this shooting was justifiable as having been in defense of self, the picture is no less clouded. Had this tragic event taken place in the usual metropolitan setting to which most case law addresses itself, I would be persuaded that it would be without such justification. The situation presented here is unique.

I am informed that agents assigned to patrol duty in the vicinity of this event are subjected nightly to missiles of all kinds being thrown at them and their vehicles, to verbal abuse and continual threats. This activity is of such an intensity as to virtually constitute an ongoing riot from dark until sometime after midnight. The patrol vehicle to which the three aliens were taken by Agent Cole is known as a "war wagon," in that all of its glass is protected by a heavy steel mesh from rocks and other objects thrown at it nightly by persons in the vicinity of the border. On the night of the incident, Agent Cole had been stoned and had worn a plastic riot helmet with face mask that is provided officers working in this area to protect them from this kind of assault.

Agent Cole has stated that he was afraid during the struggle with Reyes and Rincon Hernandez. Under California law, one need not be in actual danger to justify a claim of self-defense. If a person is confronted by the appearance of danger, which arouses in his mind as a reasonable person the honest fear that he is about to suffer death or great bodily harm, that person may use deadly force in his own defense. Agent Cole, having been engaged in arresting three far younger men by himself and then having been thrust into a sudden confrontation with two of them, has stated that he was afraid he would be killed. The central question is whether that apprehension was reasonable on his part.

From the time sequence as reflected by the tape of the radio calls from Agent Cole, coupled with the manner in which he and Rincon Hernandez described the physical confrontation, I concluded initially that such apprehension by Agent Cole was not reasonable.

Given the added observations of Mendez Diaz with respect to the length of time consumed by and the intensity of the physical confrontation, however, I am less inclined to that conclusion. In this regard, the veracity of Mendez Diaz is important.

I recognize that some of the events related by Mendez Diaz could not have happened just as he describes them. These are the position of the two other aliens at the time of the shooting, and the distance the agent stood from the aliens as he shot.

These two items are clearly otherwise, as proven by the physical evidence and laboratory tests performed with Agent Cole's revolver. These faulty observations, however, were made by Mendez Diaz as he stood in a well lighted area and peered into a relatively unlighted area. They were made by a short person from within a crowd of persons in which he was hiding.

Other aspects of Mendez Diaz' statement persuade me that he is relating the truth as best he knows it. The crucial observations that he made were within a few feet of the incident unfolding before him and are more consistent with reason and with other known facts.

Decision as to Issuance

To issue a criminal complaint against Agent Cole for a public offense arising out of this incident, I must conclude that his act was not justifiable under color of authority and that he acted unreasonably under all of the circumstances known to him at the time in taking the action he did. Agent Cole, under the most peculiar circumstances of this incident and the combat zone atmosphere of the border canal area, has a strong argument of self-defense. This is in and of itself not determinative, but it is a factor that must be carefully weighed.

\* Under these unique circumstances there also seems to be an almost diametric opposition of state and federal law. To reemphasize, while the aliens apprehended by Agent Cole would be regarded as misdemeanants under state law, thereby precluding the officer's use of deadly force, it is the interpretation of the United States Attorney that federal law considers such conduct felonious and thereby creates a legal justification for the use of such force. With the reasonable prospect that this case, if brought to trial, would be removed to federal court and tried under federal rules, it becomes more clear that the prospect of obtaining a conviction has become so diminished as to foreclose charging Agent Cole.

It is therefore my determination, arrived at only after long and painful reflection, that a criminal complaint will not issue in this case.

I do not personally condone the conduct, but I am bound to make my decisions in conformity with the law as I understand it to be. This letter should not be interpreted by anyone who now or in the future reads it as having any application beyond this particular situation.

Very truly yours,

*Edwin L. Miller, Jr.*

EDWIN L. MILLER, JR.  
District Attorney

ELM:sf

REPORT ON INVESTIGATION OF ACCIDENT INVOLVING UNDOCUMENTED ALIENS--

On Thursday, February 28, 1980, our office received a call from the Mexican Consul in Laredo, Texas, Humberto Zamora, stating that several passengers of the pickup truck that had been involved in an accident in Jim Hogg County on Wednesday night had alleged that the officers pursuing them had fired shots at their vehicle, and requesting that our office investigate this incident. This request was later reduced to writing in a letter dated February 29, 1980 (attached hereto)

Since the local Sheriff's Department was involved, we immediately requested assistance from the Texas Rangers to assist us in this investigation. Ranger Stan Guffey came to Hebbronville that same afternoon, and we examined the pickup truck, the right rear tire which had been removed by the Sheriff, and the scene of the accident. We also questioned the four officers involved, Jim Hogg County Sheriff's Deputies Jose Beltran and Onofre Serna, and U.S. Border Patrol Agents David Wharton and Robert Handy. All four officers denied firing any shots or seeing any shots fired. We received written reports from Beltran, Wharton and Handy and made copies of the information contained in the sheriff's file.

On Friday, February 29, 1980, Ranger Guffey asked us to prepare a written request for assistance directed to his Superior, and he conveyed this request personally to San Antonio (attached hereto).

We also contacted Agent John Smith of the F.B.I., in Laredo and he advised us at this time that the office of Professional Responsibility of the U.S. Immigration and Naturalization Service was conducting an internal investigation, and that up to that point in time, the F.B.I. was not conducting an investigation.

Early Friday morning District Attorney Investigator Beto Guerra and Assistant District Attorney Rodolfo Gutierrez went to the site of the accident and combed the area from the accident south toward Hebbronville, approximately 4 mile searching for spent shotgun cartridge or other evidence.

We were unable to find anything relevant to this case, but we did see a Texas Highway Department truck, which stopped and Santiago De Los Santos and Joel Ibanez asked us what we were looking for. We advised them, and later that afternoon, Mr. De Los Santos called us and advised us that he had found a spent shotgun cartridge on the shoulder of Highway 16 North. De Los Santos took Gutierrez to the location of the spent cartridge and it was recovered by this office and its location was marked, approximately .5 miles north of the Hebronville city limits and 1.15 mile south of the accident site.

Investigator Guerra took a statement from Sammy Torres, Jr., an ambulance driver on the night of the accident, and Torres advised us that he had heard through another person that several witnesses had heard the shots, and gave us Jose Serna's name as one of the witnesses. A statement was taken from Jose Antonio Serna, who stated he heard the shots, and gave us the names of four other witnesses who were with him at the time. Statements were taken from Adan Serna, Jr., and Hector Dominguez, both of whom also stated they heard shots. In addition, Adan Serna took us to the location where they pulled off the road. From this location, we walked north approximately 20-30 yards and located a second spent cartridge on the east shoulder of Highway 16 North, approximately .9 mile north of the Hebronville City limits, .35 mile north of the location of the first cartridge and .8 mile south of the accident site. The second cartridge was recovered and its location marked.

Pictures were also taken of the vehicle, the accident site and the location of the spent cartridges, all of which pictures have been marked.

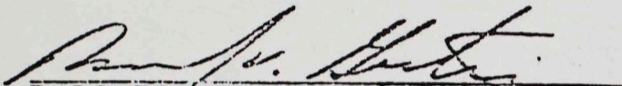
On Saturday, February 29, 1980, we talked to two of the undocumented aliens who were passengers in the vehicle. Abelardo Vasquez Martinez and Jaime Baiz Quintero, both men were in the Webb County Jail. Quintero, who claims he was lying in the bed of the truck stated that there were 7 or 8 people in the bed of the truck and that they all stayed down during the entire chase.

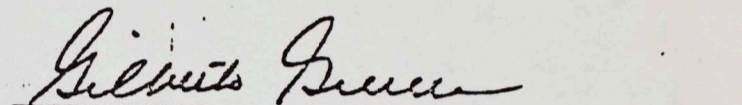
Martinez, who claims he was a passenger in the front seat with the driver, states that both he and the lady, who was in the back seat of the cab with her children, pleaded with the driver to stop.

Both Quintero and Martinez claim they heard 6 or 7 "explosions", which they believed to be shots.

On Saturday, we found out that the F.B.I. was conducting an investigation and had taken statements from the undocumented aliens that we talked to and from Deputies Beltran and Serna.

Also late Saturday afternoon, after returning from Laredo, Sheriff Ramirez advised me that Deputy Serna had submitted his report and had stated he saw Agent Handy stick his head and shoulders out of the window with a shotgun in his hands, and although he did not see or hear any shots, he did see Agent Handy reload the shotgun more than once.

  
 RODOLFO GUTIERREZ  
 Assistant District Attorney  
 Jim Hogg County, Texas

  
 GILBERTO GUERRA  
 District Attorney Chief Investigator  
 Jim Hogg County, Texas

HA  
NOMBRE: SARA DE LA CRUZ DE SALAZAR  
EDAD: 36 años  
ORIGEN: San Luis Potosí, S.L.P.  
DOMICILIO: Carlos Díaz Gutiérrez No. 1516  
Col. Independencia  
San Luis Potosí, S.L.P.

SUS HIJOS: Rogelio Salazar de la Cruz  
4 años

Lupita Salazar de la Cruz  
5 años

NOMBRE: ONESIMO HERNANDEZ ZUNIGA  
EDAD: 35 años  
ORIGEN: Dr. Arroyo, Nuevo León  
DOMICILIO: Nuevo Laredo, Tamaulipas.

NOMBRE: FLEMON PENA GUTIERREZ  
EDAD: 16 años  
ORIGEN: Morelia, Michoacán  
DOMICILIO: Santiago No. 58  
San Juan, Morelia, Mich.

NOMBRE: FLAVIO HERNANDEZ ZUNIGA  
EDAD: 30 años  
ORIGEN: Matehuala, S.L.P.  
DOMICILIO: Priv. Moctezuma No. 4511  
Col. San Rafael  
Nuevo Laredo, Tamaulipas

NOMBRE: Rubén Campa Castrellón  
EDAD: 21 años  
ORIGEN: Gómez Palacio, Dgo.  
DOMICILIO: Santiago Lavín No. 609 Pte.  
Col. Francisco Zarco  
Gómez Palacio, Dgo.

NOMBRE: MARCELINO DE LA SANCHE SANCHEZ  
EDAD: 19 años  
ORIGEN: Palmar Chico, Mpio. de Amatepec, Edo. de México  
DOMICILIO: Palmar Chico, Mpio. de Amatepec, Edo. de México

MUERTOS:

NOMBRE: ANSELMO RODRIGUEZ URIBE  
EDAD: 59 años  
ORIGEN: La Presa, Mpio. de Moctezuma, S.L.P.  
DOMICILIO: Conocido. La Presa, Moctezuma, S.L.P.

NOMBRE: Estela Salazar de la Cruz  
EDAD: 6 años  
Hija de la Sra. SARA de la Cruz de Salazar

DELECIDOS:

NOMBRE: JAIME BAEZA QUINTERO  
EDAD: 30 años  
ORIGEN: Dolores Hidalgo, Gto.  
DOMICILIO: Av. Hidalgo No. 2  
Dolores Hidalgo, Gto.

NOMBRE: ABELARDO VAZQUEZ MARTINEZ  
EDAD: 21 años  
ORIGEN: Nuevo Laredo, Tamaulipas  
DOMICILIOS: Perú 5060  
Col. Matamoros  
Nuevo Laredo, Tamaulipas

NOMBRE: AURELIO MARTINEZ MARTINEZ  
EDAD: 16 años  
ORIGEN: La Presa, Moctezuma, SLP  
DOMICILIO: Conocido  
La Presa, Moctezuma, S. L.P.

HOSPITAL DE LA MERCED

NOMBRE: EFRAIN PEREZ ARCE  
EDAD: 24 años  
ORIGEN: Tierra Colorada, Amatepec, Edo. de México  
DOMICILIO: Conocido  
Amatepec, Edo. de México.

IMMIGRATION AND NATURALIZATION SERVICE

# Memorandum

TO : Chief Patrol Agent  
Laredo, Texas

DATE: 2/28/80

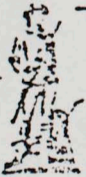
FROM : David A. Wharton,  
LPA Hebbronville, Texas.

SUBJECT: Accident involving undocumented alien driver.

While observing traffic at the intersection of Hwy. 16 and Hwy 285 at approximately 11:00AM on 2/27/80 in Hebbronville, Texas we were parked at the Millerst grocery talking to deputies Detran and Deputy Serna of the Jim Hog Co. Sheriff's Office when they observed a Ford P/U truck run the stop sign at the intersection of hwy. 16 and Hwy 285. They advised us that they were going to stop the vehicle for the above violation and we advised them that we would wait there for them to return. A very short time later we recieved a call from Deputy Detran that he was in pursuit of the vehicle and needed our assistance.

We then proceeded in their general direction towards the south east of town and they advised us that he was eluding them in the residential district, and at this time we noticed their red lights and attempted to help them stop the vehicle. We pursued the vehicle behind the deputies unit through several city blocks before they came out on hwy. 285 heading north on hwy. 16. At this time the vehicle was traveling around 90-100 MPH, jumped the railroad tracks and almost losing control of the vehicle, ran the red light at the intersection of Smith St. and Galbraith St, running several vehicles off of the road. Vehicle then proceeded through town at very high speeds again running the red light at the intersection of Viggie and Smith St. traveling north on hwy. 16.

Just north of town we observed that the Sheriff's unit was falling behind so I passed the deputies and caught up with the fleeing truck. As I attempted to pass the vehicle he tried to run me off of the road several times. The driver would pull across into the south bound traffic lane of Hwy. 16 trying to hit my marked Border Patrol unit. As he did this several times he ran off the left hand side of the road, throwing rocks on the road and our unit, lost control of the vehicle started to skid and cverturned several times coming to rest on the ~~right~~ hand side of the road. At this time we stoped and noticed several bodies laying on the ground so we rendered first aid and called for an ambulance. At this time all occupants were transported to Dr. Gutierrez's office and then to Laredo, Texas. There was approximately 13 people in the vehicle of which two were dead at the scene. We thought we had the driver identified but the aliens later stated that the driver ran off in the brush with several other aliens. The ambulance driver also stated he saw several people running in the brush when he arrived at the scene.



Form G-1  
(11-77)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

*David A. Wharton Jr.*



STATE OF TEXAS  
COUNTY OF WEBB

Y  
Y  
Y

AFFIDAVIT

- I, Efrain Perez Arce, being duly sworn state the following:
1. My name is Efrain Perez Arce. I am not sure when I was born, but I believe I am about 25 years of age. My baptismal certificate stated I was born in June, 1957, but it is not correct. I was born in Tierra Colorada, Amatepec, Estado de Mexico, Mexico. The closest town to Tierra Colorada is Palmar Chico. My parent's names are Cosme Perez and Alejandra Arce. I am one of seven children. We live in Tierra Colorada, except two sisters who live in Acapulco and one brother, Andres Perez, who for the past four years has lived in Chicago, Illinois.
  2. I married Juana Benitez in 1971. She was born in about 1957. We have four children; Federico, born March 3, 1974; Refugio, born Nov. 8, 1975; Esperanza, born in 1976; and Maribel, born January 1978. We live in Tierra Colorada.
  3. On or about February 21, 1980, I left Tierra Colorada with my cousin, Marcelino de la Sanchez. We were going to Chicago to work. We got to Nuevo Laredo, Tamaulipas, Mexico where we stayed in a hotel. I do not know the people who were to help us cross to the U.S. because my cousin Marcelino made the arrangements. On or about February 24, at night we were taken across the river. I remember we crossed with Sara Salazar and her three children.
  4. We were taken to a house. We stayed at the house for 2-3 days. There were alot of people staying with us, but I do not know how many, more then 14. Different people would come to give us food and water twice a day.

5. On the night of the accident, some men came with about 3 trucks and told us all to get in the trucks. One man got in before us, then Marcelino got in, then I got in, then the others followed. We were all told to lie down, and not to move, or we would be left to walk by ourselves. We began traveling, but I did not look up or talk. We stopped a few times and I heard voices. No one else got in the truck that I know of.

6. Then, I heard a siren. We were traveling very fast. I heard what sounded like gunshots. I heard three, and then I was so scared that I do not remember if I heard any more. I remember that Marcelino said that the shot might hit the truck and the tires and we would crash. The truck began to wave from side to side. That is all I remember. I do not remember the crash or anything afterwards until I awoke in the hospital.

Executed this the 25<sup>th</sup> day of March, 1980.

Efrain Perez Arce  
Efrain Perez Arce

Subscribed and sworn to before me this the 25<sup>th</sup> day of  
March, 1980.

J. Nancy Castillo

Notary Public in and for Webb  
County, Texas

STATE OF TEXAS Y

COUNTY OF WEBB Y

AFFIDAVIT

I, JAIME BAEZA QUINTERO, being first duly sworn, state the following:

1. My name is Jaime Baeza Quintero. I was born June 12, 1950 in Hacienda de la Venta , Municipio de Dolores Hidalgo, Guanajuato, Mexico. For the past six (6) years, I have lived in Rancho San Cristobal, Municipio de Dolores Hidalgo, Guanajuato, Mexico. I am married to Saleta Baeza de Baeza and we have three children: Juana, age 9; Blanca Elia, age 7; and Jaime, age 2. I usually work for Victor Manuel Carranza Vasquez who lives at Avenida Hidalgo #2, Dolores Hidalgo, Guanajuato, Mexico.

2. Before February, 1980, I had never been to the United States. I needed work and my son needs medical help because he can not walk so I came to the United States to look for work. I do not remember the exact day I came to Laredo. I crossed the river and was taken to a house. There were many more people at the house.

3. On the night of the accident, we were all told to get in some pick-up trucks that came to the house at about 9:00 p.m. I was the last to get in the bed of the truck. I was up against the tail gate. We were all lying down. We rode about an hour and one-half. Then all of a sudden the truck began to go faster. I saw some flashing red lights. The truck went faster. We kept going, then I heard about six or seven explosions, like from a gun. Right after I heard the explosions, the truck turned over.

4. I was thrown out of the truck. Right away I got up. A lot of cars stopped and I remember a lot of people. I do not remember if anyone had a police uniform on or if anyone had a gun. No one pointed a gun at me. I was taken by ambulance to Laredo to the hospital. I was there about three (3) hours and then I was taken to the immigration office where an immigration officer asked me questions about the accident and about me and my family and how I got to the United States. Later, I was taken to jail,

and the next day I was taken to court where the judge gave me 60 days in jail.

Executed this the 8<sup>th</sup> day of April, 1980.

Jaime Baeza Quintero  
JAIME BAEZA-QUINTERO

SWORN TO AND SUBSCRIBED BEFORE ME, by the said  
JAIME BAEZA QUINTERO on this the 8<sup>th</sup> day of April, 1980.

Frances Castillo  
FRANCES CASTILLO  
NOTARY PUBLIC  
WEBB COUNTY, STATE OF TEXAS

MY COMMISSION EXPIRES: 3-15-81

STATE OF TEXAS X

COUNTY OF WEBB X

AFFIDAVIT

I, ABELARDO VASQUEZ MARTINEZ, being first duly sworn, state the following:

1. My name is ABELARDO VASQUEZ MARTINEZ. I was born February 15, 1960 in Nuevo Laredo, Tamaulipas, Mexico. I live at Peru #5060, Nuevo Laredo, Mexico with my parents and brothers and sisters. I am not married.

2. A few days before the accident in Hebbronville, Texas, I was crossed by a coyote from Mexico to the United States. I and other persons were crossed near Carrizo Springs and then taken by truck to Laredo where we stayed two days in a house.

3. On the night of the accident, some trucks arrived at the house and we were told to get in. I was told to get in the front seat next to the driver. I did not know the driver and could not see him clearly. He was light complexioned, tall, and medium built. In the back seat of the truck were a woman and three children.

4. We left Laredo and drove about an hour. As we were approaching Hebbronville, we stopped at a light at a corner. There were two police cars parked near the corner. After we started again, one of the police cars began to follow us. We drove around the block and came back to the light. Then, when we got into the highway, we were going very fast

5. Two cars were chasing us, and I heard about eight shots, like from a gun. A few moments later the truck turned over three times and rested against a mesquite tree. I could not breathe for a few moments and an officer helped me get out of the truck. There were two patrol cars with their lights shining on the truck. Many of the people from the truck were lying on the ground and, when they tried to get up, the officers told them to stay down until the ambulance came.

6. I was taken to a hospital in Laredo where I was checked by a nurse and given a tetanus shot. Then I was taken to the immigration office where I was questioned about how I got to

the United States and about the accident. The next day they took me to a judge who sentenced me to 60 days.

Executed this the 10<sup>th</sup> day of April, 1980.

ABELARDO VASQUEZ-MARTINEZ  
ABELARDO VASQUEZ-MARTINEZ

SWORN TO AND SUBSCRIBED BEFORE ME, by the said  
ABELARDO VASQUEZ-MARTINEZ on this the 10<sup>th</sup> day of April,  
1980.

Frances Castillo

FRANCES CASTILLO  
NOTARY PUBLIC  
WEBB COUNTY, STATE OF TEXAS

MY COMMISSION EXPIRES: 3-15-81

C. ABUSE OF CHILDREN.

- Affidavits and/or Declarations
- Formal Complaints
- Official Documents
- Transcripts
- Fact Sheets
- News Articles

MEXICAN AMERICAN

COORDINATING



COUNCIL

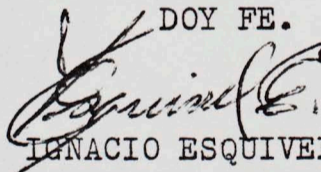
OF CALIFORNIA, INC.  
2653 Sichel St.,  
LOS ANGELES, CALIFORNIA 90031

TESTIMONIO HECHO EL DIA 11 DE ABRIL DE 1981 EN LA CIUDAD DE SAN DIEGO, CALIF., ANTE EL TRIBUNAL DEL PUEBLO POR EL SR. IGNACIO ESQUIVEL.

YO IGNACIO ESQUIVEL MEXICANO DE 61 AÑOS RESIDENTE LEGAL DE ESTE PAIS, TESTIFICO QUE:

EN LOS AÑOS DE 1971 a 1979 SE LLEBARON ACABO GRANDES REDADAS DE INDOCUMENTADOS, POR LO QUE TANTO C.A.S.A.-M.A.P.A. Y ALGUNOS MIEMBROS DE LA LOCAL 300 DE LA CONSTRUCCION, NOS DEDICAMOS A PRESTAR AYUDA A ESTAS POBRES GENTES, POR LO QUE EN EL LAPSO DE ESTE TIEMPO RECOJIMOS 280 NIÑOS QUE SE QUEDARON SIN PADRES POR HABERSELOS DEPORTADO LA IMIGRACION. AL PRINCIPIO ACUDIMOS AL CONSULADO GENERAL DE MEXICO Y JAMAS HICIERON CASO MENOS PRESTAR AYUDA. HACE POCOS MESES BOLVIMOS AL MISMO CONSULADO DE MEXICO EN LOS ANGELES PIDIENDO AYUDA PARA LOS INDOCUMENTADOS Y NOS CONTESTO EL CONSUL GENERAL: LOS INDOCUMENTADOS SON UNOS CRIMINALES QUE DEVERIAN DE ESTAR EN LA CARCEL. YO TUVE EN MI CASA 20 NIÑOS MIENTRAS SUS PADRES BOLVIAN O LOS RECOJIAN EN TIJUANA, PORESO ES QUE AHORA NO QUEREMOS MOLESTAR AL SR. JAVIER ESCOVEDO Y CORDOVA CONSUL GENERAL, POR ANTI-MEXICANO.

DOY FE.

  
IGNACIO ESQUIVEL E.





DECLARATION OF

CHRISTOPHER ROBLES ENCISO

I, Christopher Robles Enciso wish to state and affirm as follows:

1. I am a citizen of the United States by birth. I was born on the 27th day of April 1964 at Los Angeles, California.

2. On September 7, 1979 on or about 8:30 P.M. on my way to Downey, California aboard a Greyhound Bus, we were stopped by the U.S. Border Patrol at the San Clemente check point and Border Patrol officers boarded the bus I was traveling in and ask me what my citizenship was, I responded to him as follows:

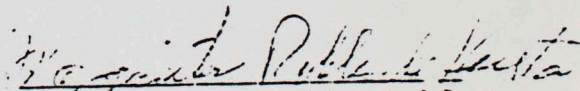
I am an American Citizen, he then requested further Identification and I produced my birth certificate, Social Security Card and school Identifications. I was then order to get off the bus and was taken to an office there at the check point. I was continued to be interrogated by this Border official and ask me in many occasions where I was born and I repeated Los Angeles. California. He told me to tell the truth and pushed me against the wall, verbally abused his authority and threaten to beat me if I did not confess that I was not an American Citizen.

3. He continued to question me regarding place of birth of my father and mother and continued to press me to say that the birth certificate that I had was fraudulent. I was incarcerated and illegally detained for 19 hours. I was again threaten and was told that if I did not sign a document saying that I was not an American Citizen I was going to be put in jail and was going to be beaten up by Border Patrol officials. After this treatment and abuse I decided to sign a document without any explanation as to what I was signing. I was tired scared and for 19 hours I got no food or water from these Border Patrol officers. I was taken the following day to the Chula Vista Sector and then at approximately 3:00 P.M. I was taken to the Mexican Border at the South bound entrance to Tijuana, B. C. Mexico.

I herewith affirm and declare that the foregoing is a true and correct statement of fact.

CHRISTOPHER ROBLES ENCISO  
3604- 3-102 Beyer Blvd., San Ysidro, CA 92073  
Date

In San Ysidro, California.

  
Margarita Robles  
(Mother) de Huerta.

FCI Form No. 25  
ENTERED  
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# United States District Court

FOR THE

DEC 9 1980

SOUTHERN DISTRICT OF CALIFORNIA

United States of America

v.

J. GILLESPIE WOOD (1)

No. 80-0508-N-Criminal

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

On this 8th day of December, 1980 came the attorney for the government and the defendant appeared in person and by counsel, Howard Frank,

IT IS ADJUDGED that the defendant upon his plea of<sup>2</sup> guilty

has been convicted of the offense of deprivation of rights under color of law, in violation of 18 USC 292, as charged in count 8 of the superseding Indictment in eleven counts,

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,  
on count 8

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that on count 8 the defendant shall pay a fine unto the United States in the sum of \$1000.00 and imposition of sentence as to imprisonment only is suspended and the defendant is placed on probation for a period of three (3) years on condition that he obey all laws, Federal, State, and Municipal, that he comply with all lawful rules and regulations of the Probation Department, and that the fine be paid in such installments as the Probation Department may determine.

IT IS ORDERED that the remaining counts of the superseding Indictment and the underlying Indictment filed in this case are hereby dismissed.

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

- - -

HONORABLE LELAND C. NIELSEN, JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Criminal No. 80-0508-N
J. GILLESPIE WOOD,	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
San Diego, California  
Monday, October 20, 1980

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

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APPEARANCES:

For the Plaintiff:

M. JAMES LORENZ  
United States Attorney  
BY: DAVID C. DOYLE  
Assistant United States Attorney  
United States Courthouse  
940 Front Street  
San Diego, Ca. 92189

For the Defendant:

FRANK & MILCHEN  
BY: HOWARD B. FRANK, ESQ.  
1755 Central Federal Tower  
225 Broadway  
San Diego, California 92101

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

1 SAN DIEGO, CALIFORNIA, MONDAY, OCTOBER 20, 1980, AT 11:30 A.M.

2 - - -

3 THE CLERK: No. 12 on calendar, Case No. 80-0508-N, United  
4 States of America v. J. Gillespie Wood; arraignment and plea on  
5 superseding Indictment.

6 MR. FRANK: Howard Frank appearing on behalf of Mr. J.  
7 Gillespie Wood. Mr. Wood is present before the Court. We are  
8 ready to proceed.

9 THE CLERK: J. Gillespie Wood: that is your true name?

10 THE DEFENDANT: That is correct, sir.

11 THE CLERK: You are informed that a superseding Indictment  
12 has now been filed charging you in Counts 1 and 2 with assault  
13 on a federal officer, and in Counts 3, 4, 6, and 8, with depri-  
14 vation of rights under color of law, and in Counts 5, 7, 9, 10,  
15 and 11, with assault within the maritime territorial jurisdiction.

16 Have you received a copy of this superseding Indictment?

17 MR. FRANK: We have.

18 THE CLERK: You are further informed that you are entitled  
19 to a trial by jury, to be represented by counsel at all stages of  
20 the proceedings before this Court, and to have witnesses summoned  
21 to testify in your behalf.

22 How do you now plead to the counts of this Indictment? Are  
23 you guilty or not guilty?

24 MR. FRANK: We would ask that a "Not Guilty" plea be entered  
25 to all counts except Count 8. Mr. Wood is prepared to enter a

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

1 plea of guilty to Count 8.

2 THE CLERK: How do you plead to Count 8 of this Indictment?  
3 Are you guilty or not guilty?

4 THE DEFENDANT: I plead guilty.

5 THE CLERK: Is the reading of the Indictment waived?

6 MR. FRANK: So waived.

7 (The defendant was then sworn.)

8 THE COURT: Mr. Wood, you understand that this change  
9 against you, Count 8, is that on or about the 7th of September  
10 of this year, while you were an agent of the Border Patrol, that  
11 you assaulted one Christopher Robles Enciso, an inhabitant of the  
12 State of California, thereby wilfully depriving him of the rights  
13 secured and protected by the Constitution not to be deprived of  
14 liberty without due process of law, and--

15 What is the maximum sentence in this matter?

16 MR. FRANK: One year and/or a thousand dollar fine, or both.

17 THE COURT: --and that you might be subject to as much as  
18 one year and/or a thousand dollar fine as a result?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand that by entering this  
21 plea, you are giving up some of your constitutional rights? You  
22 have the right to plead not guilty, the right to be tried by a  
23 jury and at that trial, the right to the assistance of counsel,  
24 the right to confront and cross-examine all the witnesses against  
25 you here in open court, and the right not to be compelled to in-

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

1 criminate yourself, and that you are giving up all of those  
2 rights by pleading guilty?

3 THE DEFENDANT: That's right, sir.

4 THE COURT: You also understand that if you plead guilty,  
5 there won't be any trial of any kind, so that by pleading guilty,  
6 you are giving up the right to a trial?

7 THE DEFENDANT: I understand that, sir.

8 THE COURT: Have you talked this over with Mr. Frank?

9 THE DEFENDANT: Yes, sir, I have.

10 THE COURT: What is the plea bargain in this matter, Mr.  
11 Frank?

12 MR. FRANK: Your Honor, we anticipate that at the time of  
13 sentencing on Count 8, the plea bargain is that the government  
14 will then move to dismiss all remaining counts. In addition,  
15 Mr. Wood will be tendering his resignation as a Border Patrol  
16 Officer to the Immigration Service.

17 THE COURT: Is that your understanding of the agreement,  
18 Mr. Wood?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that yours, Mr. Doyle?

21 MR. DOYLE: Yes, your Honor.

22 THE COURT: Now, is the government going to take a position  
23 as far as sentence is concerned?

24 MR. DOYLE: The government will take a position but there's  
25 no bargain as to that position, your Honor.

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER



1 THE COURT: Has anybody threatened you in order to get you  
2 to enter this plea, Mr. Wood?

3 THE DEFENDANT: No, sir.

4 THE COURT: Now, back on about the 7th of September 1979 at  
5 the San Clemente Checkpoint Border Patrol Station within the  
6 Southern District of California, did you, as an agent of the  
7 United States Border Patrol, Immigration and Naturalization Ser-  
8 vice of the Department of Justice, acting under color of law,  
9 wilfully assault one Christopher Robles Enciso, an inhabitant of  
10 the State of California, thereby depriving him of the rights se-  
11 cured and protected by the Constitution not to be deprived of  
12 liberty without due process of law?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The Court finds the plea to be free and volun-  
15 tary and to have a factual basis. It is ordered entered.

16 How about December 8 for sentence?

17 MR. DOYLE: That's fine with the government.

18 THE COURT: I say that because the normal sentencing would  
19 be sometime late November, but I have to be out of the country  
20 for either one week or two weeks and I'm not sure I'll even be  
21 back on the 1st.

22 MR. FRANK: That's an agreeable date and time, your Honor.

23 THE COURT: Very well. December 8 at 9:00 a.m.

24 THE CLERK: Might the trial date of November 4th be vacated?

25 THE COURT: Yes, that is vacated.

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

1 MR. FRANK: I'll take Mr. Wood to the Probation Office,  
2 your Honor.

3 THE COURT: Very well.

4 (Noon recess.)  
5  
6  
7  
8  
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10  
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12  
13  
14

15 C E R T I F I C A T E

16 I, DOROTHY A. M. ALBRIGHT, C.S.R., do hereby certify that  
17 I am a duly appointed and qualified official court reporter of  
18 the United States District Court for the Southern District of  
19 California.

20 I further certify that the foregoing is a true and correct  
21 transcription of my stenographic notes of the proceedings had in  
22 the above-entitled cause on October 20, 1980.

23 Dated this 28th day of January 1981 at San Diego, California.

24 Dorothy A. M. Albright  
25 Official Court Reporter

DOROTHY A. M. ALBRIGHT, OFFICIAL REPORTER

PEDRO VALAZQUEZ GONZALE.

REPATRIADO.

CONSTANCIA CONSULADO MEX, # 99,31 Oct, de 1980.

CALEJON LOCUTORES FRACC. LOS ALAMOS # 78  
TUJUNA B. JA CALIF.

TUJUAN B. CALIF.

MEXICANA,

16

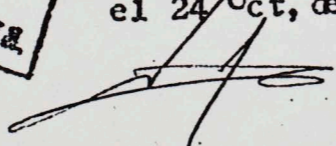
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fue deportado de los E.U.A, a la Republica de  
guatemala, por haberlo consuegrado guatemalteco.  
el 24 Oct, de 1980.

CONSULADO DE MEXICO  
RENTAS Y LICENCIAS  
\* NOV. 20 1980 \*  
CD. HIDALGO CHIA  
E. P. O.



Border Patrol says won't happen again

# Classroom checked for aliens

As the result of an incident occurring recently in an adult bilingual education class in Vista, South Bay border patrolmen have been advised by their chief that there is to be no overt checking of classrooms for illegal aliens, unless undertaken by a superior officer.

Allen Gerhardt, chief patrol agent, added, "This office does not contemplate any circumstance which would justify such action."

**THE MEMORANDUM**, dated Aug. 3, was sent out after Ernest Azhocar of National City advised Rep. Lionel Van Deerlin (D-San Diego) of the Vista incident.

Van Deerlin made an inquiry at the Border Patrol office, which resulted in the memorandum being sent to patrolmen. Dale Swancutt, assistant to Gerhardt said the memo is a restate-

ment of the Border Patrol policy, as stated in the Border Patrol Handbook.

Swancutt confirmed that the incident in Vista did occur and that the memo is the result of Azhocar contacting Van Deerlin. Swancutt said the border patrolmen in Vista entered the classroom in response to a complaint made in a telephone call from a citizen.

The border patrol officers were apparently told that illegal aliens were included in the class. Swancutt said border patrol officers will follow up and answer all complaints, "that is our responsibility. But the manner in which they are followed up will be strictly professional."

**THE MEMO** from Gerhardt states that "if responsible school officials are unwilling to present specified individuals for a private discreet

hearing," the border patrol officers are to notify their chief "before any overt checking of a classroom is undertaken."

He added, "My office does not foresee any circumstances which would warrant such overt action."

Gerhardt, in his memo, said the patrolman's handbook clearly states that searches of classroom for illegal aliens are not to be carried out, "particularly in the face of announced opposition by school authorities."

Azhocar said officials of the Chicano Federation in Vista called him to complain about the incident and that he called Van Deerlin.

This week Azhocar received a copy of Gerhardt's memorandum from Van Deerlin. Azhocar, a high school trustee, is the liaison to the Mexican-American community for Assemblyman Wadie Deddeh (D-Chula Vista).

STARNEWS  
8-17-73

Hubler

# Casos de Detención de "Polleros"

Por Rogelio LAVENANT SIFUENTES.

NATIONAL CITY.- Herman Baca, dirigente del Comité de Derechos Chicanos, acusó ayer al Fiscal Federal Michael H. Walsh y al Departamento de Justicia de los Estados Unidos, de encarcelar niños y menores de edad, "como testigos materiales" en casos de detención de "polleros" o traficantes de indocumentados.

En una conferencia de prensa ofrecida ayer en la avenida Highland 1300, el líder chicano anunció haber enviado un telegrama al Presidente Carter, denunciando lo anterior, y pidiéndola que ordene una investigación a fondo de esta situación. Lo mismo al Presidente de México, Lic. José López Portillo.

"Los niños están siendo tratados como criminales -dijo Herman Baca a EL MEXICANO- y en la mayoría de los casos ni siquiera están conscientes de lo que está pasando a su alrededor. Son separados de sus madres y fichados, imprimiendo las huellas de sus pies o manos, según su edad como si fueran delincuentes".

Citó algunos casos, aunque dijo que quienes le informaron de "estos actos bárbaros e inhumanos" pidieron que no fueran revelados sus nombres "Algunos perderían sus empleos, otros no quieren sufrir represalias", comentó Baca.

"Niños, incluyendo bebés tan de corta edad como de unos 24 meses de nacidos, están siendo aprisionados en el sistema de cárcel federal. Unos están siendo detenidos en el Metropolitan Correctional Center, el Centro de Detención de El Centro, California, y en el centro de detención en

San Ysidro, estos dos últimos de la Patrulla Fronteriza", aseguró el dirigente del Comité de Derechos Chicanos.

"Conforme nuestra investigación -añadió- aparece que el arresto y aprisionamiento de los niños y sus madres, son necesarios porque ellos son necesitados como "testigo material" en casos en que se ven involucrados los contrabandistas de ilegales y estos niños están recibiendo sus "records" (antecedentes) criminales aunque ellos están impotentes para prevenir las circunstancias en que son detenidos".

También dijo Herman Baca, que, según sus fuentes de información, algunos de los pequeños están con sus madres, pero otros no. Una vez que los menores no son necesitados mas como "testigos materiales" las autoridades del servicio de Inmigración y Naturalización, simplemente los echan a territorio mexicano sin hacer ningún esfuerzo para asegurarse que podrán reunirse con sus padres.

"Lo que es más - enfatizó Baca- también nos ha sido reportado que los niños que son turnados a las autoridades mexicanas, son guardados por una semana y luego echados a la calle para que ellos mismos se defiendan".

Por último, Herman Baca manifestó también que apenas el 27 de febrero, un niño de doce meses de nacido, fue recluido (detenido) en el Centro Correccional Metropolitano (MCC) de San Diego. Estas prácticas son inhumanas, bárbaras, y una demostración de la actual política de inmigración.

## Illegal Aliens Said Separated From Children

Children as young as 2 are being held apart from their parents in the federal Metropolitan Correctional Center and in detention centers for undocumented aliens in San Ysidro and El Centro, Herman Baca, chairman of the Committee on Chicano Rights, said in a telegram to President Carter yesterday.

Baca said he will elaborate on the charges today during a press conference.

Federal officials here denied any knowledge of incidents described by Baca.

Baca said an investigation by his committee determined that the children are held as material witnesses in cases against smugglers of undocumented aliens.

"Once the children are no longer needed as material witnesses, the INS (Immigration and Naturalization Service) authorities simply toss them into Mexico without making any effort to insure that the children are reunited with their parents," he said in the telegram.

"Furthermore, it has also been reported to us that children who are turned over to Mexican authorities are kept for one week and then are turned loose in the streets to fend for themselves," Baca said.

United States Attorney Michael Walsh could not be reached for comment yesterday.

Assistant U.S. Attorney Herb Hoffman said children in some cases are held with their parents, but added that he knew of no cases where children were imprisoned by them-

### Tossed Into Mexico

Regarding the accusations by Herman Baca that children are being imprisoned and then "tossed into Mexico," subsequently denied by federal officials, here is a true story:

The 15-year-old daughter of a friend of mine was picked up on the street by "La Migra," driven 150 miles to San Ysidro, and "tossed into

Mexico" at 1 a.m. Fortunately, just by chance, her schoolteacher witnessed the pickup and called the local immigration office to find out what they intended to do with the child. The teacher then called my friend who boarded the next bus for San Ysidro and managed to arrive there minutes before the immigration bus arrived.

What if the teacher had not witnessed this pickup? The child would have been abandoned — alone and penniless — on the streets of Tijuana in the middle of the night. And what about the anguish of the mother not knowing the whereabouts of her daughter?

ELIZABETH HUGHES  
Coronado

3-7-86

# Alien Juveniles Get Foster Homes

11-30-79

By MITCH HIMAKA  
Staff Writer, The San Diego Union

The U.S. marshal's office and the Catholic Community Services of the San Diego Roman Catholic Diocese begin an experimental foster homes program today for the care of undocumented alien juveniles waiting to be called as material witnesses in federal court cases.

U.S. Marshal James R. Laffoon said four youngsters will be placed with four families this morning.

Laffoon said that if this program is successful, it would combine with another program operated in conjunction with the Salvation Army to solve the problems created when San Diego County said it could no longer accommodate the federal government by accepting custody of such material witnesses.

The Salvation Army program, initiated July 9, allows mothers and young children to remain together in family life settings.

The new program will allow children in the 12 to 17 age bracket to move about more with their foster care families, even traveling reasonable distances, except to Mexico, with the families, Laffoon said.

Until the new programs were started, all material witnesses were kept in the Metropolitan Correctional Center with the men and women separated.

Laffoon said those in the new program or the Salvation Army program usually are held here two weeks or longer until the cases for which they are needed is completed.

"This eliminates the use of the MCC for juveniles held as material witnesses in alien smuggling cases and provides care for the juveniles in a family setting compatible to them at less cost to the government," Laffoon said.

He said the Salvation Army program has drawn praise from Washington officials, prompting them to look into starting similar programs in Los Angeles.

Cynthia Leyva, coordinator for the Catholic Family Service, will serve as liaison with the participating families.

Laffoon said the program also has been cleared by the Immigration and Naturalization Service.

James J. O'Keefe, INS district director, has agreed to issue each participating youngster with document identification for traveling with a family within the community or on trips.

*Excerpt from*  
*July 14, 79*  
**Church group seeking  
foster homes for aliens**

By PAT CALLOWAY

Catholic Community Services of San Diego, under contract with the U.S. marshal's office here, has launched a campaign to find foster homes for children of Mexican nationals who cross the United States-Mexico border illegally.

The Social Service arm of the Roman Catholic Diocese of San Diego, CCS will act as a screening agent in helping to identify candidates for foster parents and provide six-hour training programs for potential foster parents.

In addition to the CCS contract, the marshal's office also has a contract with the Salvation Army that provides temporary lodging for the Mexican mothers and their infants.

Older children will be given the option of remaining with their incarcerated counterparts at the Metro-

politan Correctional Center or in the care of foster parents.

The U.S. marshal's office sought alternative lodging and foster care facilities after its contracts with Hillcrest Receiving Home and the Juvenile Hall became obsolete. Both facilities were overcrowded with illegal aliens, officials said.

Under the new contracts with CCS and the Salvation Army, juveniles will be given an opportunity to be placed in a foster home after screening and interviewing. Mothers and their infants will take lodging at the Salvation Army facility, which opened its doors Monday.

Cynthia Leyva of the Catholic Community Services Center said only "low-risk" juveniles will be selected for foster care. She said the agency foresees "lots of problems because

the majority of the children are going to be frightened and some might run away."

CSS has received at least six inquiries about the foster care program and, according to Leyva, three families have been interviewed.

The agency is looking for comfortable foster homes where families are bilingual and able to cope with temporary visitors. Single individuals also will be considered as foster parents.

Laffoon said he prefers placing Mexican juveniles in homes where "the mores of their country are respected."

"We want the mother (Mexican national) to know that her children are in good hands," said Laffoon, for the program is designed to "treat the woman (alien mother) and her children as well as the American people would want an American woman and her children treated."

Local foster parents are asked to prepare to keep the juveniles for an average of two weeks, according to Leyva. She said foster parents caring for children under 14 years old will receive \$10 a day and \$15 for children age 15 to 17.

Laffoon said the new program will cost a maximum of \$200,000 annually. Last year's program, which provided lodging primarily at MCC, cost about \$2.3 million, he said.

The Metropolitan Correctional Center, built in 1974, once the only accommodating facility for adult aliens, is overcrowded and unprepared to deal with the growing number of women and children held there, officials say.

Many adult Mexican nationals at MCC are there as witnesses in cases against alien smugglers, and, in many cases, infants have been allowed to stay with their mothers there.

Prior to the opening of MCC, juvenile illegal aliens were transported to the Santa Barbara Juvenile Hall — a program that "had them on the road all the time and was very expensive and tiring for both officers and juveniles," Laffoon said.

Laffoon described the new foster care program as a humane effort to solve the problems of illegal aliens. He said San Diego's program is a pilot project for the United States and will be adopted by other border towns if it proves effective.



Committee on Chicano Rights, Inc

FOR IMMEDIATE PRESS RELEASE

FEBRUARY 29, 1980

NATIONAL CITY, CA.

Herman Baca, Chairman of the Committee on Chicano Rights, today accused San Diego U.S. Attorney Michael Walsh and the U.S. Department of Justice of imprisoning children in the Federal Prison System. In a telegram (see enclosure) to President Jimmy Carter the CCR has demanded an immediate cessation of imprisoning children and has requested a full scale investigation into the matter. According to Baca "The U.S. Attorney Michael Walsh must explain his actions and show cause why he is arresting, finger-printing (or foot printing) babies as "material witness" in cases involving "illegal alien" smugglers. This inhuman practice of imprisoning mothers and their children and parentless children is further indictment of the present immigration policy." The CCR also announced that it was requesting, in a letter to President Jimmy Carter and President Jose Lopez Portillo, the formation of a bilateral committee to work out a humane solution to the victimization of children on both sides of the border.

1837 Highland Avenue, National City, CA 92050 (714) 474-8195



IPMSDLB SDG  
 1-041029 NO59-001 02/28/80  
 ICS IPMSDLB SDG  
 RETRIEVAL REPLY: 1-040555 MO59 ICS IPMSDLB SDG  
 02043 SANDIEGO CA 293 02-28 317P PST  
 PMS PRESIDENT JIMMY CARTER  
 WHITE HOUSE DC  
 MR. PRESIDENT,

CHILDREN, INCLUDING BABIES AS YOUNG AS 24 MONTHS ARE BEING IMPRISONED IN THE FEDERAL PRISON SYSTEM. CHILDREN ARE BEING HELD AT THE METROPOLITAN CORRECTIONAL CENTER, EL CENTRO DETENTION CENTER AND THE SAN YSIDRO DETENTION CENTER FOR A PERIOD OF 1 DAY TO 90 DAYS. SAN DIEGO U.S. ATTORNEY MICHAEL WALSH, ACCORDING TO OUR INVESTIGATION CLAIMS THAT THE ARREST AND IMPRISONMENT OF CHILDREN AND THEIR MOTHERS IS NECESSARY BECAUSE THEY ARE NEEDED AS "MATERIAL WITNESSES" IN CASES INVOLVING ILLEGAL ALIEN SMUGGLERS. THESE CHILDREN ARE BEING GIVEN CRIMINAL RECORDS EVEN THOUGH THEY ARE POWERLESS OVER THE CIRCUMSTANCES INVOLVING THEIR ARRESTS.

OUR SOURCES INFORM US THAT SOME OF THESE CHILDREN ARE WITH THEIR MOTHERS, BUT THAT OTHERS ARE BEING IMPRISONED WITHOUT THEIR PARENTS. OUR INVESTIGATION ALSO REVEALED THAT ONCE THE CHILDREN ARE NO LONGER NEEDED AS "MATERIAL WITNESSES", THE INS AUTHORITIES SIMPLY TOSS THEM INTO MEXICO WITHOUT MAKING ANY EFFORT TO INSURE THAT THE CHILDREN ARE REUNITED WITH THEIR PARENTS. FURTHERMORE IT HAS ALSO BEEN REPORTED TO US THAT CHILDREN WHO ARE TURNED OVER TO MEXICAN AUTHORITIES ARE KEPT FOR ONE WEEK AND THEN ARE TURNED LOOSE IN THE STREETS TO FEND FOR THEMSELVES.

JUST YESTERDAY FEB. 27, 1980 A 12 MONTH OLD BABY WAS BEING HELD AT THE METROPOLITAN CORRECTIONAL CENTER. THESE PRACTICES ARE INHUMAN, BARBARIC AND AN INDICTMENT OF THE CURRENT IMMIGRATION POLICY. IN THE NAME OF HUMAN DECENCY OUR ORGANIZATION DEMANDS THE IMMEDIATE CESSATION OF THE IMPRISONMENT OF CHILDREN AND AN END TO ALL THE DEGRADING POLICIES INVOLVED IN THIS SYSTEM. THE INSANITY OF THESE ACTIONS CRY OUT FOR AN IMMEDIATE INVESTIGATION TO DETERMINE RESPONSIBILITY FOR THESE ACTS. AS THE HIGHEST ELECTED OFFICIAL IN THE COUNTRY IT IS YOUR RESPONSIBILITY TO PUT AN END TO THIS BORDER MADNESS.

THANK YOU.  
 HERMAN BACA  
 CHAIRPERSON COMMITTEE ON CHICANO RIGHTS INC

(CCR/1837 HIGHLAND AVE/NATIONAL CITY CA 92050/FN/7144748195/  
 104/O/BACA).  
 1859 EST

IPMSDLB SDG



Committee on Chicano Rights, Inc

Traducción de un telegrama Western Union, mandado el 2/28/80

Sr. Presidente Carter:

Hay niños encarcelados, encluyendo bebitos de 24 meses, en el sistema Federal de Prisiones.

Hay niños presos en el Centro Correccional Metropolitano, en el centro de Detención de El Centro, California y en el centro de Detención de San Ysidro.

Estos estan presos por un día, haste noventa (90) días; El Licenciado representante de los Estados Unidos, el Sr. Michael Walsh dice, sigein nuestras investigaciones que, el arresto y detención es necesario, porque los niños son testigos materiales, en los casos de contrabandistas de personas sin documentación.

Nuestras informas indican que, algunos niños estan encarcelados con sus madres, pero que tambien hay niños encarcelados, sin sus padres.

Non informan tambien que cuando ya no son necesitados los niños como "testigos materiales" los oficiales del I.N.S. son liberalmente hechados a México sin procurar sus familias ni padres.

Además es reportado que cuando cuales niños son entregados a las autoridades Mexicanas, que son detenidos por una semana y luego soltados a la calle.

Ayer mismo, Martes 27 de febrero, fué detenido un bebito de 12

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meses en el Centro Correccional Metropolitano. Estas practicas son inhumanos, barbaros y otra denuncia de la poliza actual de Emigracion.

En el nombre de la decencia humana, nuestra organizacion demanda la anulacion inmediata del encarcelamiento de niños y un fin a las practicas degradantes de este sistema.

La locura de estas acciones imploran una investigacion inmediata, para determinar la responsabilidad de estos actos.

Usted, como el oficial electado mas elevado del pais, es su responsabilidad de ponerle fin a esta situacion lunatica aqui en la frontera.

Gracias,

Herman Baca



Committee on Chicano Rights, Inc

February 28, 1980

President Jimmy Carter  
White House  
Washington, DC

Mr. President:

With all due respect, our organization wishes to inform you of a crucial issue requiring your immediate attention. The issue involves the disgraceful and inhumane practice of imprisoning undocumented children in the U.S. Federal Prison system as "material witnesses" in smuggling cases.

It is our organizations position that the victimization through imprisonment of innocent children for whatever reasons must cease immediately and that new alternatives must be developed to deal with this issue on a more humane level.

For those reasons our organization is proposing that the government of the United States and Mexico immediately begin talks on developing a bilateral commission so that solutions and responsibilities can be sought to end vicitimization of innocent children. The proposed commission should investigate the issue of the imprisonment of children in the U.S. and also the reported issue of deported children by the INS/Border Patrol being left to fend for themselves in the streets of Tijuana and other border cities.

Over the last ten years our organization has witnessed numerous violations of human, civil and constitutional rights with the unresolved immigration issue, but the issue of children being imprisoned represents a new low concerning this matter.

It is our sincere hope that the proposed bilateral commission will receive your immediate attention and that our recommendation for such a commission will become a reality leading to a positive resolution of this degrading issue.

Sincerely,

*Herman Baca*  
Herman Baca, Chairman

1837 Highland Avenue, National City, CA 92050 (714) 474-8195



Committee on Chicano Rights, Inc

Febrero 28, 1980

Jose Lopez Portillo  
Presidente de la Republica Mexicana  
Plaza de la Constitucion  
Los Pinos, Mexico D. F.

Sr. Presidente,

Con todo respeto, nuestra organización desea comunicarle algo tocante un asunto crucial, que requiere su atención inmediato. El asunto se trata del vergonzoso e inhumano acto de encarcelar a niños. Encarcelar a hijos de personas detenidas sin documentación; estan en prisiones federales de los Estados Unidos, como testigos materiales en casos de contrabando de personas.

La posición de nuestra organización, es de que debe cesar inmediatamente esta victimación, el encarsamiento de niños inocentes por cualquier motivo, y que nuevas alternativas deberían ser resueltas, para aliviar este asunto a un nivel más humanitario.

Por estas razones nuestra organización le propone a los gobiernos de Mexico y los Estados Unidos, que comiencen con los preparativos para formar una Comisión Bilateral, para buscar mejores soluciones y responsabilidades para terminar esta victimación de niños inocentes.

La propuesta comision deberá investigar este asunto de niños encarcelados en los Estados Unidos y tambien el asunto de niños deportados por el INS/Border Patrol y abandonados en Tijuana así como en otras ciudades fronterizas.

A través de estos últimos diez años, nuestra organización a sido testigo a varias violaciones a los derechos humanos, civiles y constitucionales, estos en asuntos de enmigracion aún irresoluto pero esto de niños encarcelados representa algo de lo más bajo concerniente al asunto.

Es nuestra sincera esperanza, que la propuesta comisión bilateral, reciba su inmediata atención, y que nuestra recomendación para tal comisión se convierta en una realidad, para llegar a una solución positivo a este asunto tan degradante.

Sinceramente,  
*Herman Baca*  
Herman Baca, Presidente

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# Mexican children imprisoned in U.S.

SPECIAL TO THE PW

CHICAGO—The Midwest Coalition in Defense of Immigrants has denounced the mass imprisonment of Mexican minors and infants in U.S. prisons and called for a national campaign to free the children.

Of 340,000 people arrested on the U.S. side of the Mexican border in 1979, it was revealed, more than 8,000 were children.

Juan Manuel Soliz, speaking for the broad coalition of civic, community, legal and labor groups based in the large Chicano community here, told the press the jailing of these children is "a violation of the most elementary human rights of children" and was the result of the racist policies of the Dept. of Justice and the Immigration and Naturalization Service (INS).

Herman Baca, president of the California-based Commission on Chicano Rights, exposed the U.S. government policy of jailing Mexican children. They are held in gruesome federal prisons which John Celary, executive director of Federal Defenders, denounced as "unconstitutional, inhuman and atrocious."

Many are held because they or their parents are material witnesses slated to testify against "coyotes"—people who bring immigrants across the border for money—who operate illegally. But as Soliz pointed out the "coyotes" are usually out on bail within one day, while the immigrants and their children are deprived of all rights and jailed for months even though not charged with any crime.

Children are separated from parents, finger-printed and treated like criminals by police and prison authorities. Para Rosa Rivas told the Mexican daily paper *Excelsior* recently she was detained as a witness against a "coyote" she had never seen, and her two children (one six, the other just a year old) were taken from her and imprisoned.

Children are jailed in federal facilities in California at San Diego, Calexico, San Ysidro, Chula Vista and El Centro. In some cases, they have been "lost" in the federal bureaucracy and permanently separated from their families; in other cases, they are deported alone to various Mexican cities—regardless of where these children came from—and abandoned.

Soliz criticized President Carter's hypocritical posture as a defender of human rights in other countries while immigrant children are jailed here—especially during the International Year of the Child in 1979. "Hundreds of Mexican children fleeing hunger, unemployment and unhealthy conditions try to cross into the U.S. with their families only to encounter repression and racism," Soliz charged.

The Midwest Coalition called on people in the U.S. to launch a letter campaign of protest to President Carter demanding immediate release of children in federal jails. Further, the coalition called for general, unconditional amnesty for all undocumented workers.

## Alien Youngsters Who Witnessed Smuggling Wait At MCC

By BILL OTT

Staff Writer, The San Diego Union

Jose is from Durango, Mexico.

Yesterday he played volleyball on the roof of the sun drenched 12-story Metropolitan Correctional Center overlooking San Diego Bay.

The physical exertion of his game released some of the tension of his confinement.

By far, he was in much better condition than when he was taken into custody with his father at a remote drop house for aliens smuggled into the United States. He was hungry and dirty then.

Before being taken into custody by Border Patrol agents, Jose and his father — along with countless others — waited in Tijuana's Colonia Libertad area, hoping that the coyote, or smuggler, they had paid could safely bring them into the United States and financial refuge.

Here, perhaps, they could find work.

The dream collapsed when they were caught on this side of the border.

Jose and his father are being held in custody as material witnesses as federal prosecutors try to convict the smugglers who prey on the destitute and hopeful.

Jose is only 15.

As of yesterday, he was one of more than 20 youngsters in custody at MCC. The juveniles are charges of U.S. Marshal James R. Laffoon.

"They aren't considered delinquents," Laffoon said. Nor are they charged with criminal offenses.

The youngsters, Laffoon said, are caught up in circumstances that are not of their own making. But they are material witnesses to alien smuggling.

Thus, the confinement at MCC.

The number of juveniles caught up in these

circumstances during the year of April 1, 1977, to March 31, 1978, totaled 292, Laffoon said. Of the total, 215 were males, whose total custody added up to 4,893 days. The 77 females spent a total of 1,297 days in custody.

The average time the juveniles spent in custody was about 20 days.

But there was the 17-year-old girl from Puebla, Mexico, who was in custody 86 days; a 17-year-old boy from Jalisco, 145 days; a 12-year-old girl from Michocan, 22 days; a 15-year-old boy from Zacatecas, 36 days.

They were in custody until the cases involving those who smuggled them in were con-

cluded. They testified as material witnesses. Then, with their parents or other relatives who brought them in, they were returned to Mexico.

At the present time, Laffoon said, MCC is the best answer to holding these juveniles.

"They're here," he said. "They were taken into custody, not charged with any crime, but what do you do with them? Who do you turn them over to here until they can be returned to Mexico?"

There is no immediate answer.

(Continued on B-2, Col. 1)

# Alien Youths At MCC Wait As Witnesses

(Continued from Page B-1)

Walter Lumpkin, MCC's warden, said: "Our mission — whether the inmates are adults or juveniles — is to hold them in an environment as humane and secure as possible."

Teen-age males, he said, are segregated from male adults as much as possible. There is no verbal contact, only visual contact at times.

As to very young children — and there have been some who are 5 or 6 years old — they are allowed to remain in custody with their mothers.

Associate Warden Lowell Kincaid said these youngsters are sometimes frightened, bewildered, and it would be more of a trauma to separate them from the parent.

Lumpkin said the youngsters, like the adults, have both dental and medical care while they are in custody. The medical care is provided by physicians' assistants, short of any major medical emergency such as appendicitis or childbirth.

The latter happened on at least one occasion. A material witness in custody was pregnant. When it came time for her to give birth, she was taken to a local hospital. After the baby was born, and enough time passed, she was returned to custody with her baby.

What about the custody for the youngsters? They are housed in separate floors of the MCC. Each floor has 48 cells, each cell accommodating two. The cells are unlocked from 6 a.m. until 11 p.m., so they are free to roam the floor's open area. Each floor has one common television set. Each floor has exercise equipment, pool tables, pingpong, cards, checkers, dominoes.

And there is the rooftop, with two basketball courts, handball, volleyball and shuffleboard. The meals are a balanced diet.

But, then, it is confinement, even if it is as humane as possible.

And time hangs heavy with the young.



# Inmates Plan Hunger-Work Strike Starting Monday At Prison Here

By KEN MIMMS  
Staff Writer, The San Diego Union

Three inmates of the Metropolitan Correctional Center in downtown San Diego say they will lead a non-violent "hunger and no work" strike, beginning Monday at the federal prison, to draw attention to a list of 28 grievances, it was learned yesterday.

The grievances, which include a call to end separation of children of suspected illegal aliens from their parents, are included in a strike plan that includes a "code of conduct"

urging striking inmates to "refrain from any and all violence."

The strike is to begin about 6:30 a.m. Monday and will "take place in the form of no food intake (adults only), work stoppage and court stoppage (not compulsory)," according to a statement issued by the trio and smuggled out of the MCC yesterday.

By "court stoppage" the inmates mean refusal to cooperate in making court appearances.

"Most of the public is not aware that children (infants to 17 years of age), are housed on the sixth floor.

We wish to . . . to exact a change to an appalling practice of separating children from their parents, most of whom are Hispanic speaking and are not able to understand what's going on," the statement said.

Asked if word of the strike had reached the MCC staff, Assistant Warden Lowell Kincaid said he was "not aware of anything of that sort."

"I have had no indication that the inmates are unhappy . . ."

Kincaid said children under 10 years of age are not separated from their parents. "And, on a periodic basis, (parents) are permitted to visit older children, who are housed in the Juvenile Unit; but I'm not sure how often our policy allows this," he said.

According to the grievance, the children do not have access to an "out of doors playground." But the roof of the MCC is used as a recreation area and "all inmates, including children, are offered time on the roof each day," Kincaid said.

In addition to their concern for the children, the strike leaders, inmates Allen M. Swarthout, Anthony R. Brinkworth and Jesus A. Cruz, demanded "(oxygen) breathing apparatus for all people in custody" and an emergency evacuation plan in the event of a fire or other life-threatening emergency.

"The MCC does not have any mattresses here that could emit toxic fumes (in the event of a fire)," he said in reference to mention in the grievance of a fire in a Tennessee jail that killed 44 persons when burning mattresses emitted cyanide fumes.

The statement by the strike leaders stressed the importance of non-violence, because "violence will only serve to alienate and deteriorate the conditions that already exist," and full participation: "A hunger strike is no good without solidarity."

The grievance list also asks: an end to "frozen TV-type" foods; availability of telephones to inmates from "wake-up to 11 p.m. to avoid altercations"; the right of inmates to seal outgoing mail and "unlimited free mailing"; daily access to the law library without delays; that inmates not be forced to work unless paid the minimum federal wage, and guaranteed time off for good behavior amounting to 15 days for each

# The San Diego Union

## Federal Official Denies Charge Of Imprisoning Alien Children

A federal official who initiated programs to care for the children of undocumented Hispanics being held as witnesses against smugglers yesterday denied that youngsters are being imprisoned needlessly.

U.S. Marshal James R. Laffoon said no child is being held at the Metropolitan Correctional Center (MCC) unless it is for his own interest.

It was at Laffoon's urging that the federal government worked out programs with the Salvation Army and Catholic Community Services for temporary care of youngsters. During fiscal 1979, more than \$500,000 was earmarked for the programs, he said.

"Baca's all wet on this," Laffoon said, adding that he was concerned about participation in the programs because of Baca's accusations.

Laffoon's statements were in response to charges by the Committee on Chicano Rights. At a press conference yesterday, Herman Baca, president of the group, said he had sent a letter and a telegram to President Carter urging a bilateral commission to investigate "the disgraceful and inhumane practice of imprisoning undocumented children in the U.S. Federal Prison system as

material witnesses in smuggling cases."

He said children are detained at El Centro, San Ysidro and the MCC.

"It is our organization's position that the victimization through the imprisonment of innocent children for whatever reasons must cease immediately and that new alternatives must be developed to deal with this issue on a more humane level," Baca said.

Baca said that a similar letter was sent to President Jose Lopez Portillo of Mexico.

Baca said he disputes the necessity of detaining children and mothers as witnesses against smugglers where there are others who can testify against them.

Laffoon said undocumented Hispanics are held as material witnesses as long as it is determined they are needed by the defense and prosecution.

Lowell Kincaid, MCC associate warden, said fingerprints are taken of children over the age of 10 and all are photographed. He said it is part of the internal record keeping process.

Laffoon said each undocumented child who is picked up is given a medical examination at the MCC

and may be required to remain there for treatment or go to a hospital for treatment.

Under a contract with the marshal's office, the Salvation Army cares for mothers and for children up to 10 years of age. Catholic Community Services is charged with finding Spanish-speaking homes for children aged 11 to 18.

Sometimes, youngsters remain in the MCC for more than a day or two because they are detained on a weekend, over a holiday, or because they have medical problems that need attention, he said.

Baca also charged that once the children are no longer needed as material witnesses, "the INS (Immigration and Naturalization Service) authorities simply toss them into Mexico without making any effort to insure that the children are reunited with their parents."

However, Clifton Rogers, INS assistant district director for deportation, said young children are not released to authorities of Mexico or other Hispanic nations unless they are with their parents or contact is made with a responsible adult who will care for them.

3-1-80  
Laffoon  
Baca  
Kincaid  
Rogers  
Catholic Community Services  
Salvation Army  
MCC  
El Centro  
San Ysidro



UNO 7 UNO (30/11/80)

## El Servicio de Inmigración de EU desmiente que haya niños mexicanos detenidos en la frontera

Señor director:

Junto con un cordial saludo, me permito enviarle la carta adjunta enviada por la señora Annie Gutiérrez, directora regional del Servicio de Inmigración y Naturalización de Estados Unidos, al señor Bert Corona, en respuesta a un telegrama en el que denunció que niños mexicanos son detenidos en cárceles estadounidenses.

En virtud de que la información relacionada con el telegrama del señor Corona suscitó algunos comentarios de columnistas que colaboran en su periódico, le proporcionamos el material antes mencionado, esperando que, en interés de una mejor y mayor comprensión de los hechos, lo ponga al alcance de los lectores.

Larry J. Ikels, agregado de prensa, embajada de Estados Unidos.

*A continuación, la carta de Annie Gutiérrez:*

Estimado señor Corona:

Cuando llegó su telegrama del 15 de febrero, yo me encontraba en América Central. A mi regreso me ocupé del asunto a que se refiere, en el sentido de que se detiene a muchos niños mexicanos durante largo tiempo, en el Centro Correccional Metropolitano (MCC) en San Diego, California, en calidad de testigos de cargo. Igualmente, me ocupé de aseveraciones de otras personas de que 600 niños mexicanos están en prisiones estadounidenses, como testigos de cargo.

Puedo asegurar categóricamente que ninguna de estas afirmaciones es cierta. Los procedimientos seguidos por el Servicio de Inmigración y Naturalización de Estados Unidos y por el alguacil de Estados Unidos se basan firmemente en los siguientes principios y normas:

- 1) Aunque preferiríamos no detener a testigos de cargo, sin embargo es preciso hacerlo a fin de poder llevar a juicio a aquellos que introducen ilegalmente a extranjeros al país. Los testigos sólo son detenidos cuando ellos han sido parte de un caso de contrabando a gran escala;
- 2) Los niños no se utilizan como testigos de cargo;
- 3) Las mujeres que son testigos de cargo y los niños no son detenidos en la cárcel durante largo tiempo;
- 4) Jamás se coloca a jóvenes detenidos en la misma área en que están los adultos, a no ser que se trate de niños pequeños que necesitan la atención de sus progenitores; los jóvenes y los testigos nunca están con criminales.

Bajo nuestras leyes, el acusado tiene derecho de interrogar al testigo. Por lo tanto, las cortes han decidido que cuando se detenga a una persona que introduzca ilegalmente a extranjeros al país, los testigos también sean detenidos. Con anterioridad, los abogados defensores insistían en que se retirara a los testigos hasta que se celebrara el juicio. En los últimos meses se han hecho grandes esfuerzos con el objeto de acortar el tiempo de detención de los testigos.

Las personas más jóvenes que se aceptan como testigos deberán tener no menos de 15 o 16 años de edad, dependiendo de que dichos jóvenes tengan algo importante que declarar que sólo ellos puedan hacerlo. Esto sucede en raras ocasiones. A los jueces y abogados no les gusta presentar jóvenes en las cortes como testigos, a menos que sea absolutamente necesario. Por otra parte, la norma que sigue el Servicio de Inmigración es de no repatriar por separado a los miembros de una familia, sino que los retiene con el objeto de que regresen juntos.

Durante los últimos nueve meses, se ha alojado a mujeres y niños del área de San Diego en una propiedad del Ejército de Salvación denominada la Puerta de la Buena Esperanza, o con familias particulares a través de la Agencia Católica de Servicios para la Familia.

En cuanto el juez inicia el proceso se envía a las mujeres y los niños a la casa del Ejército de Salvación, que no es un lugar de encierro, ni está vigilado por la policía. El sitio cuenta con habitaciones privadas para mujeres con niños y semiprivadas para las solteras. También hay una guardería para los niños, con juguetes y televisión, y un patio de juegos.

Los jóvenes menores de 18 años, que no van acompañados de adultos de la familia, son hospedados con familias de la Agencia Católica de Servicios para la Familia.

Empero, hay una excepción a esta regla: tratándose de jóvenes de 16 o 17 años que viven en el área de la frontera, no se les hospeda con familias estadounidenses justo al otro lado de la frontera, pues por experiencia sabemos que en esos casos prefieren volver a sus hogares. Estos jóvenes son enviados al MCC.

El MCC está compuesto de varios pisos. Cada piso donde se aloja a los testigos de cargo y a los jóvenes está dividido en una amplia sala central y de descanso con cuartos individuales alrededor. La sala central, generalmente, se usa para tomar los alimentos, ver televisión, para juegos de mesa, labores creativas, lecturas, o simplemente para conversar. No hay bares. De ninguna manera estas áreas de descanso se parecen a una cárcel típica.

Por otra parte, se me ha asegurado que en el MCC se fotografía y toma huellas digitales tanto a los testigos de cargo como a los jóvenes detenidos con el único propósito de identificarlos, y que ninguna información relacionada con ellos pasa la computadora que mantiene la información relativa a los criminales. Por lo tanto, no se les considera como fichados.

Las aseveraciones hechas por otros de que hay 600 niños mexicanos encarcelados como testigos de cargo, son falsas del todo. El total de testigos fluctúa diariamente; sin embargo, el promedio de la última semana fue de 135 en los Condados de San Diego e Imperial. El número de niños menores de 18 años ha sido alrededor de 25 por día. Por lo general, no se ha detenido en todo el país a más de 225 testigos en cualquier día. Del total de detenciones efectuadas por la Patrulla Fronteriza en el área de San Ysidro (de mil 350 a mil 750 diarias), calculamos que un 3.3 por ciento son niños y jóvenes menores de 18 años.

Me he extendido en la respuesta a su telegrama con tanto detalle, porque creo que es esencial tratar este importante asunto a la luz de los hechos. No es posible que los cargos irresponsables y la información inexacta contribuyan a comprender mejor este tema o a resolver estos problemas objetivos que estoy segura, todos deseamos alcanzar.

Annie Gutiérrez.

N. de la R.: Carta resumida.

3-2-80

## Anticonstitucional e Inhumano: Cleary

- ★ Tres Meses Presos Para ser Testigos de Cargo
- ★ De Nada se les Acusa; Sólo los usa el Fiscal
- ★ Figuran Millares en las Fichas Criminales

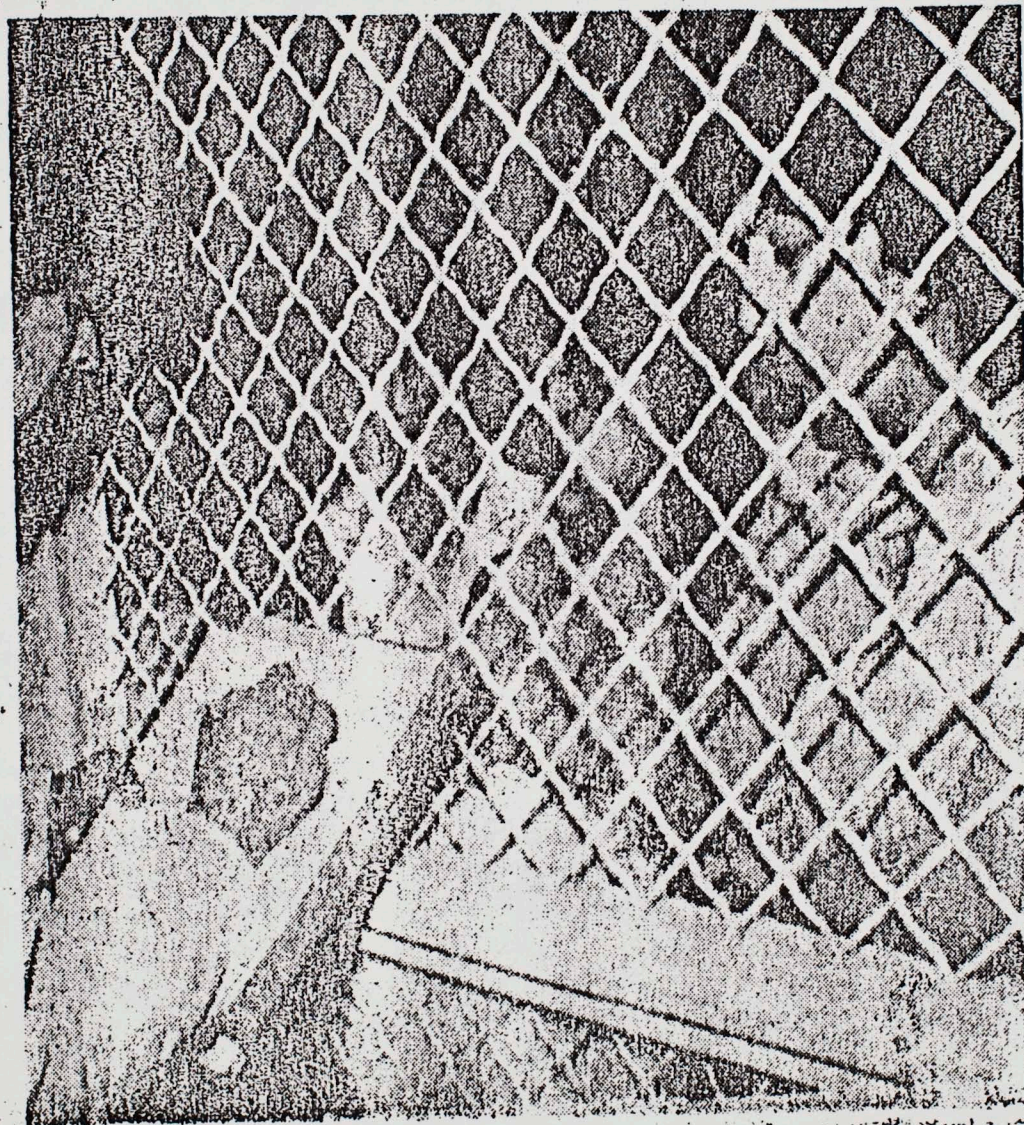
Por FERNANDO MERAZ,  
enviado de EXCELSIOR

— 1 —

SAN DIEGO, Cal., 10. de marzo—Al margen de lo dispuesto por las leyes de este país y de la Declaración Universal de los Derechos Humanos, más de 600 niños mexicanos están reclusos como testigos de cargo en las prisiones de San Diego, Calixico, San Isidro, El Centro y Chulavista.

De los 340,000 mexicanos ilegales capturados en 1979 por la Border Patrol en esta zona fronteriza, 8,300 eran adolescentes y niños que acompañaban a sus padres en la aventura: abandonaron casa y familia para buscar el sustento y ahora se hallan aquí como actores de un drama aún más cruel, que

SIGUE EN LA PÁG. DIECINUEVE



VARIAS JÓVENES indocumentadas, menores de edad, fueron entrevistadas por el reportero Fernando Meraz, en la cárcel del Condado de San Diego, California, en donde se encuentran reclusas. (Foto de Eduardo Zepeda)

## Junto a Homicidas y Asaltantes, 600 Niños Mexicanos en 5 Presidios de EU

Sigue de la primera plana

les llevó a la cárcel en calidad de reos, les privó de toda libertad y les negó cualquier derecho, antes de regresarlos derrotados a su país, a revivir su propia, la trecha suerte, en tanto que las Naciones Unidas declaraban el "Año

Internacional del Niño".

La detención de menores de edad es práctica común de las patrullas del Servicio de Migración y Naturalización de Estados Unidos, según lo comprobó el reportero mediante extensa investigación realizada en la zona fronteriza, que per-

mitió integrar la primera prueba documental sobre la denuncia presentada el lunes de la semana pasada por los principales dirigentes de la comunidad chicana al gobierno del Presidente James Carter, y reiterada el viernes ante la prensa estadounidense por

un comité encabezado por el dirigente Herman Baca, la comisionada federal, Anita Caslow y el sacerdote católico Francis Riley.

En todos los casos, los menores detenidos no son sujetos de cargos criminales. Sin embargo, son enviados a las prisiones federales, en calidad de "material witnesses", o testigos de cargo en los procesos que la fiscalía federal, en esta zona a cargo de Michael H. Walsh, abre en contra de los "polleros" o tratantes de ilegales.

Al iniciar un proceso, la fiscalía debe presentar testimonio en contra de los

tratantes y el único posible es el de sus propias víctimas. Es por eso que éstas deben permanecer a disposición de la fiscalía durante todo el tiempo que la corte estime necesario, según explicó a los enviados de EXCELSIOR, Peter Núñez, asistente del procurador Walsh en asuntos de emigración.

Sin embargo, esta práctica generalizada, al obligar en contra de su voluntad a los ilegales detenidos a permanecer en prisiones incluye en graves violaciones a la propia Constitución de Estados Unidos; a los artículos 10, 11 y 12 de la De-

claración Universal de los Derechos del Hombre, declarada norma obligatoria por el gobierno de Carter en este país, y a la Ley de Libertades Civiles Estadunidense, aseveró el director del Federal Defenders—defensoría de oficio—del condado de San Diego, Michael John J. Cleary.

El propio Cleary, indignado "por el carácter policia- co y represivo de la Patrulla Fronteriza por las cotidianas y comunes violaciones a los derechos humanos en contra de los indocumentados y por la terri-

EXCELSIOR Domingo 2 de Marzo de 1980 19-A

# 600 niños presos de la migra

Una investigación por el Comité pro Derechos Chicanos de San Diego, Calif., (CCR), condenó la práctica federal de detener a niños mexicanos como "testigos materiales" contra "coyotes y polle-ros" (traficantes de indocumentados).

De acuerdo a Herman Baca, dirigente de CCR, los niños se encuentran deteni-dos en cárceles de San Diego, Caléxico, San Ysidro, El Centro y Chula Vista. Los detenidos, muchos que apenas llegan al año de edad, son fotografiados y fichados

en archivos del Depto. de Justicia. El diario mexicano Excelsior calcula que la migra tiene detenidos a 600 niños mexica-nos en California.

CCR envió telegramas denunciando esta vil violación de derechos humanos al

Presidente Carter y al Presidente Lopez Portillo de México, pero Baca dijo al *Clarín* por teléfono que "como siempre, no han contestado."

**PUEBLOS  
DEL MUNDO  
UNIOS PARA  
DERROTAR AL  
IMPERIALISMO**

# El Clarín

**ORGANO  
DEL  
PARTIDO  
COMUNISTA  
(M-L)**

## Kids In Prison

NEW YORK, NY--Mexican and Chicano children caught crossing the border are now being held in federal prisons. This charge, recently confirmed by the US Department of Justice, was first reported by the Committee on Chicano Rights (CCR) in San Diego.

Their information came from a number of unnamed employees working inside one California prison. Undocumented children are held for as long as 90 days and then released to foster homes while their parents continue to serve time.

Lowell Kincaid, deputy-warden of the Metropolitan Correctional Center, conceded that juveniles are held in the San Ysidro prison, located on the border, when he told LNS, "We have an obligation to house anyone held by the US Attorney. If it happens to be children, then we house them."

The new practice is part of a stepped-up effort by federal prosecutors to convict those who are paid to smuggle people across the US-Mexico border. But according to Herman Baca, chairman of CCR, "The fact is that smugglers have money and pull ball, while the 'material witnesses' must spend weeks, even months, imprisoned. We believe this inhuman practice of jailing mothers and their children, and parentless children, must be investigated. So that it is stopped."

4-20

In a telegram sent to both President Carter and President Jose Lopez Portillo, Baca says that CCR sources also revealed that those children who are not placed in US foster homes are turned over to Mexican authorities. In Mexico, they "are kept for one week and then turned loose in the streets to fend for themselves."

Leticia Jiminez, also of CCR, said, "Imagine the anguish involved. The child is apprehended, alone, in a strange country, and because of the illegality the parents are afraid to call Immigration. So, they are breaking up families."

Jiminez also believes that photographing, fingerprinting, and in the case of one 25 month-old baby, footprinting, which Kincaid told LNS "is for purposes of identification only," could possibly damage a child's chances of crossing the border legally in years to come. Baca called the practice "barbaric."

The letter to President Carter and President Portillo seeks the formation of a bilateral committee "to work out a humane solution to the victimization of children on both sides of the border."

CCR has also called a Chicano National Immigration conference to be held late in May "to unify on solutions to the escalating border violence."

Baca added, "We feel that the issue of illegal workers is being used to inflame people and destroy any progress, economic and otherwise, made by the Chicano movement. So, we're calling for a national crusade to end the violence and the policy."

D. INFLICTING UNNECESSARY PHYSICAL VIOLENCE  
AND ABUSE ON SUSPECTED UNDOCUMENTED ALIENS,  
UNITED STATES CITIZENS AND PERMANENT RESIDENT  
ALIENS.

- Affidavits and/or Declarations
- Formal Complaints
- Official Documents
- Transcripts
- Fact Sheets
- News Articles



I, ELVIA MURPHY DE LAVALLES, residing at Romano #100, La Mesa, Tijuana, B.C. Mexico and employed at Empresas Fiebras, Credit Department, wish to state and affirm that on February 4th, 1978 after my husband, ENRIQUE LAVALLES CERDA, and I got out of work at approximately 9:00 p.m. we went to our home to pick up some belongings that we were to take on our trip to Disneyland. We then arrived at the San Ysidro port of entry at approximately 11:00 p.m. being referred to Secondary Inspection; in Secondary Inspection we requested a permit for both of us to go beyond the 25 mile limit. We were issued form SW-434 (one only) for both of us with the ending numbers of each of our border crossing cards by an Immigration Inspector; we then proceeded inland without any problem, at our arriving at the San Onofre Border Patrol Check Point at approximately 1:00 a.m. of February 5th, we were pulled over by a Border Patrol Officer. He requested to see our I-166 cards with our permits, we demonstrated him form SW-434, and the officer replied back by telling me to get out of the car alleging that one permit was missing without giving us the opportunity to speak, he also stated that there were some numbers missing from the SW-434 form. He then in a very nasty attitude ordered me out of my husband's car to go to his office and abusively told my husband to leave the area. My husband again asked him for an explanation as to why he was taking this attitude against us, he got my husband by the jacket and threaten to beat him up and to take his I-166 card. My husband did not want to leave me by myself at the mercy of this individual, he was very concerned of what was going to be my destiny with an individual like that Border Patrol Officer but he did not have any other alternative but to leave. I was then ordered by the same Border Patrol Officer to go in his office and then was told to go in a room with another Officer, where I was ordered to take my clothes off. The room was dirty, unsanitary, very poorly cared for the officer proceeded to search me touching my body with her dirty hands also touching my sensitive parts and putting me in a very embarrassing situation. I pleaded with the officer not to touch me and asked her why I was being treated like an animal and she only replied and stated "I DO NOT SPEAK SPANISH" I was then returned back with other individuals and stayed there without food or water until I was returned back to the Mexican side and presented to the Mexican Authorities at about 7:00 a.m. in the morning of February 5th, 1978. I HEREBY STATE AND DECLARE THAT THE FOREGOING

ELVIA MURPHY DE LAVALLES

*Elvia Murphy de Lavalles*

IS A TRUE AND CORRECT STATEMENT OF FACTS.



318 EAST SAN YSIDRO BLVD.  
SAN YSIDRO, CALIFORNIA 92073  
(714) 488-2742

June 29, 1978

Leonel Castillo, Commissioner  
Immigration and Naturalization Service  
Washington, D.C.

Dear Mr. Castillo:

The President and the Board of Directors of the United California Mexican-American Association have authorized and instructed me to convey to you their opinions and questions regarding the shooting of Emiliano Zapata Coleman by Border Patrolman Donald Heidt.

We are informed that the facts were as follows: Heidt in the company of another Border Patrolman was drinking at a local restaurant, was apparently refused additional drinks by the restaurant, proceeded to threaten at least three people with a .357 magnum, drove his vehicle on the streets of Chula Vista, running into the car of Coleman, then shooting Coleman.

QUESTIONS: Was Heidt on duty at the time? Why was Heidt carrying a .357 magnum? On duty or off-duty, why this killer weapon? Why was he carrying it in a restaurant? When he was drinking, why? Was his fellow Border Patrolman also armed? And drinking?

Other more long-range questions: what sort of record does this man have? Had he been tested for his propensity for violence? Do you test future Border Patrolmen psychologically? For mental competence? Do you give them the polygraph examination such as the Sheriff here does to ascertain background facts, including instability? How much training has this man, and any others, in the handling of a weapon? Does he and the Service not know that the use of this weapon is deadly? That an encounter with such a weapon is usually deadly? Do Border Patrolmen on this border generally use this weapon? If so, why?

For this Association, as well as all others on this border who wish both peace and law and order, we must emphatically denounce this attack on the Spanish-speaking Black man in downtown Chula Vista by an armed officer of the United States. While we must in part hesitate to make a final judgment against the man, we must protest

Mr. Leonel Castillo  
June 29, 1978  
Page 2 --

to the Service the actions of Mr. Heidt, since they are at least in part actions of and by the Service. Such a dangerous weapon should not be present in downtown Chula Vista. In all probability such a dangerous man should not be employed as an officer of the United States.

Many of us had hoped that this sort of violence had ceased along the border. Years back we sought and secured money judgments against the Border Patrolman Ken Cock when he was accused of having sexual relations with his prisoner (she consented), and against Border Patrolman Jon Holman who tore up Mr. Daniel Magana's apartment, together with Border Patrolman Francis, looking for illegal aliens in his books and chili peppers. In this last case there was testimony about the officers drinking before their rampage. Here again we have an apparent alcohol problem. Again our question: What is being done about this sort of activity? What is going to be done? Is it necessary for our people to be armed to protect themselves from "peace officers"?

Urgently, please look into this matter.

Sincerely,

UNITED CALIFORNIA MEXICAN-AMERICAN ASSN.

\_\_\_\_\_  
FREDERICK HETTER, Counsel

BY: \_\_\_\_\_  
ALBERT GARCIA, President

FH:h

RT PATIENT

# Boy, 4, Dies at Border Gates

ROBERT MONTEMAYOR  
Times Staff Writer

The U.S. Customs inspector at the desk, the Mexican woman with a 4-year-old boy in her arms was another impatient person waiting to cross the international border.

Other people waiting in the Customs lobby, the woman's frantic cry of "Emergencia! Emergencia! El niño está enfermo!" indicated only that something was wrong. How serious it was, she did not know.

Except for Guadalupe Astorga. For her son, Mario Alberto Canedo — at that point unconscious and gasping for his last breaths — the moment was a dramatic climax to a series of tragic events that ended with a terrified scream as the boy died in her

# BOY, 4, DIES WHILE WAITING TO CROSS BORDER

Continued from First Page

People who suddenly realized the seriousness of the woman's distraught pleadings began weeping as Mrs. Astorga cradled the boy's limp body in her arms. Moments later — just a few minutes too late — an ambulance team arrived.

The death, a border official explained, was the result of "a certain lack of communication . . . an unfortunate death that fractured emotions and brought everyone who witnessed it to their knees."

On Thursday, border authorities finally pieced together the details of the Tuesday incident.

The Canedo boy, who had a congenital heart disease, had undergone heart surgery about a month ago at San Diego's University Hospital. Doc-

tors told investigators that the boy's operation had involved "rebuilding the heart."

After recuperating to the doctors' satisfaction, the youth was released from the hospital March 14 and returned to his home in Colonia Francisco Villa, about 10 miles southwest of Tijuana.

Mrs. Astorga told police the boy had been fine until Tuesday afternoon when he began vomiting blood. The woman, who had raised the child since birth, carried the boy to a cousin's home and from there began driving to the border.

But en route to the San Ysidro port of entry, the boy began convulsing and shortly afterward lost consciousness.

The time was about 5:15 p.m. and the notoriously long lines of cars at the border by this time stretched beyond the Mexican customs offices, about 200 yards south of the border crossing.

"She had to wait 20 minutes in line, just like everyone else usually waits at that time of the day," said Robert Mitton, assistant district director of the U.S. Immigration and Naturalization Service.

After finally reaching the entry gate, the panicking Mrs. Astorga quickly explained her "life-and-death" problem to the Customs officer.

The officer, Mitton said, "recognized the problem and wrote the woman a note that indicated she had

an emergency." Mrs. Astorga was instructed to proceed to the secondary inspection area, where she bolted from her car with the boy in her arms, and ran into the Customs lobby.

However, "because of all the confusion going on, it was not made clear to the Customs agent inside the inspections building that Mrs. Astorga was experiencing an emergency."

In her limited English, Mrs. Astorga explained to the Customs officer at the permits desk that the boy was ill and needed immediate medical attention. She was told to wait.

San Diego police and an ambulance crew, Mitton said, had been called about 5:45 p.m., moments after Mrs. Astorga had driven into the secondary inspection area.

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"The officer (inside) was not aware it was an emergency, even though the woman was screaming," said Mitton, whose agency investigated the death. "I think if he would have known what the circumstances were, he would have waived her through. But it was simply a matter of lack of communication."

Consequently, Mrs. Astorga waited in the Customs lobby, pleading and sobbing in Spanish. The lobby was beginning to fill with confused murmur when Mrs. Astorga let out a blood-curdling scream, Mitton said.

A hush fell over the lobby, Mitton said, and officers who finally went to Mrs. Astorga's side, then realized what was happening.

Even the ambulance team, which police said responded "very quickly," also had its problems with confusion. "They drove into the secondary in-

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Fri., Mar. 23, 1979 - Part II

spection area and couldn't find the woman and boy," Mitton said. "No one outside knew that the woman had run into the inspections building."

By the time they reached the boy "the only thing left to do was call the coroner," Mitton said.

"What can I say? It was not a very happy thing for us, not a pleasant thing at all. I'm sure there are a lot of people saying, 'if only I could have done this or done that, things might be different.'"

Ironically, the boy had been scheduled to return to University Hospital Wednesday for a checkup. The county coroner said the cause of the boy's death has not yet been determined.

COMPILED BY THE COMMITTEE ON CHICANO RIGHTS, 1837 HIGHLAND AVE., NATIONAL CITY, 92050 # (714) 474-8195

A F F I D A V I T

I, Martha Elena Parra Lopez, residing at Circumbalacion #7, Fraccionamiento Los Alamos, Tijuana, B. Calif., Mexico; under oath to tell the true affirm and declare the following:

That on May 31, 1972, on or about 6:30 p.m. I was detained by an officer of the San Ysidro Border Patrol at 320 Sandstone Ct., Chula Vista, Calif., the officer asked me for documentation in which I stated to him that I had no papers at all. After questioning me and my companions, we were transported to the San Ysidro Border Patrol Office. Immediately after we arrived, the Border Patrol officer asked the following: He asked me if I was married, in which I answered yes, he said he thinks I have many admirors because I am good-looking, but expressing himself in obscene words. He asked me if I have children, he took my weight and height, he looked at me to see if I had any needle mark on my face or arms, he made me sign a paper and gave it to me and I was conducted to the other room where my companions were. After interrogating me, he proceeded to interrogate my two companions, then we were transported to the international border, once we were there, the officer insisted to my two companions to leave with the flow pedestrain traffic in which they stated to him that all three of us will leave or all three of us will stay. Very disturbed he told my companions to get back into the patrol car and continued in another direction without letting us get out of the patrol car at the border. We continued on the road for about 15 or 20 minutes until we reached the high mesa which is located in Brown Field, he traveled all the way to the fence where the division of Mexico and the United States is outlined. He insisted to my two companions that they immediately jump the wire fence into Mexico in which my companions refused to do so, I wanted also to go with them but he grabbed me by the arm and threw me in the front seat of the patrol car and he told my companions they better get going because he will do something to them and to me, in other words he (threaten) us. So they left. Once he had me on the front seat of the patrol car, he went back a few feet and then he order me to take my brassiere and panties off, I told him no and he insisted. He then got his flash-light and asked me again "take your brassiere off, I want to see if they are real and also take your panties off so that I can see if you have concealed money or documents". After a long struggle with this officer until my strenght was out, he stripped me completely and violated me, he made a statement and said "I hope you do not have any disease", he then told me to get dress and to get out of the patrol car and go to my country. I want to state that due to the sexual abuse rape, I started to bleed very badly, I called Mrs. Vera Leon the next morning and described what had heppened to me and she immediately contacted Mr. Albert R. Garcia.

I herewith affirm and declare that the foregoing is a true and correct statement of fact.

*Martha Elena Parra Lopez*  
 Martha Elena Parra Lopez

SUBSCRIBED AND SWORN TO BEFORE ME  
 This 7th day of June, 19 72  
 At San Ysidro, California

*Robert R. Garcia*

E. SYSTEMATIC VIOLATIONS OF HUMAN, CIVIL, AND  
CONSTITUTIONAL RIGHTS.

- Affidavits and/or Declarations
- Formal Complaints
- Official Documents
- Transcripts
- Fact Sheets
- News Articles

STATE OF CALIFORNIA  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the matter of:

JOSE B. PLANCHARTE

Claimant-Appellant

SSA No. 559 98 2686

PRICE PFISTER MAFG

Employer

Account No. 013 9819

Time(s) and Place(s) of Hearing:

March 2, 1978  
San Diego, California

Appearances:

For the Claimant:

JOSE B. PLANCHARTE, Claimant  
LEGAL AID SOCIETY OF SAN DIEGO:  
By: TIMOTHY BARKER, Att. at Law  
and  
STEVE COHN, Law Clerk

5

Interpreter for Claimant:

CARMEN CONTRERAS

3

For the Employer:

NATIONAL EMPLOYERS COUNSEL  
By: WILLIAM BURD 68  
BILL GARCIA, Employee Relations Mg. 46

Exhibits:

	<u>No.</u>	<u>Iden.</u>	<u>Evid.</u>
Dentist's Statement	1		7
Claimant's Visa	2		23
Claimant's Receipt for Cash	3		24
Employee's Earnings Statement	4		24
Telegram	5	28	
Record of Claim Status Interview	6	43	

--o0o--

Case No: SD-12019

TRANSCRIPT OF HEARING

BEFORE

JAMES C. WILLIAMS  
ADMINISTRATIVE LAW JUDGE

REPORTER: S. A. HOLLAND

RECEIVED

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Appeals Board

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P R O C E E D I N G S

JAMES C. WILLIAMS, ADMINISTRATIVE LAW JUDGE:

This is a hearing in Case No. SD-12019 in the matter of the claim for unemployment benefits and the appeal by Jose B. Plancharte; the former employer being Price Pfister. The hearing is being held on March 2, 1978, at the San Diego Office of Appeals. Present by conference telephone in the North Hollywood Appeals Office as the authorized representative for the employer is William Burd of National Employers Counsel; and with Mr. Burd as a prospective witness is Bill Garcia, Employee Relations Manager with Price Pfister. Present in the San Diego Office is the claimant, Jose Plancharte. He is represented by his attorney, Timothy Barker, and by Steve Cohn of the San Diego Legal Aid Society. Present as an interpreter for Mr. Plancharte is Carmen Contreras. The reporter is Sally Holland. The appeal is being heard by James Williams.

The appeal was filed from a determination and ruling by the Chula Vista office of the Employment Development Department disqualifying the claimant from receiving unemployment benefits on the ground that he was discharged for misconduct connected with work. A ruling relieved the employer's account of charges.

The primary issue appears to be whether or not Mr. Plancharte was absent without an excuse or



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that Mr. Plancharte at no time engaged in any conduct which would fall within this definition.

I can now begin the questioning if you would like.

THE ALJ: Thank you, Mr. Cohn.

BY MR. COHN:

Q Could you please state your name for the record.

A Jose Plancharte.

Q Mr. Plancharte, did you work for the Price Pfister Manufacturing Company?

A Yes.

Q How long did you work for them?

A Six years.

Q And before this incident in November which is the subject of this hearing, did you ever have any problems with your employer?

A No, I didn't. A No, I didn't.

Q Were you ever before November absent from work without permission during those six years?

A No.

MR. BURD: Excuse me, Mr. Williams.

THE ALJ: Mr. Burd?

MR. BURD: We can't hear the interpreter's answers to the questions.

THE ALJ: Oh, all right. She will hold the mike a little closer here.

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2                   Incidentally, the two last questions  
3 in substance were, had there been any problems before  
4 with the job; and Mr. Plancharte said no. And he  
5 responded to the next question, I believe, that he was  
6 never absent without permission.

7                   MR. COHN: Without permission, right.

8                   THE ALJ: Thank you.

9 BY MR. COHN:                   BY MR. COHN:

10                  Q           Mr. Plancharte, on Thursday, the 3rd  
11 of November 1977, did you have a dentist appointment?

12                  A           The dentist told him to go on the 3rd,  
13 yes. Dentist had mentioned that he wanted him to go on  
14 that day to get consultation on his work on his mouth.

15                  Q           Where was this consultation?

16                  A           In Tijuana.

17                  Q           About what time did you go for this  
18 appointment?

19                  A           It was in the afternoon between 2:00  
20 and 3:00.

21                  Q           Mr. Plancharte, do you recognize this  
22 document I am presenting before you now?

23                  A           Yes. The dentist gave him that to  
24 tell him what was wrong with his teeth and to show what  
25 would be more or less the cost, an estimate what it  
26 would cost him to get his teeth fixed, so on and so forth.

27                  Q           From looking at this document, can you  
28 tell me what date this took place?

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A It was on the 3rd of November.

Q 3rd of November 1977?

A Yes.

Q If I may, I would like to introduce a copy of this document into the record.

THE ALJ: Oh, may I identify it, Mr. Cohn. I will identify it for Mr. Burd and Garcia.

Mr. Burd, it is a document bearing Mr. Plancharte's name and his address at that time; that is, 3824 Brooklyn Avenue, Los Angeles; and it is in Spanish, but it is from the doctor at the dental clinic on Constitucion Avenue in Tijuana, has a diagram of the teeth; and there are a number of them checked here which apparently would need attention, and it is dated November 3, 1977, and it has a cost estimate here including an extraction and number of prophylaxes and other work, a total of \$386.

Is that a fair brief summary, Mr. Cohn?

MR. COHN: Yes.

MR. BURD: Thank you.

THE ALJ: If you want a copy, Mr. Burd, I can transmit a copy to you, of course, today.

MR. BURD: I don't think it will be necessary.

THE ALJ: I am returning the original to Mr. Cohn and mark the copy as Exhibit 1. Thank you.

(Document marked for identification and received into evidence as Exhibit No. 1.)

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MR. COHN: Thank you.

Q Now, Mr. Plancharte, did you have permission to be absent from work on that day, November 3, 1977?

A Okay, he says Mr. Garcia knew that he was having work done on his teeth; that all he needed to know was some proof that he had been with the doctor or the dentist that day.

Q And Mr. Garcia approved this matter?

A (No response.)

Q Did Mr. Garcia approve this matter?

A Yes, that just to take some proof that he had been at a, at his dentist.

Q Okay, and after this appointment with the dentist did you then come back to the United States to San Diego?

A Yes, he did, on the 4th of November, the next day.

Q On the 4th of November of 1977?

THE INTERPRETER: Right.

BY MR. COHN:

Q Where were you going at that time?

A He was going to Los Angeles on his way to work.

Q And what time were you supposed to report to work on that day?

A At 3:30 in the afternoon.

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Q And now in what manner did you intend to go to Los Angeles?

A He took a bus from San Ysidro to San Diego Airport to take a, catch a flight to Los Angeles.

Q So you went to the San Diego Airport then?

A Yes, he did.

Q Okay, did you purchase a ticket at the airport?

A He arrived a little earlier before 12:00 o'clock noon in hopes of catching the 12:10 flight to Los Angeles. Finding that they were all taken, seats were all taken with reservations, so he had to wait.

Q And did you finally purchase a ticket?

A Yes, he bought the ticket to Los Angeles.

Q What did you do after, immediately after buying the ticket?

A He sat in the lobby to wait.

Q Now while you were waiting in the lobby, did anyone speak to you at that time?

A No. He was waiting there for about an hour when someone approached him dressed in civilian clothing, asked where he was going; and Mr. Plancharte answered to Los Angeles.

Q Who was this gentleman?

A He said he was from Immigration. Mr. Plancharte asked for some identification.

Q And then what happened?

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A He then showed him the identification and Mr. Plancharte showed him his mica.

MR. COHN: Would your Honor like an explanation of the word mica?

THE ALJ: Perhaps we should for the record, please.

MR. COHN: For the record mica card is the Spanish nickname for a card which evidences lawful permanent residence in the United States.

Q And after you showed him your mica or your green card as it is known, what happened then?

A He showed the gentleman the green card and also the badge that he uses to identify himself at work. He showed him a card which had Mr. Garcia's name from work.

The gentleman from Immigration said that he did not care what it was all about.

Q Did he then question you further?

A Yes. He then, the gentleman for Immigration then stated that the mica was not his; that it was all false.

Q And what did the Immigration officer then do?

A He then led Mr. Plancharte to a room down the hallway.

Q Did he question you further in this room?

A No. There was, he did not say anything else; he just left him in with about eight other people that

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were waiting in that same room.

Q What subsequently happened after that?

A He then made everyone in that room fill out a form, and at that time there was two gentlemen there present; and they then took Mr. Plancharte out of the room to another room.

The gentleman that had asked Mr. Plancharte to fill out a form that he had already filled in, the gentleman from Immigration had filled in; and he had asked Mr. Plancharte to sign his name on the form. Mr. Plancharte refused to.

Q And what was this form; do you know what it said?

A No, he did not.

Q At the time that you were apprehended by the Immigration officer, was your mica card in fact valid?

A Yes, it was there. It was the same one that he received when he immigrated in 1971.

Q How long were you in this room that you just have spoken of?

A Almost, well, the gentleman returned Mr. Plancharte back to San Ysidro around 6:00 or 7:00 in the evening.

Q How many hours would you estimate that you were actually in the room?

A It was from about 20 minutes to 1:00 in the afternoon when he first entered in the room.

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2 November the 4th?  
3 A Yes, the same day.  
4 Q Once you were taken to Tijuana, what did  
5 you do then?  
6 A He waited until Saturday to call his sister  
7 to send him his passport, his Mexican passport.  
8 Q Was this passport necessary for him to get  
9 back across?  
10 A Yes, it was because it has numbers that are  
11 on the mica also.  
12 Q And the mica card was no longer on Mr.  
13 Plancharte's person?  
14 THE INTERPRETER: I am afraid he doesn't --  
15 MR. COHN: Let me repeat the question:  
16 Q On Friday, November the 4th, once you were  
17 taken to Tijuana after the incident at the airport,  
18 did you then have your mica on your person?  
19 A No, he did not have it at that time, or else  
20 he would have returned to Los Angeles.  
21 Q Who had your mica then?  
22 A The gentleman that had approached him at  
23 the airport.  
24 Q Now when was your sister able to bring  
25 you the passport that was necessary to get your permit?  
26 A Sunday afternoon.  
27 Q Sunday, November the 6th?  
28 A Yes.

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2 Q Okay, and when you received your passport,  
3 were you then able to obtain the permit to cross the  
4 border?

5 A He received it on Sunday afternoon. He  
6 didn't think that at that time the office was open for  
7 him to report to so he then reported Monday morning.

8 Q On Monday morning, the next day, November  
9 the 7th?

10 THE INTERPRETER: That's correct.

11 THE CLAIMANT: Yes, in the afternoon.

12 BY MR. COHN:

13 Q And when did you actually cross the border  
14 into San Ysidro?

15 A Monday.

16 Q Monday, November 7th?

17 A Yes.

18 Q What time of day would that be?

19 A Between 6:00 and 7:00 in the evening.

20 Q And what type of permit was this? Was this  
21 the same as your mica?

22 A It was a form asking him questions such as  
23 his name, name of his parents. It was just a form that he  
24 had to fill out.

25 Q And did the Immigration officer at the border  
26 tell him how he could get his mica back at that time?

27 A No, they didn't.

28 Q Did you in fact know how to get your mica back?

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A No, he didn't.

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Q So what did you do after you arrived in the United States in San Ysidro?

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A He took a bus from San Ysidro to San Diego, then in turn take another bus to Los Angeles because he was afraid to take an airplane back to Los Angeles because of what had happened before.

9

Q And when did you arrive in Los Angeles?

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A It was Monday night around 12:00.

11

Q Around midnight, you mean?

12

A Yes, around midnight.

13

Q And when were you first able to see your employer then?

15

A It was Tuesday, the 8th of November.

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Q And were you there in person?

17

A Yes. He took the form that was given to him at the Immigration office and showed it to --

19

Q To whom?

20

A To his boss which is Mr. Garcia and explained what had happened at the time.

22

Q And what did Mr. Garcia say?

23

A Mr. Garcia stated that that was fine, that just to take proof that he was, you know, that he was taking care of his papers and that he would then in turn show them to the boss.

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Q Mr. Garcia's supervisor?

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THE INTERPRETER: Right.

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BY MR. COHN:

Q Did he give you a set date to return to work?

A No, he did not. He just told him to hurry up and take care of his matters and return.

Q Now this is on still Tuesday, November 8?

A Yes.

Q Okay, and what did you do after leaving Mr. Garcia?

A He went to his home where he was living in Los Angeles.

Q What did you do then?

A He went to search a notary who would advise him as what he should do.

Q Advise him on how to get back his papers?

A Okay, he was told to, that it was such a delicate situation that it would be better that he contact an attorney and have legal counsel.

Q Did he then go to see a lawyer?

A Yes. Okay, he did. The attorney that he spoke to, he did see him. He told him that what they had done to him was very wrong because of his family and that he told him that he could not help him in Los Angeles; that since it did happen in San Diego, it would have to be handled from San Diego.

Q Did you then go to San Diego?

A Yes, he did.

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Q What day was this?

A On the 9th of November.

Q Okay, and what did you do when you arrived in San Diego?

A Not knowing any attorneys or nothing really in San Diego, He was searching. He thought maybe he would go to Immigration and get some information there.

Q Where was this?

A San Ysidro.

Q And were you in fact able to contact anyone in the Immigration office at San Ysidro on the 9th of November?

A No. He was not able to find anyone since it was late already. He had to take the bus, and so he returned back to Tijuana.

Q You went back to Tijuana then?

A He returned to Tijuana with intentions of returning the next day.

Q Why would you go to Tijuana?

A He didn't know what else. He had no more funds for taxi or anywhere to stay so he knew of an attorney in Tijuana so he went in search of him.

Q And did you return to the Immigration office in San Ysidro the following day, November the 10th?

A Yes.

Q And what did they tell you there?

A He was told that he could not pass.

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Q Why were you not able to pass?

A He was informed that that paper, that permit that he was given the first time, was no good any more. It was not valid any longer.

Q Did you know this before you returned to Tijuana?

A No.

Q So what did they tell you to do?

A He returned back to Immigration to where they have information, and he was told that he was going to have to pay \$5 to get another permit.

Q Did you have \$5 to pay for another permit?

A No, he did not.

Q And about how much money would it be to return to Los Angeles from the border?

A At least \$25.

Q And did you have \$25 to pay for that?

A No. He only had \$2 in his possession at the time.

Q What did you do then?

A He had to wait until the 14th to get ahold of some money to return.

Q Why did you not return before the 14th?

A Because he did not have any money at the time.

Q You didn't even have enough money on the 13th of November, Sunday?

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A In the afternoon.

Q Why didn't you cross on Sunday afternoon then?

A Because he received the money late on that afternoon.

Q So when did you actually go to the border to try to get your permit to come back across into the United States?

A It was another form that he had to fill out which was -- he received it on the next day, which was on the 14th, Monday.

Q It was in the afternoon?

A It was in the afternoon. He had gone there early in the morning, but there was already a big line of people waiting since early in the morning.

Q Did you try to call your employer at that time to tell him of your problems?

A There was no telephone in there at the time.

Q So when were you finally able to come back across the border?

A It was Monday afternoon.

Q About how late was it?

A Between 7:00 and 8:00.

Q And what did you do after coming across?

A He took the bus from San Ysidro to San Diego and another bus from San Diego to Los Angeles.

Q What time was it when you arrived in

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Los Angeles?

A It was about 10 minutes to 12:00 he arrived Monday night.

Q In the evening?

THE INTERPRETER: In the evening.

BY MR. COHN:

Q What did you do then the next morning, Tuesday the 15th?

A He had to wait until about 5:00 o'clock in the morning to go to Immigration. He had to be there early since very early in the morning the people start getting in line and forming a line rather.

Q And did you finally talk to someone at the Immigration office?

A At that time they gave him a form to fill out and took his fingerprints.

Q And did you actually receive your visa at that time?

A Okay, he finished filling out the form. They sent him to another office; and at that time when he arrived, they told him he would need \$10.

Q Did you have \$10?

A No.

Q Then where did you go?

A He then took all the papers that he filled out and returned to his job or his, where the place of employment.

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NANCY MARSH  
FRESNO-MERCED COUNTIES LEGAL SERVICES, INC.  
900 Civic Center Square  
906 "N" Street, Suite 125  
Fresno, California 93721  
Telephone: (209) 441-1611

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

--oo0oo--

JESUS CARDONA, individually and as  
next friend of DANIEL CARDONA,

Plaintiffs,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,  
an agency within the United States  
Department of Justice; DAVID CROSLAND,  
in his capacity as Acting Director of  
the Immigration and Naturalization  
Service; TWENTY UNKNOWN AGENTS OF THE  
IMMIGRATION AND NATURALIZATION SERVICE,  
in their individual capacities, the  
CITY OF CLOVIS; Clovis Police Officer  
EDWARD DOWNS, individually and in his  
official capacity; and FIVE UNKNOWN  
CLOVIS OFFICIALS, individually and in  
their official capacities,

Defendants.

NO. CV-F-81-14 MDC

COMPLAINT FOR DAMAGES  
(Jury Trial Demanded)

INTRODUCTORY STATEMENT

1. DANIEL CARDONA seeks compensation for the injuries he received when he was forcibly removed from the United States, the country of his birth. His right as a citizen to be secure in his person was violated by the actions of employees of the Immigration and Naturalization Service, assisted by those of the City of Clovis, who picked him up solely because he appeared to be of Mexican descent and who then sent him to Mexico, more than three hundred and fifty miles away from his



1 home. His father, Jesus Cardona, seeks reimbursement for the  
2 expenses he incurred in getting his son back from Mexico. In  
3 addition, damages are sought for the willful destruction by the  
4 Immigration Service of its records of this false deportation  
5 which Plaintiffs requested in order to pursue their claims.

6 JURISDICTION

7 2. This case arises under the Federal Tort Claims  
8 Act, 28 U.S.C. §2671 et seq., the Freedom of Information Act, 5  
9 U.S.C. §552 et seq., the Civil Rights Acts of 1871, 42 U.S.C.  
10 §1983 and the First, Fourth, Fifth, Eighth, and Fourteenth  
11 Amendments to the Constitution of the United States.  
12 Jurisdiction is conferred upon this court by 28 U.S.C. §1331,  
13 28 U.S.C. §1346(b) and 28 U.S.C. §1343.

14 JURY TRIAL

15 3. A jury trial is demanded.

16 PARTIES

17 Plaintiffs

18 4. Plaintiff JESUS CARDONA is a legally admitted  
19 alien residing in Orange Cove, Fresno County, State of  
20 California. He is suing on his own behalf as an individual and  
21 as next friend of his son DANIEL who is an incompetent person.

22 5. Plaintiff DANIEL CARDONA is a citizen of the  
23 United States of Mexican descent and a resident of Fresno  
24 County, State of California where he was born on July 28,  
25 1953. He is not mentally competent to manage his own affairs.

26 Defendants

27 6. Defendant, IMMIGRATION AND NATURALIZATION SERVICE  
28 (hereinafter referred to as "Immigration Service" or "I.N.S."),  
29 is an agency within the United States Department of Justice and  
30 a federal administrative agency within the meaning of the  
31 Administrative Procedure Act. It is the federal agency

32 ...

1 exclusively authorized to implement and administer the  
2 Immigration and Nationality Act.

3 7. Defendant DAVID CROSLAND is the acting director of  
4 the Immigration and Naturalization Service, duly appointed,  
5 qualified, and acting and as such, is the administrative head  
6 of the agency charged with responsibility and authority in the  
7 administration of the Immigration Service, including the  
8 maintenance of its records.

9 8. Defendants, TWENTY UNKNOWN AGENTS OF THE  
10 IMMIGRATION AND NATURALIZATION SERVICE, are those federal  
11 officials who, at the times and places hereinafter described,  
12 removed DANIEL CARDONA from the Clovis City Jail to Mexico and  
13 prevented his re-entry to the United States. They were  
14 investigative and law enforcement officers acting within the  
15 scope of their employment as employees of the United States  
16 Immigration and Naturalization Service. Their names are  
17 presently unknown to the plaintiffs, but as soon as the names  
18 of these individuals can be ascertained this complaint will be  
19 amended to show their true names.

20 9. Defendant CITY OF CLOVIS is and at all times  
21 herein relevant was a political subdivision of the State of  
22 California duly organized and existing under the laws of the  
23 State, with responsibility for the policies and activities of  
24 the Clovis Police Department.

25 10. At the times and places hereinafter described,  
26 the Defendant Clovis Police Officer EDWARD DOWNS and the  
27 defendants FIVE UNKNOWN CLOVIS OFFICIALS were local police  
28 officers and city jail officials employed by the City of  
29 Clovis, who were acting under color of state law. As soon as  
30 the names of these FIVE UNKNOWN CLOVIS OFFICIALS can be  
31 ascertained, this complaint will be amended to show their true  
32 names.

STATEMENT OF FACTS

1  
2           11. On September 8, 1977, DANIEL CARDONA was stopped  
3 on the street in Clovis, California by Defendant Clovis Police  
4 Officer EDWARD DOWNS, who demanded to see identification  
5 documents, which DANIEL did not have. DANIEL was taken to the  
6 Clovis City Jail and held there until he was turned over to the  
7 Defendant IMMIGRATION SERVICE.

8           12. At the Clovis Jail neither Defendant DOWNS nor any  
9 of the Defendants FIVE UNKNOWN CLOVIS OFFICIALS charged DANIEL  
10 CARDONA with any criminal offense; they did not advise him of  
11 his right to counsel; they did not allow him to communicate  
12 with his family or others outside the jail; nor did they bring  
13 him before a magistrate. He was simply held without probable  
14 cause and without his consent in the Clovis City Jail for the  
15 purpose of providing agents of the Immigration Service the  
16 opportunity to determine whether he should be deported.

17           13. On or about September 9, 1977, Defendants UNKNOWN  
18 CLOVIS OFFICIALS delivered DANIEL into the custody of one or  
19 more of the Defendants TWENTY UNKNOWN IMMIGRATION SERVICE  
20 AGENTS who transported him to the Border Patrol Station in  
21 Fresno. At the Fresno Station, DANIEL told the UNKNOWN  
22 IMMIGRATION SERVICE AGENTS who interrogated him that he had  
23 been born in Fresno. Despite his protestations that he was not  
24 an alien and despite his not voluntarily consenting to being  
25 removed from Clovis or from the United States, DANIEL CARDONA  
26 was forcibly taken by Defendant IMMIGRATION SERVICE to Mexico  
27 and left there.

28           14. At no time while he was in their custody did  
29 Defendant IMMIGRATION SERVICE or its agents allow DANIEL  
30 CARDONA to communicate with his family or friends, or to seek  
31 medical attention, or to obtain the medication which he needed,  
32 nor did the Immigration Service furnish him medical attention.

1           15.    In December 1977, after repeated attempts by  
2 himself and others, Plaintiff JESUS CARDONA was finally able to  
3 locate his son DANIEL wandering the streets of Tijuana,  
4 Mexico. He found it necessary to place DANIEL in a private  
5 mental hospital in Mexico.

6           16.    Defendant IMMIGRATION SERVICE and its UNKNOWN  
7 AGENTS refused to allow DANIEL into the United States until on  
8 or after January 15, 1978 when he was allowed to return to  
9 Fresno where he was admitted to the psychiatric ward of the  
10 Valley Medical Center.

11           17.    On April 21, 1978, JESUS CARDONA filed a claim  
12 pursuant to the Federal Tort Claims Act in the amount of  
13 \$50,385.00 for injury to his son and for expenses incurred in  
14 locating and treating his son, and in transporting him back  
15 home. A copy of this claim is marked Exhibit 1 and  
16 incorporated by this reference.

17           18.    On July 9, 1980, Nancy Marsh, Attorney for  
18 Plaintiff, telephoned the Border Patrol Station of the  
19 Immigration Service at Pleasanton, California, to ask for a  
20 check of their records pertaining to Plaintiff DANIEL CARDONA.  
21 She was told by Agent Jim Scammell that records for DANIEL  
22 CARDONA for September 9, 1977 were in existence but that  
23 Defendant IMMIGRATION SERVICE would need a form signed by  
24 DANIEL CARDONA before they could release the information  
25 contained therein.

26           19.    On July 16, 1980, written requests with signed  
27 release forms were sent to the Border Patrol Station at  
28 Pleasanton and to the Immigration and Naturalization Service in  
29 San Francisco, California; copies of these requests are  
30 attached, marked as Exhibits 2 and 3 respectively, and are  
31 incorporated by this reference.

32    ...

1           20.   On July 22, 1980, Agent Becker of the Border  
2 Patrol Station at Pleasanton telephoned the plaintiffs'  
3 attorney and told her that on July 19, 1980, the September 1977  
4 files had been prematurely destroyed and that any CARDONA  
5 record for September 9, 1977 was no longer available.

6           21.   On August 4, 1980, JESUS CARDONA amended his claim  
7 of April 21, 1978 to ask for reimbursement of the expenses in  
8 the amount of \$2,589.50           which he had personally incurred  
9 for locating, treating and returning his son. A copy of this  
10 claim with its attachment, and the accompanying letter of  
11 explanation are attached as Exhibit 4 and incorporated by this  
12 reference.

13           22.   On August 18, 1980, the Acting Regional Counsel of  
14 the Western Region of the Department of Justice, Immigration  
15 and Naturalization Service finally rejected these claims in a  
16 letter sent by certified mail, giving as his reason that the  
17 claim was not filed within two years of its accrual. A copy of  
18 this denial letter is attached as Exhibit 5 and incorporated by  
19 this reference.

20           23.   On December 17, 1980, the San Francisco District  
21 Director of Defendant IMMIGRATION SERVICE notified Plaintiffs'  
22 attorneys that their office was unable to identify any record  
23 relating to DANIEL CARDONA.

24   FIRST CAUSE OF ACTION

25           24.   The acts and omissions of the Defendant  
26 IMMIGRATION AND NATURALIZATION SERVICE in detaining, arresting,  
27 imprisoning, transporting and excluding from his native country  
28 Plaintiff DANIEL CARDONA constitute intentional tortious  
29 conduct including but not limited to false arrest, false  
30 imprisonment, and intentional infliction of emotion distress on  
31 the part of the Immigration Service's investigative and law  
32 enforcement officers.

1           25. This intentionally tortious conduct proximately  
2 caused general damages to DANIEL CARDONA in the amount of  
3 \$47,410.50 for personal injury to his physical, mental, and  
4 emotional health, for pain and suffering, and for loss of  
5 income as proved at trial, and proximately caused special  
6 damages to DANIEL's father, Plaintiff JESUS CARDONA in the  
7 amount of \$2,589.00 for medical and other expenses incurred in  
8 locating his son DANIEL, treating him and returning him to his  
9 home in Fresno, California.

10           26. Timely claims for compensation for these injuries  
11 have been submitted to and rejected by the Defendant  
12 IMMIGRATION SERVICE, as appears above.

13                               SECOND CAUSE OF ACTION

14           27. Plaintiffs reallege paragraphs 1 through 16,  
15 inclusive, as if set forth in full and incorporate them by this  
16 reference.

17           28. Defendant IMMIGRATION SERVICE owed a duty to  
18 DANIEL CARDONA, and all other citizens of the United States not  
19 to remove them from their native land.

20           29. Defendant IMMIGRATION AND NATURALIZATION SERVICE  
21 breached that duty when it negligently detained, arrested,  
22 imprisoned, transported, and excluded DANIEL CARDONA from his  
23 native country; it negligently allowed his health to  
24 deteriorate while DANIEL was in the IMMIGRATION SERVICE's  
25 custody; and it failed to follow its own procedures, rules and  
26 regulation relating to the processing of a person suspected of  
27 being in the country in contravention of U.S. Immigration laws.

28           30. This negligent conduct by employees of the  
29 IMMIGRATION SERVICE proximately caused general damages to  
30 DANIEL CARDONA in the amount of \$47,410.50 for personal injury  
31 to his physical, mental, and emotional health, for pain and  
32 suffering, and for loss of income as proved at trial, and

1 proximately caused special damages to DANIEL's father,  
2 Plaintiff JESUS CARDONA in the amount of \$2,589.00 for medical  
3 and other expenses incurred in locating his son DANIEL and  
4 returning him to his home in Fresno, California.

5 31. Timely claims for compensation for these injuries  
6 have been submitted to and rejected by the defendant  
7 IMMIGRATION SERVICE, as appears above.

8 THIRD CAUSE OF ACTION

9 32. This Third Cause of Action is brought under 5  
10 U.S.C. Section 552(a)(g) which provides civil remedies to  
11 individuals adversely affected by an agency's failure to  
12 maintain records as required by the Freedom of Information Act,  
13 including no less than \$1,000.00 in damages, plus attorney's  
14 fees and costs when an agency has acted intentionally or  
15 willfully.

16 33. Plaintiffs reallege paragraphs 1 through 23  
17 inclusive, as if set forth in full and incorporate them by this  
18 reference.

19 34. Defendant IMMIGRATION SERVICE maintains records  
20 consisting generally of deportation records which relate to:  
21 where and when a suspected alien is picked up, by which  
22 officers, the basis for belief that the suspect is an alien  
23 unlawfully in the United States and the basis on which he is  
24 being removed from the United States.

25 35. The Plaintiff DANIEL CARDONA has an interest in  
26 these records by reason of his having to prove his claim for  
27 damages against the IMMIGRATION SERVICE for having deported him  
28 even though he is a native-born United States citizen.

29 36. DANIEL, through his attorney, has unsuccessfully  
30 attempted to obtain his I.N.S. records; further attempts to  
31 secure the records of DANIEL CARDONA would be futile since the  
32 ...

1 IMMIGRATION SERVICE has already acknowledged that it has  
2 destroyed those records.

3 37. As the result of the above-described actions of  
4 Defendant in wilfully and intentionally withholding and  
5 destroying records relating to the apprehension, detention,  
6 deportation and exclusion of a native-born citizen of the  
7 United States, DANIEL L. CARDONA has been damaged in his  
8 ability to prosecute his claims against Defendants in an amount  
9 to be proved at trial.

10 FOURTH CAUSE OF ACTION

11 38. This Fourth Cause of Action is brought under 42  
12 U.S.C. Section 1983 which provides that any citizen deprived of  
13 rights, privileges, and immunities by persons acting under  
14 color of state law may bring proceedings to redress his  
15 injuries.

16 39. Plaintiffs reallege paragraphs 1 through 16,  
17 inclusive, as if set forth in full and incorporate them by this  
18 reference.

19 40. Defendant CITY OF CLOVIS, through, inter alia its  
20 police supervisory personnel, established a policy, practice,  
21 and custom of: approaching and questioning persons who appear  
22 to be of Mexican descent without warrant or rational suspicion  
23 that such individuals had been involved in criminal conduct,  
24 but solely for the purpose of determining the immigration  
25 status of the persons questioned; placing in custody persons  
26 who appear to be of Mexican descent who cannot produce  
27 identification documents; incarcerating such individuals in the  
28 Clovis City Jail without charging them; turning them over to  
29 federal Immigration Service officials for deportation, and  
30 failing to provide such incarcerated individuals with the  
31 constitutional rights to which every accused person is entitled.

32 ...



1           41. Pursuant to this policy, Defendants Clovis Police  
 2 Officer EDWARD DOWNS and FIVE UNKNOWN CLOVIS OFFICIALS, acting  
 3 under color of law, as set forth above deprived DANIEL CARDONA  
 4 of his rights as secured by the Fourth, Fifth and Fourteenth  
 5 Amendments to the Constitution of the United States, and 42  
 6 U.S.C. §1983.

7           42. The de facto policy, practice, and custom set  
 8 forth above amounts to gross negligence and to deliberate and  
 9 conscious indifference by the CITY OF CLOVIS, there being a  
 10 substantial probability that the aforesaid or similar  
 11 constitutional violations would occur. Additionally, this  
 12 defendant implicitly authorized, approved, or acquiesced in  
 13 these deprivations of constitutional rights inflicted by  
 14 Defendants DOWNS and FIVE UNKNOWN CLOVIS OFFICIALS.

15           43. This deprivation of rights by Defendants CITY OF  
 16 CLOVIS, and Clovis Police Officer DOWNS, and FIVE UNKNOWN  
 17 CLOVIS OFFICIALS proximately caused general damages to DANIEL  
 18 CARDONA in the amount of \$50,000.00 for personal injury to his  
 19 physical, mental, and emotional health, for pain and suffering,  
 20 and for loss of income as proved at trial, and proximately  
 21 caused special damages to DANIEL's father, Plaintiff JESUS  
 22 CARDONA in the amount of \$2,589.00 for medical and other  
 23 expenses incurred in locating his son DANIEL, treating him and  
 24 returning him to his home in Fresno, California.

25  
 26                           FIFTH CAUSE OF ACTION

27           44. Plaintiffs reallege paragraphs 1 through 16,  
 28 inclusive, as if set forth in full and incorporate them by this  
 29 reference.

30           45. Defendants TWENTY UNKNOWN AGENTS OF THE  
 31 IMMIGRATION SERVICE, acting under color or claim of federal  
 32 authority, by the actions set forth above, deprived DANIEL

1 CARDONA of his rights as secured by the First, Fourth, Fifth  
2 and Eighth Amendments to the Constitution of the United States.

3 46. This deprivation of constitutional rights by  
4 TWENTY UNKNOWN AGENTS OF THE IMMIGRATION SERVICE proximately  
5 caused general damages to DANIEL CARDONA in the amount of  
6 \$50,000.00 for personal injury to his physical, mental, and  
7 emotional health, for pain and suffering, and for loss of  
8 income as proved at trial, and proximately caused special  
9 damages to DANIEL's father, Plaintiff JESUS CARDONA in the  
10 amount of \$2,589.00 for medical and other expenses incurred in  
11 locating his son DANIEL, treating him, and returning him to his  
12 home in Fresno, California.

13 WHEREFORE, plaintiffs demand the following relief  
14 jointly and severally against all the Defendants:

15 1. Compensatory damages for DANIEL CARDONA in the  
16 amount of \$50,000.00.

17 2. Punitive damages for DANIEL CARDONA in the amount  
18 of \$100,000.00.

19 3. Special damages for JESUS CARDONA in the amount of  
20 \$2,589.50.

21 4. For the destruction of DANIEL CARDONA's records, an  
22 amount to be proved at trial but not less than the statutory  
23 minimum of \$1,000.00.

24 5. Attorney's fees and the costs of this action.

25 6. Such other and further relief as this Court deems  
26 just.

27  
28 Dated: January 13, 1981

29 FRESNO-MERCED COUNTIES LEGAL  
30 SERVICES, INC.  
31 Attorneys for Plaintiffs

32 By Nancy Marsh  
NANCY MARSH

BEFORE THE NATIONAL  
IMMIGRATION TRIBUNAL  
SAN DIEGO, CALIFORNIA

IN THE MATTER OF: )  
 )  
 ELIAZAR ESCAMILLA-MONTOYA, )  
 )

DECLARATION OF ELIAZAR ESCAMILLA-MONTOYA

I, Eliazar Escamilla-Montoya, make the following declaration to the distinguished panelists selected to hear testimony concerning the violations of civil, human, and constitutional rights of Chicano/Latino people.

On April 9, 1979, I was arrested and taken into custody by agents of the Immigration and Naturalization Service in Chicago, Illinois. I was taken to an office of the Immigration Service where I was interrogated by one of the criminal investigators.

At one point during the course of the interrogation, I showed the criminal investigator a picture of my fiancée, who I identified as a United States citizen. I told the investigator that she was six months pregnant with my child.

The investigator told me that having a pregnant fiancée did not give me the right to stay in the United States and continued with the interrogation.

At the conclusion of the interrogation, the criminal investigator told me that I had to return to Mexico and that I

had to sign Form I-274 authorizing my departure to Mexico by the earliest available transportation and waiving my right to a deportation hearing before an immigration judge to determine my deportability. The investigator did not explain to me the significance of signing the Form I-274 nor did he explain to me my post-custodial due process rights to a bond or a deportation hearing. Unaware of the alternative procedure available to me, including the availability of free legal services and the right to seek release on bond or personal recognizance, I was coerced to sign the Form I-274 authorizing my expulsion to Mexico.

The criminal investigator then ordered me to sign various other forms. I believe one of these was a Form 214 which waived certain of my post-custodial rights.

At no time did the criminal investigator explain to me, the significance of any of these forms or my right to consult with an attorney prior to signing them. In addition, the forms executed by me did not contain any specification of the reasons for the arrest, nor information concerning the Immigration Service's duty to make a decision within twenty-four hours as to whether I would remain in custody or be released on bond or personal recognizance nor that the conditions of custody could be reviewed at a bond redetermination hearing by an Immigration Judge.

For these reasons, I did not knowingly or intelligently waive my rights to: remain silent, consult with an attorney, seek release on bond or personal recognizance, obtain a bond redetermination hearing, or assert my right to a deportation hearing.

At no time did the criminal investigator explain to me the significance of any of these forms or my right to consult with an attorney prior to signing them. In addition, the forms executed by me did not contain any specification of the reasons for the arrest, nor information concerning the Immigration Service's duty to make a decision with twenty-four hours as to whether I would remain in custody or be released on bond or personal recognizance nor that the conditions of custody could be reviewed at a bond redetermination hearing by an immigration judge.

For these reasons, I did not knowingly or intelligently waive my rights to: remain silent, consult with an attorney, seek release on bond or personal recognizance, obtain a bond redetermination hearing, or assert my right to a deportation hearing.

In the late afternoon of April 9, 1979, my fiancée contacted the Legal Assistance Foundation of Chicago (LAF) to secure representation for me. She requested that LAF help her bring me back. She was sure I had been sent to Mexico by mistake as we were planning to get married in June, and she was over six months pregnant with my child. An attorney from LAF contacted the Immigration Service to request that I be returned to Chicago to allow me the opportunity to consult with my attorney and to exercise my right to a deportation hearing, if I so chose. The Immigration Service refused to return me to Chicago so that I could consult with my attorney.

Finally, the Immigration Service agreed to allow me the opportunity to call my attorney from El Paso, Texas. On April 11, 1979, I consulted with an LAF attorney by telephone from El Paso,

Texas. I chose to exercise my right to have a bond set and to have a deportation hearing.

On April 19, 1979 my fiancée posted a \$2,000 immigration bond and I was released from the Immigration and Naturalization Service detention facility in El Paso. I took a bus back to Chicago at my own expense.

My fiancée and I were married on April 23, 1979. On April 24, 1979, I appeared at a deportation hearing and I was granted until July 24, 1979, or until any extensions beyond that date as may be granted by the Immigration Service to depart the United States voluntarily.

Pursuant to immigration regulations my fiancée has filed with the Chicago District Immigration and Naturalization Service office a visa petition to classify me as an immediate relative immigrant visa applicant. Under the Immigration and Naturalization Service regulations, I am entitled to remain in the United States while the visa petition is adjudicated and until the visa application is processed. Pursuant to these provisions, the Immigration Service has granted me extensions of voluntary departure and permission to work.

The Chicago District Office of the Immigration and Naturalization Service is engaged in a routine practice of coercing persons of Mexican descent to sign the Form I-274 and leave the

United States without exercising their right to a deportation hearing by not informing them in a timely manner of their rights to counsel, the availability of free legal services, the possibility of release on bond or recognizance and a bond redetermination hearing. In addition, the Immigration and Naturalization Service coerces persons of Mexican descent into signing waivers of their rights when they do not understand the significance of the waivers and/or when such waivers come after improper interrogations. Consequently, I am involved in a class action lawsuit challenging the Immigration and Naturalization Service racist and unconstitutional treatment of Mexican workers. I have attached a copy of the complaint in this case which is presently being litigated.

*Eliazar Escamilla Montoya*  
Eliazar Escamilla-Montoya  
*Attorney for Eliazar  
Escamilla-Montoya*