

Los Angeles Times

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8/28

Mr. Baca -

Here are your originals.

Thanks for taking the time to
talk with me.

Jim Schultz

Border Patrol, Mexico Police Differ Over Shooting Of 2

By ALEX DREHSLER
Staff Writer, The San Diego Union

TIJUANA — The two undocumented Mexican aliens who were wounded — one of them fatally — Saturday night by a border patrolman were handcuffed to each other at the time, Mexican and U.S. law enforcement officials said yesterday.

Supervising Border Patrol Agent Dan Cole, 49, shot the two men in self-defense during a struggle that began when two of three aliens resisted arrest, said Albert Franco, deputy chief patrol agent. Mexican police, however, said the aliens were shot while trying to escape.

"Two of the aliens apparently used their handcuffs as a lever to bring him (Cole) down. At this point the aliens were no longer trying to escape," said Franco.

Natividad Tapia, head of the homicide squad of the Baja California State Judicial Police, identified the slain man as Efren Reyes, 23, of San Luis Potosi, and his wounded companion as Benito Rincon, 22, of the Federal District (Mexico City).

"Reyes arrived in Tijuana about two months ago to cross into the

United States illegally," said Tapia.

Tapia said two eyewitnesses told him that Reyes and Rincon were shot while trying to escape.

One of the witnesses, Gilberto Contreras Ramirez, 22, was in Tapia's office yesterday morning, waiting for San Diego police detectives to interview him. The second witness was identified by Tapia as Jose Robles Estrada, 18.

Reyes, Rincon and a third man, Jose Ramiro Martinez, 17, were sighted on the U.S. side of the border by Cole while he was patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel, said investigators.

Cole parked his vehicle, got out, approached the three Mexicans and placed them under arrest. Ramiro was placed in Cole's vehicle. Immediately afterward, Reyes and Rincon began struggling with Cole.

While grappling with Reyes and Rincon, Cole saw Ramiro escape from the rear of his vehicle. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees.

(Continued on B-4, Col. 1)

S.D. Union
3-20-79

Views Differ On Shootings

(Continued from Page B-1)

"At this point Cole made his decision (to fire his weapon)," said Franco.

San Diego County Coroner Dave Stark said Reyes was shot once in the chest, "lacerating his heart, lung and liver." Stark said the man had a wound in his back, where the bullet came out.

Rincon was listed in satisfactory condition at University Hospital with a bullet wound in his left shoulder. The wound indicates that Rincon was shot from the

back, investigators said.

San Diego Police homicide detectives said they hoped to complete their investigation by tomorrow and then present their findings to the San Diego district attorney's office, where a decision will be made on whether or not to prosecute Cole.

Franco said his agency is supporting Cole unless the detectives' findings prove other action is warranted. Cole, who has been with the Border Patrol for more than 20 years, remains on duty, said Franco.

Alien shooting being probed

By ROBERT DIETRICH

The weekend shooting death of an illegal alien by a senior Border Patrol agent is under investigation by the FBI and San Diego police.

The identity of the man killed while handcuffed to a fellow border runner and in Border Patrol custody has not been determined, the coroner's office said today.

The man he was handcuffed to, Benito Hernandez, 21, was wounded in the left shoulder during the incident and was reported in satisfactory condition today in the University Hospital jail ward.

Police said the agent involved, Dan Cole, a supervisory patrol officer, gave the following account:

Cole was on patrol about 10 p.m.

See ALIEN, B-3

T.C.B.
3-20-79

★Alien

CONTINUED FROM B-1

Saturday near the U.S. section of the Tia Juana River flood control channel when he spotted three persons run from the Mexican side of the border.

He arrested them, handcuffed two together and tried to place the third in the rear of the Jeep-like patrol vehicle.

That prisoner escaped, and the two handcuffed prisoners attacked Cole, forcing him to his knees and grabbing his baton.

At that point, Cole drew his revolver and fired.

The coroner's office said today it did not know whether the dead man was struck in the front or back of his body.

A Mexican newspaper yesterday quoted a man who said he is the person who broke away from Cole in another version of the incident. The man, Jose Ramiro Martinez, 17, told reporters his two companions had been shot in the back.

His identification of the wounded man, however, did not match the name determined by San Diego police.

Martinez said the name of the dead man is Efren Reyes, 25, of San Luis Potosi, Mexico.

A Border Patrol official said Cole will undergo an Border Patrol internal affairs probe of the incident as well as the FBI and police investigations.

4. I saw Efren Reyes and Benito Rincon start to run down the embankment. The Border Patrolman then fired two shots hitting Benito Rincon and Efren Reyes.
4. Yo mire a Efren Reyes y a Benito Rincon bajando el Borde de la ladera corriendo. Entonces el hombre de la Patrulla Fronteriza tiro dos valas que pegaron a Benito Rincon y a Efren Reyes.
5. At no time did Benito Rincon, Efren Reyes or myself ever hit or assault the Border Patrolman in any manner.
5. A ningun tiempo tratamos (Benito Rincon, Efren Reyes ni yo) de pegar or asaltar el hombre de la Patrulla Fronteriza en ninguna manera.
6. At no time did the Border Patrolman's safety or life appear to be threatened or in danger from Benito Rincon and Efren Reyes in any manner.
6. A ningun tiempo parecia que la seguridad o la vida del hombre de la Patrulla Fonteriza estaba en peligro or amenezado en ningun manera por parte de Benito Rincon or Efren Reyes.
7. El balacera parecia que era un intentar del hombre de Patrulla Fonteriza de prevenir Efren Reyes y Benito Rincon de regresar a Mexico.
7. The shooting appeared to be an attempt by the Border Patrolman to prevent Efren Reyes and Benito Rincon from returning to Mexico.

I declare under penalty of perjury that the foregoing is true and correct.

Yo declara bajo pena de perjurio que el antes mencionado es la verdad y corecto.

Date:

Fecha: 2/14/74

Rogelio A. Mendez Diaz
Rogelio Adolfo Mendez-Diaz

DECLARATION OF REGELIO ADOLFO MENDEZ-DIAZ

DECLARATION OF ROGELIO ADOLFO MENDEZ-DIAZ

I, Rogelio Adolfo Mendez-Diaz, declare:

Yo, Rogelio Adolfo Mendez-Diaz, declaro lo siguiente:

1. On Saturday, March 17, 1979, I, Efren Reyes and Benito Rincon were sitting on a paved road that runs along the embankment on the United States-Mexican Border about fifty feet inside the United States territory.
1. El Sabado, 17 de Marzo, 1979, yo, Efren Reyes, y Benito Rincon, estabamos sentados en un camino pavimentado que corre al lado de un bordo de la ladera en la frontera del Mexico y los Estado Unidos, aproximadamente 50 pies adentro del territorio de los Estados Unidos.
2. At approximately 9:30-10:00 a Border Patrolman pulled up while we were sitting there. The Border Patrolman was alone. He placed Efren Reyes and Benito Rincon in Handcuffs.
2. Aproximadamente a las 9:30-10:00, un hombre de la Patrulla Fonteriza se acerco mientras que estabamos sentados alli. El hombre de la Patrulla Fonteriza estaba-solo. Les puso loas esposas a Efren Reyes y a Benito Rincon.
3. While the Border Patrolman was attempting to place Efren Reyes and Benito Rincon into the patrol jeep, I ran down the embankment back to the Mexican side. From there I was able to observe the Border Patrolman still trying to place Efren Reyes and Benito Rincon into the jeep. I had no trouble seeing what was occurring because the lights from the city and the streets luminated the area where the arrest was taking place.
3. Mientras que el hombre de la Patrulla Fronteriza trato de poner a Efren Reyes and Benito Rincon en el "jeep" de patrulla, yo baje el bordo de la ladera corriendo al lado mexicano. Desde alli pude observar que el hombre de la Patrulla Fronteriza todavia estaba tratando de poner Efren Reyes y Benito Rincon en el "jeep". Yo no tenia ninguna dificultad mirando lo que pasaba por que los luces de la ciudad y de los calles alumbraban el area donde estaba pasando el el arresto.

5. At no time did Reyes, Mendez-Diaz, or myself attempt or threaten to strike the Border Patrolman with our hands, sticks, stones or any object or in any manner whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5/14/79

in San Diego, California

Benito Rincon
BENITO RINCON-HERNANDEZ

DECLARATION OF
BENITO RINCON-HERNANDEZ

I, Benito Rincon-Hernandez, declare:

1. I am a native and citizen of Mexico.
I am twenty-two years of age.
2. On March 17, 1979, Efren Reyes and Rogelio Alfredo Mendez-Diaz and myself were sitting on a paved road that runs along an embankment on the United States-Mexican Border about two (2) miles west of San Ysidro, California, and about fifty (50) feet inside the United States territory.
3. At approximately 9:30-10:00 p.m. a Border Patrolman pulled up while we were sitting there. The Border Patrolman was alone. He placed Efren Reyes and myself in handcuffs, my right arm attached to Reyes' right arm. As he was placing the handcuffs on, the Border Patrolman kicked me very hard in the back for no reason.
4. The Border Ptrolman escorted the three of us to his vehicle. As we approached the vehicle Reyes pulled back. The Border Patroman immediately pulled his handgun and threatened Reyes and myself. After the Border Patrolman replaced his gun, Reyes again pulled and started moving toward the Mexican side. I had no choice but to follow Reyes since I was handcuffed to him. About 3/4 of the way down the embankment I heard a shot from the Border Patroman's gun. I squatted down. Then another two shots were fired. I fell forward. At first I did not realize I was hit but after a few minutes, I felt an intense pain in my shoulder. The bullet had entered from my front left side and passed out the back near the right arm. I laid face down for 20-25 minutes before anyone came to my attention. Reyes was dead as soon as the bullet hit him.

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

5-18-77

Agent Will Not Be Charged In Alien Killing

(Continued from B-1)

them make any move to suggest that they were reaching for a concealed weapon. The agent had not, however, determined that neither of them was in possession of some weapon."

Cole and his superiors claimed after the incident that the agent shot the men in self-defense, while Rincon Hernandez and Mendez Diaz claimed the two victims were shot in the back.

Miller rejected the latter contention, however, "on the

basis of indisputable physical evidence that the shots entered both men from the front."

Rincon Hernandez has not been charged with a federal felony, Miller said. He said U.S. Attorney Michael Walsh "advised that his decision not to charge Rincon Hernandez was based on the fact that the man already had suffered substantially as a result of the confrontation with the officer."

Police sources said Mendez Diaz voluntarily returned from Mexico to aid in the investigation.

Miller said the legal understanding of the case on the part of federal authorities "complicates an already difficult situation," and that, "viewed from the perspective of whether or not this shooting was justifiable as having been in self-defense, the picture is no less clouded."

He noted that Cole was on duty "in a combat zone atmosphere" of the border, and earlier that night had been the target of rock-throwers along the Mexican zone.

Saying that his was a difficult decision reached only after "long and painful reflection," Miller said he did not condone the conduct of the Border Patrol agent and that he did not believe the shootings were justified.

"But I am bound to make my decision in conformity with the law as I understand it to be," Miller said.

5-18-79

DA Will Not File Charges In Manacled-Alien Slaying

By MICHAEL D. LOPEZ

Staff Writer, The San Diego Union

District Attorney Edwin Miller said yesterday that he will not issue a criminal complaint against a senior Border Patrol agent who shot and killed a Mexican alien and wounded another on March 17 when the two men attempted to escape while handcuffed together.

In a decision expected to trigger renewed protest from local Chicano activists and Mexican officials, Miller said supervising Border Patrol agent Dan Cole, 49, probably would have been charged if he had been a state law enforcement officer.

State law prohibits the use of deadly force against fleeing misdemeanants, but, because Cole is a federal agent, Miller said his actions come under the jurisdiction of federal law, which holds that resisting arrest or escape from a federal officer is a felony that probably justifies Cole's use of a gun.

"With the reasonable prospect that this case, if brought to trial, would be removed to federal court and tried under federal rules," Miller said, "it becomes more clear that the prospect of obtaining a conviction has become so diminished as to foreclose charging agent Cole."

Local Chicano activists, led by the Committee on Chicano Rights, earlier sent telegrams to congressmen to protest the shootings and other incidents that they called evidence of a "pattern of brutality against Mexicans" along the border by Border Patrol agents.

Some Mexican officials also called for an investigation of the shootings in the wake of the Chicano protests.

In a letter explaining his decision to Chief of Police William Kolender, Miller said, "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

(Benito) Reyes (who was killed by Cole) and (Benito) Rincon Hernandez were engaged at the time they were shot constitutes a chargeable felony under federal law."

Miller's letter added, "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 . . . by the ranking federal legal authority in this district."

The results of Miller's investigation of the case, first disclosed in

yesterday's letter to Kolender, showed that Reyes, 23, of San Luis Potosi, and Rincon Hernandez, 22, of Mexico City, were shot while they were struggling to escape from Cole, who had just arrested them about 30 yards inside the U.S. border.

A third alien arrested with the two, Rogelio Mendez Diaz of Guatemala, escaped back into Mexico while Cole struggled with the handcuffed men.

Miller said his investigation disclosed that "neither of the handcuffed men made any move to strike or kick the agent, nor did either of

(Continued on B-5, Col. 1)

For more information
contact Herman Baca
at 477-8195



Committee on Chicano Rights, Inc

For Immediate Press Release

Another matter which deeply concerns our organization is the sad tragic fact that this latest act of violence by the Border Patrol is not an isolated incident, but rather a continuing pattern of violence agravated by a continual dependence on law enforcement and military solutions as a policy to resolve the immigration issue. This approach has impacted the economic, social, political and human rights of all persons (citizens, documented, undocumented) of Mexican ancestry. Because of these facts, San Diego has now become the testing ground which will determine how the immigration issue will be resolved. This is the reason why we question as to where the care-takers of our society stand on this legal and moral issue of murder. We have got to ask where is President Carter and his human rights program? Where is Governor Brown? Where is Mayor Pete Wilson? Where are the Church's? Where are the voices of justice? The voices of Fair Play? The voices of equality?



Committee on Chicano Rights, Inc

5/21/79

For Immediate Press Release

San Ysidro, CA

The Committee on Chicano Rights has called today's press conference to express our "moral outrage" at San Diego District Attorney Edwin Miller's decision not to prosecute United States Border Patrol agent Dan Cole for the killing of Efren Reyes and the wounding of Rincon Hernandez with a 357 Magnum while both men were handcuffed to each other. This gross miscarriage of justice proves to us once again that the judicial system in San Diego not only operates on a "dual standard", but is now even condoning murder if the person is of Mexican ancestry.

District Attorney Miller's decision is unacceptable, irresponsible, and a dereliction of his elected responsibility and his oath to uphold the law.

We also do not accept the "politics of convenience" that is being played by District Attorney Ed Miller and United States Attorney Michael Walsh. It is unbelievable to us that the two highest law enforcement officials in San Diego would take 60 days to "investigate" and then tell us that the matter of murder is out of each other's office jurisdiction. In our opinion, on this matter Michael Walsh and Ed Miller are either incompetent, or they have joined in a "conspiracy of convenience" to sweep this matter under the rug.

In the past, our organization and other organizations, have accused the Border Patrol of being a lawless agency that is controlled and accountable to no one. The District Attorney and United States Attorney's decision not to prosecute is undisputable proof of this. Very simply, what the District Attorney's decision means is that the Border Patrol can now kill any person of Mexican ancestry (either legal or illegal) because there is no one to prosecute.

A F F I D A V I T

I, Martha Elena Parra Lopez, residing at Circunbacion #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

Donat R. Garcia



SAN DIEGO HUMAN RELATIONS AGENCY

3730 FIFTH AVENUE • SAN DIEGO, CALIF. 92103 • PHONE (714) 299-2840

December 18, 1972

Mr. Edwin L. Miller, Jr.
District Attorney
San Diego County
220 West Broadway
San Diego, California 92101

Dear Mr. Miller:

On May 31, 1972, Kenneth W. Cocke, a United States Border Patrol Officer allegedly raped a 26 year old female Mexican National, Martha Elena Parra Lopez, while in the process of deporting her back into Mexico. (See copy of attached affidavit.)

Mr. Phil Saenz of the San Diego County District Attorney's Office conducted a preliminary investigation in which it was determined that the alleged crime took place within San Diego City Limits. It was therefore decided that the agency with primary jurisdiction handle it and thus, the San Diego Police Department conducted an investigation.

The matter was then referred to the District Attorney's Office who referred the matter to the Federal Bureau of Investigation. Apparently the F.B.I. did not feel it had jurisdiction in the matter and returned it. The District Attorney then referred the matter to the United States Attorney's Office here in San Diego.

Witnesses testified before a Federal Grand Jury and the case was presented to the Department of Justice, Civil Rights Division for consideration. To our knowledge this matter is still pending and has been since July, 1972.

The Human Relations Agency is concerned that apparently a woman, regardless of her nationality, has no legal recourse against forcible rape in San Diego County.

Mr. Edwin L. Miller, Jr.
December 18, 1972
Page 2

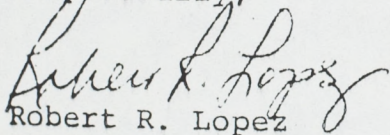
We are sure you will agree, that a San Diego woman visiting Mexico, Canada, or any other country should have legal protection against such a heinous offense-- especially from government officials of the country. A Mexican National should have that same protection in our country irrespective of the legality of her entry.

Furthermore, Mr. Kenneth Cocke should have the opportunity to clear his name if indeed he is innocent. In any event, this Agency feels strongly that legal action by the District Attorney is called for and must be pursued immediately. This case has been bounced back and forth between Federal and local jurisdictions and has already experienced far too much delay. Inasmuch as rape is not a federal offense, unless committed on a Federal reservation, this matter clearly falls into the jurisdiction of the District Attorney in accordance with California's Penal Code, Title IX, Section 261.

The San Diego Human Relations Agency hopes that you agree with its assessment of the case, and that your office will take prompt legal action. This is a top priority item with our Agency, and if we do not hear from you soon, we intend to pursue it through other channels.

Thanking you in advance for your cooperation.

Respectfully,


Robert R. Lopez
Chairman

RRL:jb

cc: Ken Morales, State Attorney General's Office
Harry Steward, United States Attorney
United States Civil Rights Commission
Evelle J. Younger, California State Attorney General



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, SAN DIEGO 92101

May 4, 1973

Albert R. Garcia
Ad Hoc Committee on
Border Brutalities
323-1/2 E. San Ysidro Blvd.
San Ysidro, California 92073

Robert R. Lopez
San Diego Human Relations Agency
3730 Fifth Avenue
San Diego, California 92103

Re: MARTHA LOPEZ

Gentlemen:

After reviewing all the evidence available to the San Diego County District Attorney's Office, we have concluded that the evidence supports their decision not to initiate criminal proceedings in this matter.

While the evidence does reveal that an act of sexual intercourse did occur on May 31, 1972, between Mrs. Lopez and a member of the United States Border Patrol, the evidence also reveals that the Border Patrol officer did not use such threats or force that would cause his act to fall within the proscription of California Penal Code section 261.

Accordingly, the District Attorney's Office acted within its discretion in deciding not to file any criminal charges.

In such a situation, there is no reason for our office to intervene in this matter. While it is the responsibility of the District Attorney to prosecute violations of State law which occur within his county, whether or not a particular matter warrants criminal prosecution is a question committed to

May 4, 1973

Albert R. Garcia
Robert R. Lopez

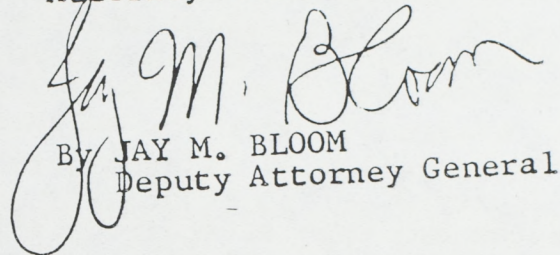
his discretion. See Taliaferro v. Locke, 182 Cal. App. 2d 752, 755-757; Taliaferro v. City of San Pablo, 187 Cal. App. 2d 153, 154; Ascherman v. Bales, 273 Cal. App. 2d 707, 708. Thus, the fact you may disagree with his decision not to prosecute affords neither reason nor basis for intervention by our office.

Moreover, it may be of interest to you, that we have been informed that the Federal Government is investigating this matter and has presented evidence regarding this case to a Federal Grand Jury. Thus, your further inquiries in this matter might better be directed toward Federal authorities. This is especially true since the conduct of the Border Patrolman in this case did not violate any State laws, but may have violated Federal laws.

Finally, we feel we should inform you that, to the best of our knowledge, the Border Patrolman involved in this case has been relieved of his position by the Federal authorities.

Very truly yours,

EVELLE J. YOUNGER
Attorney General


By JAY M. BLOOM
Deputy Attorney General

JMB:jg

cc: John Hewicker, DA
Ken Morales

DA's rape case delay disgusts congressman

(Continued from Page A-1)

admitted that the suit may need to be amended, but on Friday Frank reported that his client had not been served.

The border agent's attorney had received an earlier version of the damage suit that did not identify the border officer by name, but Frank said his client had not authorized him to accept service.

The defense attorney revealed that he has requested an injunction postponing the U.S. Immigration Department's administrative hearing under Judge Gordon Thompson until Sept. 5.

The injunction prevents immigration officials from revealing the border patrolman's name and enjoins the department from determining whether the agent should be retained.

FRANK EXPLAINED that he wants to protect his client from a "certain connotation which attaches itself to anyone whose name is mentioned in a criminal investigation."

The border patrolman's rights to privacy are "more important than the rights of someone who might feel like filing a law suit," the attorney asserted. He added that the woman may file a lawsuit one year from now, and it will be just as effective.

Although the agent's name would be used in the lawsuit, connection with a civil suit is a "far less severe action" than a criminal case, Frank explained. "And it will be clear to everybody that two prosecuting agencies came to the conclusion that he was innocent."

However, the attorney also admitted that the prosecutors may decide to drop the case if they cannot gather enough evidence to win a conviction.

Border patrol case August 27-1952

Delay irks Roybal in rape prosecution

Congressman Edward Roybal (D-Los Angeles) said this week that he has an "attitude of disgust" at the way San Diego's district attorney has failed to act in the prosecution of a border agent who allegedly raped a Mexican alien May 31.

Roybal took an interest in the rape case shortly after he headed a congressional investigation into allegations of brutality and illegal body searches by U.S. Customs officials at San Ysidro and other points of entry along the Mexican border.

THE RAPE of a 26-year-old Mexican woman, illegally in the United States, reportedly occurred while the victim was in the custody of the border patrolman.

The U.S. attorney is investigating the incident to determine if a violation of civil rights occurred, and attorneys for the Mexican woman have filed a damage suit against the border agent for \$365,000. However, no criminal charges have been made.

"The district attorney does not seem to recognize the fact that a crime was committed in his own area," Roybal told a Star-News reporter Friday. "He should carefully investigate the situation to find out if it warrants an indictment or exonerate the border patrolman."

Roybal made the remarks in response to a statement by Howard Frank, attorney for the border patrolman, focusing the congressman of the case as a campaign tactic.

CALLING Roybal "a politician in trouble in his own area," Frank criticized him for trying to coerce the district attorney into "bringing charges against an innocent man."

"Roybal's done nothing for the people he represents, so he's making this into a campaign issue," Frank contended. "He ought to mind his own business."

The representative scoffed at Frank's statement. "I don't get votes in Chula Vista or San Diego," Roybal remarked. "It's not a campaign gimmick."

He said his interest stemmed from a concern that every American citizen should have — "that justice is not made possible by the district attorney."

Roybal asserted that a determination must be made in the case.

IN AN EARLIER interview, the congressman revealed that the border patrolman had made a statement saying that he had had intercourse with the girl, but that she had submitted willingly to the act.

Roybal referred to the statement this week. "He must be guilty of something, even if the girl consented," the congressman charged. "He committed the act in a United States uniform, using a United States vehicle and on U.S. government time."

The border agent "must have violated some rule," Roybal insisted, "even if the U.S. Immigration Department permits employes that kind of conduct."

Frank said the district attorney and the U.S. attorney (involved in the federal Grand Jury investigation) would make the "best decision" concerning the prosecution of his client on criminal charges.

THE BORDER patrolman's attorney maintained that the "time lapse indicates the evidence (against his client) isn't what people like Roybal would use people to believe it is."

Frank admitted that his client had been suspended from duty for 30 days when the investigation began in June, but he explained that Civil Service regulations provide procedures for temporary suspensions up to 30 days if complaints are brought against employees.

The suspension "in no way indicates guilt or innocence," the attorney emphasized. He said he had no knowledge of any statement made by the border agent which revealed that he had had intimate relations with the girl while he was on duty.

FRED HETTER, attorney for the Mexican woman, cited a man by the name of Kenneth Cock last week in a civil suit for damages, but Frank said his client had not been served, and he would not reveal the border patrolman's name.

However, a clerk in Frank's office told a Star-News reporter this week that Hetter had misspelled the name — that it was actually spelled "Cocke."

John Porter, clerk for Hetter.
Turn to back page, this section.



Committee on Chicano Rights, Inc

FOR IMMEDIATE PRESS RELEASE

APRIL 25, 1985

SAN DIEGO, CA

THE COMMITTEE ON CHICANO RIGHTS (CCR) TODAY CALLED ON CONGRESS TO APPOINT A SPECIAL PROSECUTOR TO INVESTIGATE AND PROSECUTE U.S. BORDER PATROL AGENT EDWARD COLE FOR THE SHOOTING OF 12 YEAR OLD HUMBERTO CARRILLO ESTRADA. IN CALLING FOR THE APPOINTMENT BY THE U.S. CONGRESS, CCR CHAIRMAN HERMAN BACA STATED, "IT IS IMPOSSIBLE FOR EITHER SAN DIEGO DISTRICT ATTORNEY EDWIN MILLER, OR U.S. ATTORNEY PETER NUNEZ TO CARRY OUT A THOROUGH AND IMPARTIAL INVESTIGATION, OR A VIGOROUS PROSECUTION AGAINST ANY BORDER PATROL AGENT IN SAN DIEGO. THEIR DISMAL TRACK RECORD OF THE PAST ATTESTS TO THAT."

BACA, IN HIS LETTER TO HOUSE SPEAKER THOMAS "TIP" O'NEILL, POINTED OUT THAT THE LATEST SHOOTING INTO MEXICO BY A BORDER PATROL AGENT INVOLVES SERIOUS FOREIGN POLICY AND INTERNATIONAL IMPLICATIONS. "LOCAL DISTRICT ATTORNEY EDWIN MILLER HAS NO JURISDICTION OVER THESE MATTERS AND HAS NO BUSINESS INVOLVING HIMSELF."

ACCORDING TO BACA, "SAN DIEGO DISTRICT ATTORNEY EDWIN MILLER IN 1979 CHOSE NOT TO PROSECUTE BORDER PATROL AGENT DAN COLE FOR THE SHOOTING DEATH OF EFREN REYES AND THE WOUNDING OF BENITO RINCON WHILE BOTH MEN WERE HANDCUFFED TO EACH OTHER. MILLER AT THAT TIME CLAIMED THE KILLING WHICH TOOK PLACE IN U.S. TERRITORY WAS A FEDERAL MATTER OVER WHICH HE HAD NO JURISDICTION." U.S. ATTORNEY PETER NUNEZ, ON

THE OTHER HAND, WAS CRITIZED BY BACA FOR "FOR ABDICATING HIS AND THE U.S. JUSTICE DEPARTMENT'S RESPONSIBILITY. THEY HAVE FAILED TO ENFORCE THE POLICY PROHIBITING BORDER PATROL AGENTS FROM SHOOTING INTO MEXICO, AND HAVE REFUSED TO PROSECUTE AGENT COLE IN CLEAR VIOLATION OF NUNEZ' OWN 1979 POLICY WHICH PROHIBITS THE USE OF DEADLY FORCE EXCEPT IN THE FOLLOWING CIRCUMSTANCES:

1. THE AGENT IS ACTING IN DEFENSE OF HIS OWN LIFE;
2. IS ACTING IN THE DEFENSE OF ANOTHER AGENT;
3. OR WHEN SAVING THE LIFE OF AN INNOCENT 3RD PARTY.

IN CONCLUSION, BACA STATED, "THE SHOOTING OF A 12 YEAR OLD CHILD IS BUT THE LATEST INCIDENT OF VIOLENCE AGAINST PERSONS OF MEXICAN ANCESTRY RESULTING FROM:

1. THE MILITARIZATION OF THE U.S./MEXICO BORDER AS A POLICY TO RESOLVE THE IMMIGRATION ISSUE;
2. THE NAMING OF EDWIN MEESE AS U.S. ATTORNEY GENERAL, WHO HAS GIVEN THE GREEN LIGHT TO THESE TYPES OF ACTIONS;
3. THE HYSTERIA AGAINST PERSONS OF MEXICAN ANCESTRY CREATED BY THE ESTABLISHED MEDIA, ESPECIALLY THE COPLEY PRESS;
4. THE DIRTY POLITICS BEING PLAYED BY THE REAGAN ADMINISTRATION, THE INS/BORDER PATROL, AND ITS APOLOGISTS, TO APPROVE PASSAGE OF LEGISLATION LIKE THE SIMPSON-MAZZOLI AND LUNDGREN BILLS.

FOR FURTHER INFORMATION CALL (619) 474-8195.

1 January 3, 1979

2
3 I Jesse Martinez, declare under penalty of perjury, that the fore-
4 going statement is true to the best of my ability:
5

6 On January 3, 1979, at approximately 7:30 A.M. while I was
7 taking my wife to work, I observed a U.S. Border Patrol Van, Lic#
8 J-15028 parked in the entrance of a Storage and Rental Company lo-
9 cated approximately between Main Street and Hollister Street, San
10 Diego, Ca. I also observed two Border Patrol agents sitting in the
11 van and several other persons in the back.
12

13 At approximately 8:10 A.M., I was returning home, when I again
14 noticed the same van parked in the entrance, but the two agents
15 were standing outside next to a bus stop. As I passed by, I noticed
16 in the rear view mirror, that the bus had pulled over at the stop
17 and the two agents bordered the bus. I immediately turned back to-
18 wards the bus and parked my car about 15 yards in front of it.
19

20 As I stood by the car, I could see the two agents walking
21 through the Bus. The bus driver was just sitting with his hands on
22 the steering wheel. The officers then noticed me observing them and
23 quickly exited the bus. The search of the bus took approximately
24 45 seconds to one minute.
25

26 As I was writing down the number of the bus (32), time and
27 location of incident, plus the license number of the van, one of
28 the agents approached me and asked for my name. He asked me se-

1 veral times. I responded by asking for his name and badge number.
2 His name was A.L. Flores. I then gave him my name. Agent Flores
3 then asked me for my address, which I gave to him. Flores then
4 said "the reason I asked for your name was because I observed you
5 speeding", I said, "you didn't see me speeding, you heard tires
6 squeeling". At that time the second agent approached and over heard
7 the conversation. The agent replied and agreed with me that all
8 they heard was tires squeeling. The second agents name was R. A.
9 Murphy.

10
11 We continued to converse on the matter for a few minutes more,
12 and then ended the conversation.

13
14
15
16
17 Dated 1-4-79 1979.

Jesse Martinez

Jesse Martinez,

18
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25
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27
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2-12-79

EL Mexicano

Otro Mexicano Balaceado por un Patrullero de la Border Patrol

Margarito Balderas, la Víctima, se Encuentra Hospitalizado en San Diego

Por Arturo GONZALEZ PEREZ

SAN YSIDRO.— Un mexicano, al parecer aspirante a ilegal, fue ayer balaceado en ambos brazos por un patrullero de la Border Patrol. Los hechos ocurrieron en la línea internacioal que divide a Tijuana, con esta ciudad, en la zona canalizada del Río Tijuana.

Margarito Balderas Fernández, de aproximadamente 28 años de edad, quien según un testigo pretendió arrojarle piedras al patrullero, resultó herido en ambos brazos y es atendido en el "University Hospital de San Diego" según el reporte.

El Departamento de Justicia de Estados

Unidos, el FBI y la Policía de San Diego, están realizando las investigaciones del caso sin la intervención del Border Patrol.

El cónsul auxiliar de México, en San Ysidro Alfonso Fuentes y el Supervisor de Protección de la Secretaría de Relaciones Exteriores, ingeniero Jorge del Río, inmediatamente acudieron al "Community Hospital de Chula Vista" en donde primeramente fue atendido Margarito para interiorizarse del caso e informar a las autoridades mexicanas. Aseguraron estos funcionarios, que el

(Pasa a la Pág. 4, Col. 7)

Otro Mexicano Balaceado...

(Viene de la 1ª Pág.)

Consulado de México en San Diego se hará cargo de la defensoría del mexicano y estará pendiente de que se le atienda debidamente.

Margarito Balderas Fernández (a) Antonio Cuevas Moreno y (a) Juan Cuevas, aún no ha declarado debido a que se encuentra bajo los efectos de la anestesia, pero el médico que lo atendió Dr. Edwar L. Rasik, informó que las heridas que sufre no ponen en peligro su vida y sus brazos quedarán sin defecto alguno.

OCULTAN EL NOMBRE DEL PATRULLERO

Por otra parte Donald Cameron jefe de la Border Patrol en San Diego, se negó a dar a conocer el nombre del patrullero que hirió a Margarito, hasta que se realicen las investigaciones y se señalen responsabilidades aunque por su actitud mostró su malestar por dicha situación.

HABLA UN TESTIGO

Por otro lado, en Tijuana, el joven Efrain Ruiz Valadez, de 20 años de edad, y quien fue testigo de los hechos, señaló ante el agente del Ministerio Público que Margarito después de levantar unas piedras, caminó hacia los Estados Unidos, al parecer con intenciones de arrojarle las piedras a un agente de la Border Patrol. Después se escucharon los disparos (dos) y cayó herido Margarito.

Señaló que sólo fue espectador de los hechos, como muchas otras personas que estuvieron ahí.

MARCHA DE PROTESTA NACIONAL

'Encontra de La 'CORTINA CARTER'

Feb. 11, 1979 - 12:00 Noon

Larson Park, San Ysidro, California

SPEAKERS-ORADORES



Herman Baca Committee on Chicano Rights
Corky Gonzales Crusade for Justice
Bert Corona National Immigration Coalition
Ester Estrada MALDF
Richard Chavez United Farmworkers
Armando Navarro Congreso Del Pueblo

ENTERTAINMENT-ENTRETENIMIENTO

Mariachi DE VILLA NUEVA

Alacranes Mojados
Teatro Mezito
Toltecas de Aztlan

Armando Solo
BALLET FOLKLORICO Nayar

ENDORSED BY-RESPALDO POR

- 1 UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION
- 2 CASA JUSTICIA
- 3 WESTERN CENTER FOR IMMIGRATION STUDIES
- 4 CAL-STATE, LOS ANGELES
- 5 ORANGE COUNTY IMMIGRATION COMMITTEE,
- 6 LA HERMANDAD, SAN DIEGO
- 7 NATIONAL IMMIGRATION COALITION,
- 8 MAPA, LOS ANGELES
- 9 CALIFORNIA CHICANO CAUCUS
- 10 PUEDO, OTAY
- 11 CHICANO FEDERATION
- 12 N.I.A.
- 13 BLACK FEDERATION
- 14 PADRE HIDALGO CENTER
- 15 STOP IMMIGRATION, ANGELES
- 16 SACRAMENTO COMMITTEE FOR A NEW IMMIGRATION POLICY
- 17 LA RAZA LAWYERS ASSOCIATION
- 18 CALIFORNIA STATE MAPA
- 19 LA RAZA UNIDA-VENTURA
- 20 SAN YSIDRO COALITION FOR BETTER EDUCATION
- 21 ED MORGA, EX-PRESIDENT NATIONAL LULAC

- CRUSADE FOR JUSTICE DENVER, COLORADO
- NATIONAL COALITION FOR FAIR IMMIGRATION PRACTICE
- CONGRESO DEL PUEBLO, SAN BERNARDINO, ARMANDO NAVARRO
- MECHA CENTRAL, SAN DIEGO
- G.I. FORUM STATE OF CALIFORNIA
- HANNIGAN CASE COMMITTEE WASHINGTON, D.C.
- CHICANO PARK STEERING COMMITTEE, SAN DIEGO
- SAN YSIDRO MEXICAN-AMERICAN CHAMBER OF COMMERCE
- NATIONAL COMMITTEE TO ORGANIZE UNDOCUMENTED WORKERS
- MARICOPA ORGANIZING COMMITTEE
- CHICANO DEMOCRATIC ASSOCIATION
- SAN JOSE COALITION FOR FAIR IMMIGRATION LAW & PRACTICE
- MANZO ORGANIZING COMMITTEE, ARIZONA
- PADRES, NATIONAL COMMITTEE ASSEMBLYMAN ALATORRE, CA
- CONGRESSMAN EDWARD ROYBAL, CA

- UNITED FARM WORKERS CHICANO PINTO UNION
- MEXICAN-AMERICAN LEGAL DEFENSE FUND
- FARM LABOR ORGANIZING COMMITTEE, OHIO
- BROWN BERETS, SAN DIEGO
- BROWN BERETS, NORWALK, CA
- CARLOS MONTES DEFENSE COMMITTEE
- COMUNIDAD MEXICANA DE PERRIS, CA
- LA RAZA CNETRO LEGAL, SAN FRANCISCO
- CHICANO COALITION DE SAN FRANCISCO
- FRENTE AMPLIA ANTI SOMOZA, LOS ANGELES
- SAN YSIDRO TRUSTEES, ROSARIO C. de BACA, MIKE FLEMING, MANUEL GALAVEZ
- CENTRO DE INMIGRACION, WASHINGTON, D.C.
- BISHOP PATRICIO FLORES, EL PASO, TEXAS
- BISHOP GILBERT CHAVEZ, SAN DIEGO, CA
- ASSEMBLYMAN ART TORRES, CA



Committee on Chicano Rights, Inc

Estimado Hermana/Hermano

In recent weeks various media articles have announced that President Carter will be meeting with President Jose Lopez Portillo in Mexico City on February 14 through the 16, 1979, to discuss the important issues of oil and immigration.

In the past, the Committee On Chicano Rights, Inc., has advocated a strong opposition to existing and current immigration policies which are effecting the human and constitutional rights of our people. Now that both Presidents will be meeting, it is our organization's position that any decision or agreement reached will ultimately have an effect on the social, economic and political progress of the Chicano community in the United States. It is for these reasons that our organization is calling for a National Protest March on Sunday February 11, 1979, in San Ysidro, California.

We therefore, extend an invitation to you, and your organization to participate in making the march a success. The purpose of the march is to allow the Chicano community to demonstrate a "United Front" on the following issues:

1. The strong opposition to the construction of the "Carter Curtain" in San Diego, California and El Paso, Texas.
2. The opposition to the Carter Immigration Plan which is now before the United States Congress.
3. The opposition to the escalation of a Vietnam like militarization of the United States-Mexico border.
4. The massive violation of human and constitutional rights by the Border Patrol in the Chicano community.

If you are in agreement that we must act to protect our interest, we urge you to fill out the enclosed form immediately in order that the agenda, printing, press release and accomodations can be made. For further information feel free to call us at (714) 474-8195

Sinceramente,

Herman Baca

Herman Baca, Chairperson

BOLETIN DE PRENSA

El comite de los Derechos de Chicanos tuvo una manifestacion en la frontera internacional de San Ysidro, California para protestar el comienzo de la "Cortina de Carter" de 6 millas al costo de tres millon de dolores aqui en San Ysidro, California y en El Paso, Texas. El comite de los Derechos Chicanos recomienda al las 66 organizaciones en todos partes de los Estados Unidos y a las 3,000 personas quienes marcharon aqui en San Ysidro el 11 de febrero de 1979 que:

Detengan sostenimiento politico y ayuda o endorsamento al la compana Presidential del Jimmy Carter para 1981. En essencia proponemos que un movimiento politico de "descargar a Carter" empieza en las commuidades Chicanas por todas partes de los Estados Unidos.

La posicion de nuestra organizacion y de los que protestaron el 11 de febrero de 1979 es que la construccion de la "Cortina de Carter" sera:

- (1) un gasto perdido del dinero de los pagadores pagadores de impuestos, y solamente servira como una simbolo a todos, que la politica de inmigracion es una de racismo, discriminacion y fanatismo contra los 16 millones de Chicanos/Latinos en los Estados Unidos.

For Immediate Press
Release
Information: Herman Baca
(714) 474-8195



Committee on Chicano Rights, Inc

FOR IMMEDIATE PRESS RELEASE

WE ARE GATHERED HERE TODAY, IN ORDER THAT A MESSAGE CAN BE SENT FROM OUR ORGANIZATIONS AND OUR PEOPLE TO BOTH PRESIDENT JIMMY CARTER AND PRESIDENT JOSE LOPEZ PORTILLO BEFORE THEY MEET IN MEXICO CITY ON THE ISSUES OF OIL AND IMMIGRATION ON FEBRUARY, 1979. FOR TOO LONG THE ISSUE OF IMMIGRATION HAS AFFECTED AND IMPACTED THE LIVES OF THE MORE THAN 16 MILLION CHICANOS/LATINOS IN THE UNITED STATES. NOW THAT AGREEMENT AND DECISIONS ARE GOING TO BE MADE IN MEXICO CITY, IT IS THE CONSENSUS OF OUR ORGANIZATIONS THAT THESE DECISIONS WILL HAVE A PROFOUND EFFECT ON THE SOCIAL, ECONOMIC, AND POLITICAL PROGRESS OF OUR PEOPLE. FOR THIS REASON, WE ARE MARCHING. WE ARE MARCHING IN ORDER THAT THE FOLLOWING CAN BE EXPRESSED TO BOTH PRESIDENT CARTER AND PRESIDENT JOSE LOPEZ PORTILLO.

- 1.) OUR STRONG OPPOSITION TO THE PROPOSED CONSTRUCTION OF THE 6-MILE, 12 MILLION DOLLAR, "CARTER CURTAIN," IN SAN DIEGO, CALIFORNIA AND EL PASO, TEXAS... THIS PROPOSED FENCE IS AN INSULT TO ALL OF OUR PEOPLE IN THE UNITED STATES AND MEXICO. THE FENCE IS BOTH A WASTE OF MONEY AND IT'S RIDICULOUS TO BELIEVE THAT A 6-MILE FENCE ALONG A 2,000 MILE BORDER IS GOING TO STOP ANYONE OR IS GOING TO RESOLVE THE SOCIAL, ECONOMIC, AND POLITICAL FACTORS WHICH MAKE UP THE IMMIGRATION ISSUE.

THE PROPOSED FENCE CAN ONLY SERVE AS A SYMBOL TO ALL, THAT THE IMMIGRATION POLICY IS ONE OF RACISM, DISCRIMINATION AND BIGOTRY AGAINST 16 MILLION CHICANOS/LATINOS. THIS FENCE CAN ONLY SERVE AS A MONUMENT OF THE GOVERNMENTS' UNWILLINGNESS AND INABILITY TO RESOLVE THE IMMIGRATION ISSUE. IF THERE

IS NO FENCE BEING PROPOSED ALONG THE CANADIAN/U.S. BORDER THEN THERE SHOULD BE NO FENCE ALONG THE U.S./MEXICO BORDER.

- 2.) OUR OPPOSITION TO THE CARTER-IMMIGRATION PLAN WHICH WAS INTRODUCED IN AUGUST OF 1977 AS A SOLUTION TO THE IMMIGRATION PROBLEM... EVERY MAJOR CHICANO/LATINO ORGANIZATION HAS OPPOSED THIS IMMIGRATION PLAN FOR THE REASON THAT IT IS A REHASH OF OLD "WORN OUT" POLICIES WHICH HAVE VICTIMIZED OUR COMMUNITIES AND HAVE RESULTED IN A BANKRUPT IMMIGRATION POLICY.
- 3.) OUR OPPOSITION TO THE ESCALATION OF THE VIETNAM-LIKE MILITARIZATION OF THE U.S./MEXICO BORDER...TO DATE WE HAVE SEEN THE INCREASE OF MORE BORDER PATROL SENSORS, INFRARED LIGHTS, ELECTRONIC CURTAINS, ELECTRONIC AIR SURVEILLANCE, JEEPS, COMPUTERS AND FENCES AS SOLUTIONS TO THE IMMIGRATION ISSUE. THESE SO CALLED SOLUTIONS ARE NOT ACCEPTABLE TO US. THE IMMIGRATION ISSUE IS A SOCIAL, ECONOMIC, AND POLITICAL PROBLEM NOT A LAW ENFORCEMENT, MILITARY PROBLEM AND SHOULD BE TREATED AS SUCH.
- 4.) THE MASSIVE VIOLATION OF HUMAN AND CONSTITUTIONAL RIGHTS BY THE BORDER PATROL IN THE CHICANO COMMUNITY...WE URGE PRESIDENT CARTER TO RECOGNIZE THE REALITY, THAT THE RIGHTS OF MILLIONS OF U.S. CITIZENS ARE BEING VIOLATED. BECAUSE OF THIS POLICY, PERSONS IN OUR COMMUNITIES ARE BEING RANDOMLY STOPPED AND SEARCHED IN THE STREETS, AIRPORTS, HIGHWAYS, PARKS, BEACHES, ETC., CHURCHES, HOMES, BUSINESSES, AND PLACES OF WORK HAVE BEEN BROKEN IN TO. ENFORCERS OF THESE PRACTICES HAVE CAUSED MURDERS, RAPES, BEATINGS, ROBBERIES, SMUGGLING AND OTHER HUMAN DEGRADATION WHICH HAVE BECOME COMMONPLACE IN NUMEROUS CHICANO/LATINO COMMUNITIES IN THE UNITED STATES. THIS IS IN DIRECT VIOLATION OF CONSTITUTIONAL GUARANTIES & HUMAN RIGHTS PRINCIPLES.

IN MARCHING TODAY WE ALSO WISH TO PROPOSE THE FOLLOWING MEANINGFUL SOLUTIONS TO THE IMMIGRATION ISSUES TO BOTH PRESIDENTS.

1. WE PROPOSE THAT SINCE PRESIDENT JIMMY CARTER IS MEETING WITH CHICANO LEADERS TOMORROW (2/12/79) IN WASHINGTON, D.C. TO GATHER IMPUT FOR HIS UPCOMING TRIP TO MEXICO THAT HE IN AN ACT OF GOOD FAITH, STATE TO THEM THAT HE WILL NOT BUILD THE PROPOSED "CARTER CURTAIN".
2. WE PROPOSE THAT ANY AGREEMENT OR DECISION CONCLUDED IN MEXICO CITY BY PRESIDENT CARTER AND PRESIDENT JOSE LOPEZ PORTILLO INCLUDE A "HUMAN RIGHTS PROGRAM" BEFOREHAND.
3. WE PROPOSE THAT NOW IS THE TIME TO CALL FOR NATIONAL HEARINGS IN ORDER THAT A NEW IMMIGRATION POLICY BE FORMULATED. IN CLOSING WE WISH TO STATE: RATHER THAN CARTER'S FENCE AND A CONTINUED MILITARIZATION OF THE BORDER, WE SEEK A SOCIAL, ECONOMIC AND POLITICAL APPROACH TO THE HUMAN PROBLEMS THAT CONFRONT THE TWO NATIONS.

RATHER THAN AN IMMIGRATION POLICY WHICH PLANTS THE FUTURE SEEDS OF HATRED, ANTGONISM AND FEAR, LET US WORK FOR A POLICY OF MUTUAL RECIPROCITY.

RATHER THAN THE CONTINUED MAINTENCE OF A BORDER PATROL WHICH CAN ONLY JUSTIFY ITS EXISTENCE THROUGH TERROR, OPPRESSION AND DENIAL OF HUMAN AND CIVIL RIGHTS, LET US SEEK INSTEAD TO PLACE ALONG OUR BORDERS REPRESENTATIVES OF A JUST GOVERNMENT WHICH EXISTS TO FACILITATE THE POLICIES OF OUR GOVERNMENT INSTEAD OF CONTINUING A REIGN OF TERROR, CORRUPTION AND BRUTALITY.

INSTEAD OF CONFRONTATIONS, WE PROPOSE THAT NATIONAL HEARINGS BE HELD IN EVERY SINGLE CITY WITH A CHICANO/LATINO POPULATION OF SIGNIFICANT SIZE. IN THIS MANNER, THOSE WHO MOST STAND TO BE AFFECTED BY FUTURE IMMIGRATION POLICY MAY HAVE A SAY IN DETERMINING THEIR FUTURE.

INSTEAD OF CONSTRUCTING A BARBARIC FENCE, WE ASK THAT THOSE FUNDS BE USED TO ESTABLISH A JUST, FAIR AND HUMANE IMMIGRATION POLICY AND TO ELIMINATE THE ADMINISTRATIVE INCOMPETENCE RAMPANT THROUGHOUT THE I.N.S.

INSTEAD OF PSEDUO PARAMILITARY POLICEMEN MANNING BORDER PATROL STATIONS OR POLICY MAKING OFFICES OF THE I.N.S., WE ASK THAT PROFESSIONAL COMPETENT ADMINISTRATORS BE HIRED AND UTILIZED.



Committee on Chicano Rights, Inc

To: ALL NEWS MEDIA
From: Ralph Inzunza, Coordinator-Press/Media
Re: Press release, Tijuana B.C. Mexico

Enclosed, please find a translation of a press release which was presented to the Mexican News-Media by our Chairperson Herman Baca at the Palacio Aztec Hotel on February 3, 1979.

If you are in need of any further information on this press release or in the enclosed material regarding the National Protest March of February 11, 1979, please feel free to contact me at the above telephone number.

Thank you,

Ralph Inzunza

Ralph Inzunza,
Press/Media Coordinator

Enclosure (4)



Committee on Chicano Rights, Inc

PARA PUBLICACION INMEDIATA
Informacion: Herman Baca
(714) 474-8195

Estimados Companeros de la Prensa,

We are here today to ask you, the members of the Mexican press, to convey to the people of Mexico, a message...a message from the 16 million Chicanos/Latinos of the United States that we no longer will tolerate the continued abuses of our people, los Mexicanos, by the I.N.S. and the U.S. government, whether they live on this or that side of the border. An injustice against one is an injustice against all; to us there is no border. We ask today that the Mexican people join us in stopping the construction of that most odious symbol of racism, discrimination, and bigotry. The "Carter curtain" which is being proposed and to be built along the border of San Ysidro, California, and El Paso, Texas will be such a symbol.

Many people have asked me why we are having a protest march. We are marching because there comes a time when one has to take a stand, a stand for what one believes in, a stand that proclaims that our people's rights for too long have been violated and that we Mexicans also have rights. We declare today before President Carter and President Portillo meet in Mexico City, Que Ya Basta! Hasta Aqui!...No Mas!...And that we are tired. We want our rights respected before any agreements are made in Mexico City and we

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



Committee on Chicano Rights, Inc

will tolerate no more abuses nor will we any longer stand by and see our people mistreated and oppressed whether on this side or that side of the border simply because we are of a different color and culture.

Let us have a clear understanding that the "Carter Curtain" is not just a fence. It is a symbol of racism, of discrimination, of oppression...and of the low esteem that the government of the United States holds of the 16 million Chicanos/Latinos in the United States and of 60 million Mexican citizens. We want to make it clear to you what this fence means to us and exactly what the political reasons are for the construction of such a symbol.

Gentlemen of the Press, the fence is a test. A test of the Chicanos and the Mexican people. Chicanos are the "testing ground" of how far the government dare go in its relations towards Mexico. If we the Chicanos fail to respond or are luke warm to the construction of the fence, then the United States will deal with impunity towards Mexico, because if there is no respect for 16 million Chicanos living within its own borders then how can there be respect for Mexicans living in Mexico. If we the Chicanos and you Los Mexicanos fail to respond to the construction of the proposed fence.. it is a

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a clear signal to American policy makers that the United States can proceed without concern with the continued abuse and exploitation of the Chicano in the United States, and the exploitation of Mexico's resources (Undocumented workers and oil) without fear.

We wish to make it clear that La Raza represents a potential 10 million votes within the United States and will have a decisive voice in the most powerful states in the Union. The United States of the 1980's is not the America of 1910. Chicanos are a growing number and we will have a voice. Today we ask the help of the Mexican people. Now more than ever, while your President waits to meet with President Carter we ask that they help us send a strong message..."That Mexico, the United States, Chicanos, and Anglo-Americans must learn to deal with each other with equality and respect. And that the fence not be constructed because it is an insult to every Mexican of the Republic of Mexico and Chicano of the United States".

Today, we ask the people of Mexico to join with us in making a stand by joining with us on February 11, 1979, in San Ysidro in demonstrating our deep concern over the symbol of the fence, in order that all of us together can begin the task of resolving the immigration issue which is now before us. Gracias.

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THE ISSUE

From a letter to President Jimmy Carter, 28 Feb 80

"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."

From a telegram to President Jimmy Carter, 28 Feb 80

"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."

CCR PROPOSAL & POSITION

From a request for an Amnesty International Investigation

"It is our position that children should not have to pay the price for the unresolved immigration issue."

From a telegram to Pres. Carter, 28 Feb 80

"Our organization demands the immediate cessation of the imprisonment of children"

From a letter to Pres. Carter, 28 Feb 80

"Our organization is proposing that the government of the United States and Mexico immediately begin talks on developing a bilateral commission (to) ... 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."

THE LEGAL SITUATION

In 1970 the 9th Circuit Court of Appeals handed down the Mendez-Rodriguez ruling which requires that if the Border Patrol catches a suspected alien smuggler with his group of "pollos" and thinks it could be a "good" case, all the aliens have to be kept in custody as potential witnesses until the smuggler - often free on bond - can find or have appointed a lawyer, who must interview each alien to decide if he or she could help the - defendant's case.

VICTIM IN JAIL AND BAD GUY OUT ON STREET

THE LEGAL SITUATION

CRIMES AND CRIMINAL PROCEDURE

5035 Detention prior to disposition

"The Attorney General shall not cause any juvenile alleged to be ~~detain~~ delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime."

Annie Gutierrez March 28, 80 letter District Director, INS

"juveniles and material witnesses are never housed with criminals"

FACT: In a S.O. Union article Aug 28, 78 Walter Lumpkin, MCC Warden is the source for the following statement "Teen-age males, he said, are segregated from male adults as much as possible. There is no verbal contact, only visual contact at times."

FACT: According to a N.Y. Times article 4 Aug 80 U.S. Marshall in Sacramento Robert LaRoche says "They're (material witnesses) subject to a lot of harassment by the general jail population"

FACT: ... friends ... adults subjected to homosexual ...

THE LEGAL SITUATION

NY Times / ~~WALL~~ Crewdson 4 Aug 80

FACT "The alien witnesses frequently endure stays in jail as long as two months for nothing, since many of those charged with having smuggled them eventually forgo a trial and plead guilty"

LA Times / 4 Sept 78

concerning material witnesses

FACT "Speaking 'clinically', not statistically, both he and Walsh believe the defense uses the witnesses it keeps 'very infrequently - so few that I can hardly remember them.'"

THE LEGAL SITUATION

Alternatives to keeping children in jail

from LA Times 4 Sept 78

"One prosecutor who had a "terrific" case against a smuggler dropped it when he found that two of the smuggled aliens were a 15-year-old mother and her 6-month-old baby.

'I will not keep 15-year-old mothers and 6-month-old babies in jail,' he declared"

Alternatives

Arizona is experimenting with a videotaped question-and-answer session with attorney, defendant prosecutor and magistrate

Critics say it is too cumbersome and may violate constitutional rights

Alternatives

U.S. Marshall James R. Laffoon initiated a foster home program for mothers and young children (through Salvation Army starting 9 JUL ⁷⁹) and for children 12-17 (through Catholic Community Services starting 30 NOV 79). program started when S.D. County refused to accept custody of such material witnesses (according to SD Union, 30 NOV 79)

ALL ALTERNATIVES REQUIRE JAILING OF CHILDREN FOR AT LEAST SOME TIME

RESPONSE TO CCR ISSUE AND POSITION

JAILING OF CHILDREN

SD Union 1 Mar 80

" 'Baca's all wet on this', Laffoon said "

" 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 "

According to Annie Gutierrez, at the time Laffoon was quoted 3 youth, 2 16-year-olds and a 17-year-old had been at the MCC for from 24 to 38 days. Laffoon never mentioned this

According to our source from Catholic Community Services when Laffoon spoke one 16-yr-old and 2 17-yr-olds were at the MCC and would remain in custody for over a week !

16 - Olivarez, Jose Solorzano 2/29/80 - 3/10/80 10 days
Jalisco, Mexico

17 - Rodriguez, Crispin Gomez 2/29/80 - 3/11/80 11 days
Michoacan, Mex.

Cabrera, Alfredo Ramirez 2/29/80 - 3/11/80 11 days
Jalisco, Mex

⑧

RESPONSE TO CCR

SD Union 20 OCT 79

Asst. MCC Warden Howell Kincaid

"' But we have never separated children under 10 years old from their parents "'

~~Annie Gutierrez~~

Annie Gutierrez 28 March 80

reported that a one year old baby had been kept overnight without the mother in Feb 80

According to People's World 4-80

" ~~Mrs~~ 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. "

RESPONSE TO CCR

SD Union 1 Mar 80

"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."

FACT N.Y. Times — 14 year old from Mexico City dumped in Juarez knew no one, survived by eating garbage

~~Handwritten scribble~~

Alien Slain, 2nd Shot In Border Arrest

By HOMER CLANCE
Staff Writer, The San Diego Union

A Border Patrol agent shot two illegal aliens, killing one of them, early yesterday at the international border, San Diego police reported.

The agent opened fire with his service revolver during a struggle that began when two of the three aliens resisted arrest, homicide investigators said.

They said Supervising Border Patrol Agent Dan Cole spotted the three illegal aliens at about 4 a.m. while patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel.

Investigators said Cole parked his vehicle, got out, approached the aliens and put them under arrest.

He had seated one of the three in the vehicle when the other two began struggling with him, investigators said. At some point during the struggle, they said, Cole lost his nightstick.

While struggling with the two aliens Cole saw the third prisoner trying to escape from the rear of his vehicle, investigators said. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees, they said.

When the aliens pressed the attack, Cole drew his service revolver and fired two or three times, investigators said. Bullets struck both men, fatally wounding one of them.

The injured alien was taken to Bay General Hospital and transferred to University Hospital, police said. He was identified as Benito Hernandez, 21, who was shot in the left shoulder.

The third alien did not escape during the agent's struggle with the other two men, investigators said. He is being held in the federal Metropolitan Correctional Center.

Chief Border Patrol Agent Donald Cameron said the incident is under investigation by the San Diego Police Department.

The coroner's office reported the dead alien was shot in the chest. The man, between 18 and 22, had no identification on him, a spokesman said.

4004
110000
SAN DIEGO, CALIFORNIA, MONDAY MORNING, MARCH 19, 1979

FBI investigating abuse charge

By JESSICA WATSON
Times Staff Writer

About 100 persons marched silently Wednesday in front of Our Lady of the Light Church to protest "actions of government agents stationed at the border."

The Rev. Jesse Munoz, pastor of the church, Tuesday accused Customs inspectors of "stripping me down, throwing me against the wall five times, slapping me down," in an early-morning detention at the bridge. He added that the abuse occurred before he was given a chance to identify himself.

The El Paso FBI office Wednesday began a preliminary investigation of Munoz's allegations to determine whether his civil rights were violated, assistant agent in charge Robert Ivey said.

Meanwhile, Customs spokesmen said the incident is being investigated by their internal affairs agents.

"We don't know what happened ourselves," said Charles Conroy, spokesman for the Houston Customs Region. "What we are doing is trying to find out what really did happen. We are in the process of interviewing all the people involved, including Father Munoz and the Customs inspectors. We are getting written statements from the inspectors," the public affairs officer said. The incident was reported at the Bridge of the Americas.



inspectors, public affairs officer said. The incident was reported at the Bridge of the Americas.

Efforts to obtain comments from El Paso Customs officers again were unsuccessful Wednesday. However, agent Vince Moore said an investigation is automatic when charges as serious as Munoz' are made. Moore, an internal affairs agent, is conducting the Customs investigation here.

A diabetic, Munoz Wednesday recounted more of his "humiliation" at the bridge. "I asked them if I could use the bathroom. I was told to shut up. Then I showed them my health card that says I'm a diabetic. I wanted to call a parishoner who helps me with my illness. They refused. I ended up urinating in my pants. It was very humiliating," he said.

Moore confirmed that any Customs inspectors found guilty of such behavior could lose their jobs. "If it were to prove out that Munoz' allegation is substantiated, somebody could possibly lose his job," he said.

Emphasizing the point that Customs officials do not know the facts surrounding Munoz' detention, Conroy said, "If it is established there was any wrongdoing, appropriate disciplinary action will be taken against the persons responsible. The range of action depends on what happened."

The Customs spokesman said his agency's investigation should be concluded early next week. "We expect to be through by Monday or Tuesday next week," he said.

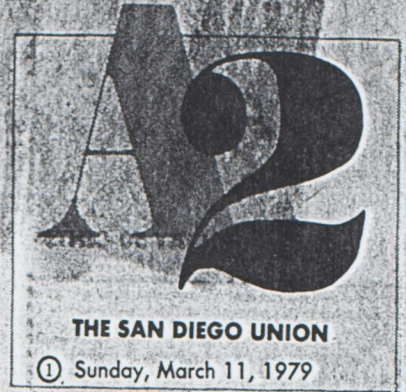
PARISHIONERS, BEARING CROSS, MARCH IN PROTEST OF ALLEGED ABUSE OF PRIEST

—(Times staff photo)

Mexicans Tear Down U.S. Flags at El Paso

Hundreds of Mexican citizens, angered by a U.S. crackdown on illegal aliens, blocked three international bridges at El Paso, tore down three American flags and threw them into the Rio Grande. A 10-year-old Mexican girl was killed when she reportedly fell in front of a car driven by an American woman trying to get through the crowd to visit a sick grandmother in Juarez on the Mexican side of the border. The driver, Carmen Candelaria de Rios of El Paso, was dragged from the car and beaten until Juarez policemen pulled her from the crowd. The protest began Friday after about 150 illegal aliens had been rounded up by Immigration and Naturalization Service officials and deported. At one point, an estimated 650 demonstrators were on the bridges.

John B. Connally emerged as the favorite of Midwest Republicans for the 1980 GOP presidential nomination in a CBS News survey of delegates to the Midwest Republican Leadership Conference in Indianapolis. The former Democratic governor of Texas was the choice of 29.1% of those surveyed. Former California Gov. Ronald Reagan was second with 21.3%, former U.N. Ambassador George Bush had 17.3%, Senate Minority Leader Howard H. Baker Jr. of Tennessee, 12.2% and Rep. Philip M. Crane of Illinois, 11.8%. Former President Gerald R. Ford was not included in the survey.



Girl, 10, Killed During El Paso Border Clash

EL PASO, Texas — Hundreds of Mexican citizens, angered at a U.S. crackdown on illegal aliens, blocked three international bridges yesterday, tearing down three American flags and casting them into the Rio Grande.

A 10-year-old Mexican girl was run down and killed at the "Bridge of the Americas" when two American women in a car allegedly tried to drive through the barricades from the El Paso to Juarez, Mexico, side of the international bridge, Mexican police said.

One of the two women, a U.S. citizen who lives in Juarez, was dragged from the car and beaten before being rescued by police. She was jailed in Juarez in connection with the death of Lara Patricia Favela-Chavez.

The protest ended last night, when the demonstrators withdrew, moving cars that had been blocking the bridges and allowing traffic to cross.

At one point an estimated 650 demonstrators were on the bridges. Some carried signs, some cheered, and others listened to speakers, but witnesses said most were orderly. No arrests of demonstrators were reported.

— AP

L.A. Times 3-22-79

Castillo to Study Alien Border Toll

Acts After Report of Bodies in Rio Grande

BY JACK NELSON

Times Washington Bureau Chief

WASHINGTON—The nation's top immigration official, shocked by reports he says indicate that hundreds of Mexicans die every year trying to cross the U.S. border illegally, has ordered a study along the 1,933-mile U.S.-Mexican border to determine the extent of the death toll and the causes of death.

Leonel J. Castillo, commissioner of the Immigration and Naturalization Service, acted after receiving a report that the bodies of 24 aliens who tried to cross the Rio Grande from Mexico washed ashore on the U.S. side in the Laredo, Tex., area alone during the last year.

"I'm not sure the Laredo figures are any worse than anywhere else," Castillo said in an interview with The Times. "But it's enough to make me want to know. So what I'm going to do is make a complete survey of the entire border."

Castillo, who will seek Mexican cooperation in the study since many bodies also wash up on the Mexican side of the Rio Grande, ordered the survey after receiving a report from Donald Day, head of the Border Patrol, on bodies recovered along a 35-to-40-mile stretch of the river in the

Please Turn to Page 13, Col. 1

ALIEN BORDER TOLL TO BE STUDIED

Castillo, first pointing to the Laredo area and then to an Arizona section on a large map in his Washington office, said, "That's one of the smaller sectors. You see, we've got bodies up here as well, in the desert. There are bones of people trying to make it across the desert on foot."

No national statistics have ever been compiled on the death toll or the causes of death. And the problem has received relatively little national attention.

The discovery of bodies is so routine in American border areas that local newspapers generally give it brief, if any mention, immigration officials say.

Castillo, the highest ranking Hispanic in the Carter Administration, said, "It's not news in Arizona. Found another body. It's not news in Laredo."

It was after reading a brief article in the Laredo Times last month about the death of two aliens that Castillo asked for a report on deaths in the area for the last year. The story told how two aliens who were being smuggled northward to work died in agony after being left in the trunk of a car that caught fire.

Asked about any previous studies of the problem, Castillo said, "There have been little studies, little reports here

and there that so many of the bodies are found in Arizona, or so many were found in this little section of California. But never a comprehensive study.

"I don't think people talk much about the deaths of aliens," Castillo said. "They mostly talk about those that make it and get here and then what happens, job displacement and so on."

Castillo said the Border Patrol told him the number of bodies found in the Laredo area had increased in the last year, although there were no previous death statistics for comparative purposes.

Although the Rio Grande is so shallow in many places that thousands of aliens safely wade across it, other Mexicans seeking to avoid apprehension risk drowning by trying to cross in deeper parts of the river.

"Some people try to come across in the evening," Castillo pointed out. "They strip, put all their clothing in a little plastic thing and carry their clothes over the head, to keep the clothes dry. And when they get to the other side they put their clothes back on."

"And if they miscalculate there, they can find themselves drifting down. That river can be shifty. But we just don't know what happens to many of them. And we should know."

PRESS CONFERENCE TODAY

Charges Anger Border Patrol

By DAVE POLIS

Staff Writer, The San Diego Union

SAN YSIDRO — Border Patrol agents say they are fed up with criticism of their efforts from both sides of the border, and have decided to do something about it.

"We're being accused of murdering and raping illegal aliens, and the patrolmen have really had a bellyful of it," Muriel Watson, spokeswoman for the National Border Patrol Council, said yesterday.

Watson, whose husband has been an agent for 24 years, said the tendency had been to ignore charges against the Border Patrol.

"The feeling was that we shouldn't lower ourselves to answer some of these charges — but when it begins infringing on our communities on our families, then we think it is time to do something about it," she said.

The National Border Patrol Council intends to answer these charges at a press conference at 10:30 this morning at Swiss Park in Chula Vista. Watson said Robert Faber,

president of the local chapter, and other officers will be present.

Agents are particularly upset with statements being made by Herman Baca, chairman of the National City-based Committee on Chicano Rights, Watson said.

Baca's group wrote Sen. Edward Kennedy, D-Mass., and Rep. Elizabeth Holtzman, D-N.Y., demanding a congressional investigation into what he termed "documented cases of illegal and unconstitutional acts which have been committed by the Border Patrol over the past 10 years."

Those acts, he said, included alleged shootings and killings, beatings, rape and sexual abuse of women, breaking into houses and strike-breaking.

In the letter, Baca charged the Border Patrol "is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one."

Watson said Baca and others have been quoted making similar charges

in the Mexican press.

Baca made his charges against the Border Patrol on March 21 following an incident where Agent Dan Cole killed one illegal alien and wounded another. Cole said the two men, who were handcuffed to each other at the time, jumped him and that he shot the men in self-defense.

A spokesman for the district attorney's office said the results of an investigation into that incident are expected next week. The investigation is to determine whether the shootings were justified, or whether charges should be brought against Cole, a supervising agent.

"My own children won't admit their father is an agent," Watson said. "They feel they would be putting themselves in jeopardy because of the animosity toward patrolmen."

The council represents about 80 percent of the agents who are eligible to belong to the union, she said. She said first-year agents do not normally join the union, since they are on probationary status.

Border Patrol, Mexico Police Differ Over Shooting Of 2

By ALEX DREHSLER
Staff Writer, The San Diego Union

TIJUANA — The two undocumented Mexican aliens who were wounded — one of them fatally — Saturday night by a border patrolman were handcuffed to each other at the time, Mexican and U.S. law enforcement officials said yesterday.

Supervising Border Patrol Agent Dan Cole, 49, shot the two men in self-defense during a struggle that began when two of three aliens resisted arrest, said Albert Franco, deputy chief patrol agent. Mexican police, however, said the aliens were shot while trying to escape.

"Two of the aliens apparently used their handcuffs as a lever to bring him (Cole) down. At this point the aliens were no longer trying to escape," said Franco.

Natividad Tapia, head of the homicide squad of the Baja California State Judicial Police, identified the slain man as Efren Reyes, 23, of San Luis Potosi, and his wounded companion as Benito Rincon, 22, of the Federal District (Mexico City).

"Reyes arrived in Tijuana about two months ago to cross into the

United States illegally," said Tapia. Tapia said two eyewitnesses told him that Reyes and Rincon were shot while trying to escape.

One of the witnesses, Gilberto Contreras Ramirez, 22, was in Tapia's office yesterday morning, waiting for San Diego police detectives to interview him. The second witness was identified by Tapia as Jose Robles Estrada, 18.

Reyes, Rincon and a third man, Jose Ramiro Martinez, 17, were sighted on the U.S. side of the border by Cole while he was patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel, said investigators.

Cole parked his vehicle, got out, approached the three Mexicans and placed them under arrest. Ramiro was placed in Cole's vehicle. Immediately afterward, Reyes and Rincon began struggling with Cole.

While grappling with Reyes and Rincon, Cole saw Ramiro escape from the rear of his vehicle. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees.

(Continued on B-4, Col. 1)

S.D. Union
3-20-79

Views Differ On Shootings

(Continued from Page B-1)

"At this point Cole made his decision (to fire his weapon)," said Franco.

San Diego County Coroner Dave Stark said Reyes was shot once in the chest, "lacerating his heart, lung and liver." Stark said the man had a wound in his back, where the bullet came out.

Rincon was listed in satisfactory condition at University Hospital with a bullet wound in his left shoulder. The wound indicates that Rincon was shot from the

back, investigators said.

San Diego Police homicide detectives said they hoped to complete their investigation by tomorrow and then present their findings to the San Diego district attorney's office, where a decision will be made on whether or not to prosecute Cole.

Franco said his agency is supporting Cole unless the detectives' findings prove other action is warranted. Cole, who has been with the Border Patrol for more than 20 years, remains on duty, said Franco.

Alien shooting being probed

By ROBERT DIETRICH

The weekend shooting death of an illegal alien by a senior Border Patrol agent is under investigation by the FBI and San Diego police.

The identity of the man killed while handcuffed to a fellow border runner and in Border Patrol custody has not been determined, the coroner's office said today.

The man he was handcuffed to, Benito Hernandez, 21, was wounded in the left shoulder during the incident and was reported in satisfactory condition today in the University Hospital jail ward.

Police said the agent involved, Dan Cole, a supervisory patrol officer, gave the following account:

Cole was on patrol about 10 p.m.

See ALIEN, B-3

T-6
3-19-79

★Alien

CONTINUED FROM B-1

Saturday near the U.S. section of the Tia Juana River flood control channel when he spotted three persons run from the Mexican side of the border.

He arrested them, handcuffed two together and tried to place the third in the rear of the Jeep-like patrol vehicle.

That prisoner escaped, and the two handcuffed prisoners attacked Cole, forcing him to his knees and grabbing his baton.

At that point, Cole drew his revolver and fired.

The coroner's office said today it did not know whether the dead man was struck in the front or back of his body.

A Mexican newspaper yesterday quoted a man who said he is the person who broke away from Cole in another version of the incident. The man, Jose Ramiro Martinez, 17, told reporters his two companions had been shot in the back.

His identification of the wounded man, however, did not match the name determined by San Diego police.

Martinez said the name of the dead man is Efren Reyes, 25, of San Luis Potosi, Mexico.

A Border Patrol official said Cole will undergo an Border Patrol internal affairs probe of the incident as well as the FBI and police investigations.

5.10 5.11
3-22
1.79

Alien Slain, 2nd Shot In Border Arrest

By HOMER CLANCE

Staff Writer, The San Diego Union

A Border Patrol agent shot two illegal aliens, killing one of them, early yesterday at the international border, San Diego police reported.

The agent opened fire with his service revolver during a struggle that began when two of the three aliens resisted arrest, homicide investigators said.

They said Supervising Border Patrol Agent Dan Cole spotted the three illegal aliens at about 4 a.m. while patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel.

Investigators said Cole parked his vehicle, got out, approached the aliens and put them under arrest.

He had seated one of the three in the vehicle when the other two began struggling with him, investigators said. At some point during the struggle, they said, Cole lost his nightstick.

While struggling with the two aliens Cole saw the third prisoner trying to escape from the rear of his vehicle, investigators said. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees, they said.

When the aliens pressed the attack, Cole drew his service revolver and fired two or three times, investigators said. Bullets struck both men, fatally wounding one of them.

The injured alien was taken to Bay General Hospital and transferred to University Hospital, police said. He was identified as Benito Hernandez, 21, who was shot in the left shoulder.

The third alien did not escape during the agent's struggle with the other two men, investigators said. He is being held in the federal Metropolitan Correctional Center.

Chief Border Patrol Agent Donald Cameron said the incident is under investigation by the San Diego Police Department.

The coroner's office reported the dead alien was shot in the chest. The man, between 18 and 22, had no identification on him, a spokesman said.

L.A. Times - 3-22-79

Chicano Leader Asks Probe in Border Patrol Shooting

BY ROBERT MONTEMAYOR

Times Staff Writer

The head of the San Diego Committee on Chicano Rights said Wednesday he has requested a full-scale congressional investigation of the Border Patrol following the shooting death of a Mexican alien Saturday.

Herman Baca, CCR chairman, said he wants both a probe into the shooting of Efred Reyes, 23, by border patrolman Dan Cole, and an investigation of "the overall operation of the Border Patrol, including its policies, financial budgeting and supervision."

Baca called Reyes' death and the wounding of a companion, Benito Rincon, 22, "the tip of the iceberg" of alleged violations the Border Patrol has committed against Mexican aliens.

"It is apparent to us that the Border Patrol is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one," Baca charged.

Cole shot Reyes and Rincon last Saturday, apparently in self-defense, during a struggle in which the two men, who reportedly were trying to cross the international border illegally, attempted to escape, police said.

Reyes and Rincon, according to reports, were handcuffed to each other at the time the shooting occurred. Cole told police the two men knocked him down on an embankment and were trying to escape when he drew his gun.

Both the FBI and San Diego police are investigating the case.

Baca said he has written Sen. Edward Kennedy (D-Mass.), chairman of the Senate Judiciary Committee, and Rep. Elizabeth Holtzman (D-N.Y.), of the House immigration subcommittee, asking for the investigation of the Border Patrol.

Albert Franco, deputy chief of the

Indocumentado Asesinado de un Balazo por la Border Patrol Estando Esposado

Por Luis Antonio MORALES CASTILLO
Reportero de EL MEXICANO

TIJUANA.- Un agente de la Border Patrol mató por la espalda, de un balazo, a un joven mexicano de 25 años de edad e hirió a otro, de 22 años, un poco después de las diez de la noche en la línea internacional, a la altura de la calle Mutualismo.

Ambos jóvenes mexicanos previamente habían sido esposados por el policía norteamericano, luego de sorprenderlos en territorio norteamericano, junto con un tercer joven que logró huir sano y salvo y que ayer relató a EL MEXICANO parte de lo acontecido.

La Policía Judicial del Estado, a través del jefe del grupo de investigadores de homicidios, Natividad Tapia, informó ayer que hubo dos testigos presenciales de los hechos y dió a conocer a este diario las declaraciones de ambos observadores.

El hombre muerto fue identificado con el nombre de Efrén Reyes y el herido grave como Benito Rincón. El primero era oriundo de San Luis Potosí y el segundo al parecer del Distrito Federal, ayer todavía se desconocía en qué parte del cuerpo recibieron, Efrén el balazo que lo mató y Benito el balazo que lo hirió de gravedad.

La identidad del agente de la patrulla fronteriza norteamericana, que mató e hirió a Efrén y Benito no ha sido proporcionada a las autoridades mexicanas. Dichos hechos movillaron varias ambulancias norteamericanas -una de ellas trasladó a Benito a un centro médico del condado de San Diego Cal.- y asimismo varias patrullas fronterizas y un helicóptero cuyo tripulante dirigió bruscamente el aparato en contra de uno de los múltiples curiosos que se congregaron en el lugar referido poco después de la hora mencionada.

José Ramiro Martínez, un joven bolero de 17 años de edad, que desem-

peñaba sus actividades en calle 1a., cerca de Catedral, luego de indicar a este diario el nombre del muerto y del herido, añadió lo siguiente:

"Yo iba con el hombre que mataron y con el que hirieron, logré escapar pese a que el emigrante me tiró un balazo".

Dijo que el sábado último acordaron Efrén, Benito y él ingerir bebidas embriagantes en territorio norteamericano, en los bordos de la canalización estadounidense para contemplar las ciudades de San Ysidro y San Diego.

Repentinamente llegó una patrulla tipo Blazer de la Border Patrol de la cual descendió un oficial "que me agarró y me subió a la camioneta", mientras que aparentemente su compañero aprehendió a Benito y Efrén. No se había precisado ayer si el oficial que mató e hirió a los mexicanos iba acompañado, pero el joven bolero en su relato siempre habló en plural.

Dijo que logró zafarse del emigrante norteamericano y que al intentar huir le dispararon un balazo, que no logró alcanzarle, pero sí asustarle por lo que trató de desaparecer del lugar de los hechos, no sin antes darse cuenta que sus dos compañeros habían caído al suelo heridos.

"Yo ya no me quise acercar, me fui a casa, y como está cerca del lugar, desde ahí ví que los americanos se llevaron un cuerpo y dejaron otro. Expresó que llegaron como a las diez de la noche y señaló que media hora después, aproximadamente, ocurrieron los hechos. Recalcó que llegaron "muchas ambulancias y patrullas y un helicóptero".

José Robles Estrada, de 18 años, otro testigo presencial de los hechos declaró al jefe policiaco Natividad Tapia que antes de los hechos referidos vió que el mismo emigrante que mató e hirió a los mexicanos golpeó a unos chiquillos con una macana, sacándolos de esa forma de territorio norteamericano. Agregó que un rato después escuchó tres disparos y fue al lugar de los hechos, a unos cuantos metros de territorio mexicano.

Manifestó que vio llegar dos policías fronterizos norteamericanos y dijo que uno de ellos le preguntó al presunto asesino y herido "Did You Kill.", "pero el emigrante se quedó callado fumando en silencio". Expresó que cuando escuchó los tres disparos estaba a una distancia de 20 metros. Recalcó que le dió miedo acercarse más porque el emigrante estaba muy enojado"

Señaló que el agente en cuestión mide aproximadamente 1.70 metros y traía un casco de protección en la cabeza que golpeaba nerviosamente. Agregó que al poco rato llegó un helicóptero cuyo tripulante dirigió el aparato en contra de un curioso y subrayó que le pareció ver que el policía que mató e hirió se introdujo al helicóptero y agregó que mientras tanto dos oficiales de la Border Patrol intentaron recoger "algo" a un lado del cadaver de Efrén, pero su intento fue impedido por un tercer miembro de la Border Patrol que les dijo que dejaran todo como estaba.

Por último dijo que vió cuando una ambulancia norteamericana se llevó un cuerpo y dejó otro que presumió era el muerto "porque ya no se movía y porque ellos dijeron que allí lo dejaran".

Por su parte el otro testigo presencial, Gilberto Contreras Ramírez, de 22 años de edad, tras de coincidir con lo declarado anteriormente agregó: "Vi que se bajó un emigrante que traía la macana en la mano bajándose al bordo de la canalización. Como a un metro del bordo soltó la macana y sacó una pistola con la que apuntó a dos hombres".

Agregó: "tiró un plomazo con una mano y luego otro con las dos manos, enseguida vi que cayeron las dos personas juntas", esposadas.

Manifestó que el agente de la Border Patrol caminó como tres metros para dispararle a los mexicanos, con el saldo anotado, aunque ayer se especulaba que Benito Rincón podría perecer a consecuencia de su herida.

Border Patrol, Mexico Police Differ Over Shooting Of 2

By ALEX DREHSLER
Staff Writer, The San Diego Union

TIJUANA — The two undocumented Mexican aliens who were wounded — one of them fatally — Saturday night by a border patrolman were handcuffed to each other at the time, Mexican and U.S. law enforcement officials said yesterday.

Supervising Border Patrol Agent Dan Cole, 49, shot the two men in self-defense during a struggle that began when two of three aliens resisted arrest, said Albert Franco, deputy chief patrol agent. Mexican police, however, said the aliens were shot while trying to escape.

"Two of the aliens apparently used their handcuffs as a lever to bring him (Cole) down. At this point the aliens were no longer trying to escape," said Franco.

Natividad Tapia, head of the homicide squad of the Baja California State Judicial Police, identified the slain man as Efrén Reyes, 23, of San Luis Potosí, and his wounded companion as Benito Rincon, 22, of the Federal District (Mexico City).

"Reyes arrived in Tijuana about two months ago to cross into the

United States illegally," said Tapia.

Tapia said two eyewitnesses told him that Reyes and Rincon were shot while trying to escape.

One of the witnesses, Gilberto Contreras Ramirez, 22, was in Tapia's office yesterday morning, waiting for San Diego police detectives to interview him. The second witness was identified by Tapia as José Robles Estrada, 18.

Reyes, Rincon and a third man, José Ramiro Martínez, 17, were sighted on the U.S. side of the border by Cole while he was patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel, said investigators.

Cole parked his vehicle, got out, approached the three Mexicans and placed them under arrest. Ramiro was placed in Cole's vehicle. Immediately afterward, Reyes and Rincon began struggling with Cole.

While grappling with Reyes and Rincon, Cole saw Ramiro escape from the rear of his vehicle. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees.

(Continued on B-4, Col. 1)

S.D. Union
7-20-79

Alien shooting being probed

By ROBERT DIETRICH

The weekend shooting death of an illegal alien by a senior Border Patrol agent is under investigation by the FBI and San Diego police.

The identity of the man killed while handcuffed to a fellow border runner and in Border Patrol custody has not been determined, the coroner's office said today.

The man he was handcuffed to, Benito Hernández, 21, was wounded in the left shoulder during the incident and was reported in satisfactory condition today in the University Hospital jail ward.

Police said the agent involved, Dan Cole, a supervisory patrol officer, gave the following account:

Cole was on patrol about 10 p.m.

See ALIEN, B-3

★ Alien

CONTINUED FROM B-1

Saturday near the U.S. section of the Tia Juana River flood control channel when he spotted three persons run from the Mexican side of the border.

He arrested them, handcuffed two together and tried to place the third in the rear of the Jeep-like patrol vehicle.

That prisoner escaped, and the two handcuffed prisoners attacked Cole, forcing him to his knees and grabbing his baton.

At that point, Cole drew his revolver and fired.

The coroner's office said today it did not know whether the dead man was struck in the front or back of his body.

A Mexican newspaper yesterday quoted a man who said he is the person who broke away from Cole in another version of the incident. The man, José Ramiro Martínez, 17, told reporters his two companions had been shot in the back.

His identification of the wounded man, however, did not match the name determined by San Diego police.

Martínez said the name of the dead man is Efrén Reyes, 23, of San Luis Potosí, Mexico.

A Border Patrol official said Cole will undergo an Border Patrol internal affairs probe of the incident as well as the FBI and police investigations.

Views Differ On Shootings

(Continued from Page B-1)

"At this point Cole made his decision (to fire his weapon)," said Franco.

San Diego County Coroner Dave Stark said Reyes was shot once in the chest, "lacerating his heart, lung and liver." Stark said the man had a wound in his back, where the bullet came out.

Rincon was listed in satisfactory condition at University Hospital with a bullet wound in his left shoulder. The wound indicates that Rincon was shot from the

back, investigators said.

San Diego Police homicide detectives said they hoped to complete their investigation by tomorrow and then present their findings to the San Diego district attorney's office, where a decision will be made of whether or not to prosecute Cole.

Franco said his agency is supporting Cole unless the detectives' findings prove other action is warranted. Cole, who has been with the Border Patrol for more than 20 years, remains on duty, said Franco.

ART PATIENT

Boy, 4, Dies at Border Gates

BY ROBERT MONTEMAYOR
Times Staff Writer

the U.S. Customs inspector at desk, the Mexican woman with 4-year-old boy in her arms was another impatient person waiting across the international border. For other people waiting in the Customs lobby, the woman's frantic pleas of "Emergencia! Emergencia! El niño está enfermo!" indicated only that something was wrong. How serious it was, she knew.

cept for Guadalupe Astorga. For her husband, Mario Alberto Canedo — who had just become unconscious and gasping for breath — the moment was a dramatic climax to a series of confusing events that ended with a terrified scream as the boy died in her arms.

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.

Please Turn to Page 5, Col. 1

"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.

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Fri., Mar. 23, 1979 - Part II

inspection 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 deter-

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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)

B

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.

Baby's Death In Tijuana Blamed On Red Tape

By LEW SCARR

Medical Writer, The San Diego Union

Manolo Augustin Alberto's death certificate probably will list acute dehydration as the cause.

But red tape may be the real killer.

The 18-month-old boy, an American citizen, died in a Tijuana hospital Monday morning after efforts to get him to a hospital in this country were blocked by a tragic series of delays.

Final arrangements had been made to clear his transfer to University Hospital, but by then he was dead.

Federal and county officials in the United States and Mexico and hospital officials and physicians in both countries have been able to piece together this account:

Manolo, American-born, but living with his mother, Irma Alberto, in El Salvador where the mother is a citizen, became ill, apparently with some kind of intestinal disorder.

When the boy tried to eat, he vomited, leading to a loss of fluids, malnutrition and eventual dehydration. Traveling with her sick son, Alberto got as far as Tijuana.

She crossed the border illegally, leaving the baby with a sister in Tijuana.

Robert Mitton, deputy district director for the Immigration and Naturalization Service here, picks up the story:

"On June 15 (last Friday) at 3 a.m. a light blue vehicle arrived at the border. There were two young females and a baby. The females

(Continued on B-4, Col. 1)

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Red Tape Blamed In Death Of Baby

(Continued from B-1)

said they were both citizens and they said they were taking the baby to the United States for medical treatment."

Mitton said the women admitted that neither was the baby's mother, that they did not know the mother and that they had picked the baby up on a Tijuana street corner and were trying to get him to the United States because he was an American citizen.

"The inspector was aware that the child was sick, but in her opinion was not terminal. The instructions our people gave to the two young ladies were get the baby's mother. We don't know if they were kidnaping the baby or smuggling the baby.

"If there were a health emergency, get the mother and we will process her and the baby and get them to a (U.S.) hospital," Mitton said the women were told.

"(The inspector) gave the women a couple of bucks to get milk for the kid and sent them back with the request they appear with the mother.

"To the best of our knowledge that is the only contact the Immigration Service ever had."

Ralph Benson, chief of protection

of American citizens for the American Consulate in Tijuana, continues:

"We were called at about 3 o'clock Friday afternoon by the civil hospital here saying they had the child. We sent an officer to see the child and he said the baby was suffering from second degree malnutrition."

Through an aunt living in Los Angeles, the consulate determined that there were no funds to care for the child in the United States and the San Diego County Welfare Department was contacted. County Welfare and University Hospital made arrangements here for Manolo to be received.

"We anticipated the child could be moved Friday night," Benson said. "However, the state district attorney (in Tijuana) had to investigate the case because the child may have been abandoned.

"They said they could not issue their report until Saturday and that is why the child was not transferred Friday night.

"In between, however, the aunt called the hospital and told them she would come and pick up the child after all on Friday evening.

"And about 9 o'clock that night two people paid the hospital bill and tried to take the child to the United

States."

Benson said the young women, probably the same two encountered by the immigration officer, even tried to have the baby transported to Los Angeles by airplane but the hospital said this was impossible.

By 5 p.m. Sunday, the way was cleared for Manolo to be transferred to University Hospital by ambulance. But the University Hospital physician, Dr. Robert Kahn, pediatric chief resident in the infant intensive care unit at University, was unaware of earlier arrangements by Dr. Charles Landers in the hospital emergency room and by the County Welfare Department for the transfer.

Kahn already had called Tijuana General Hospital and was told the baby was in stable condition, so he deferred action until Monday.

"The hospital (Tijuana) told us Sunday morning that the child was improving, and this was verified by an American representing a Chula Vista church who saw the child early Sunday afternoon."

But when Kahn called about 8:30 a.m. Monday to make final arrangements for transfer, he learned the baby had died. Time of death was 8:20 a.m.





Committee on Chicano Rights, Inc

March 21, 1979

FOR IMMEDIATE PRESS RELEASE

The Committee on Chicano Rights today announced that it has written Senator Edward Kennedy, Chairperson of the Senate Judiciary Committee and to Representative Elizabeth Holtzman of the House Immigration Sub-Committee to request a full scale Congressional investigation of the U.S. Border Patrol. (See attachment A).

C.C.R. spokespersons stated that "we are calling on Congress to not only investigate the brutal killing of Efren Reyes and the wounding of his companion Benito Rincon by Border Patrolman Dan Cole while both men were handcuffed, but also the overall operation of the U.S. Border Patrol, including its policies, financial budgeting, and supervision." Furthermore, the C.C.R. spokespersons called attention to the fact that "the U.S. Border Patrol has become a lawless agency which is totally out of control and accountable to no one."

The C.C.R. will await the response from Senator Kennedy and Representative Holtzman and will at that time provide the documentation on the charges which have been made against the Border Patrol.

Attachments.

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



Committee on Chicano Rights, Inc

Senator Edward Kennedy
Chairperson--Judiciary Committee
431 Russell Office Building
Washington, D.C. 20510

March 21, 1979

Dear Senator Kennedy:

Our organization is requesting a full scale Congressional investigation of the U.S. Border Patrol. We are accusing the U.S. Border Patrol of committing illegal acts and abuses involving the human and constitutional rights of both undocumented persons and U.S. Citizens of Mexican ancestry. We are hereby petitioning your committee to initiate a full scale Congressional investigation into the following:

1. The March 17, 1979, killing of Efren Reyes with a 357 Magnum by the U.S. Border Patrolman Daniel Cole and the wounding of his companion Benito Rincon. At the time Reyes and Rincon were shot, both men were handcuffed and were reported to have been shot in the back!
2. The massive violations of human and constitutional rights by the Border Patrol at the international border and in the Chicano Community. The latest killing of Reyes and the wounding of Rincon involving the U.S. Border Patrol is not an isolated incident, but the "tip of the iceberg" of such violations. It is apparent to us that the Border Patrol is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one.

Because of the lack of supervision and adequate training the Border Patrolmen have in essence become a law on to themselves.

Additionally, we request that your committee conduct an investigation into the entire operation of the Border Patrol and investigate the following documented cases of illegal and unconstitutional acts which have been committed by the Border Patrol over the past 10 years:

- a. Shooting and killing of individuals
- b. Beatings
- c. Rapes
- d. Sexual abuse of women
- e. Breaking into homes

- f. Stopping persons in the streets, airports bus depots, etc., on the basis of race and without reasonable suspicion.
- g. Stopping persons from entering places of worship.
- h. Boarding public transit buses and interrogating persons on the basis of race and without reasonable suspicion.
- i. Collaborating with the K.K.K.
- j. Entering schools to question children.
- k. Strikebreaking and involving themselves in labor disputes.
- l. Mistreatment at detention camps.

Our committee believes that a congressional investigation is not only necessary but imperative at this time. Any further delay can only inflame the already volatile situation along the border and lead to further confrontations and violence. We will be awaiting your response on this urgent matter.

Thank You,

Herman Baca

Herman Baca
Chairperson

cc.
President Jimmy Carter
President Jose Lopez-Portillo
Attorney General Griffin Bell
Comissioner Leonel Castillo
Senator Cranston
Senator Hayakawa

Border Patrol, Mexico Police Differ Over Shooting Of 2

By ALEX DREHSLER
Staff Writer, The San Diego Union

TIJUANA — The two undocumented Mexican aliens who were wounded — one of them fatally — Saturday night by a border patrolman were handcuffed to each other at the time, Mexican and U.S. law enforcement officials said yesterday.

Supervising Border Patrol Agent Dan Cole, 49, shot the two men in self-defense during a struggle that began when two of three aliens resisted arrest, said Albert Franco, deputy chief patrol agent. Mexican police, however, said the aliens were shot while trying to escape.

"Two of the aliens apparently used their handcuffs as a lever to bring him (Cole) down. At this point the aliens were no longer trying to escape," said Franco.

Natividad Tapia, head of the homicide squad of the Baja California State Judicial Police, identified the slain man as Efen Reyes, 23, of San Luis Potosi, and his wounded companion as Benito Rincon, 22, of the Federal District (Mexico City).

"Reyes arrived in Tijuana about two months ago to cross into the

United States illegally," said Tapia.

Tapia said two eyewitnesses told him that Reyes and Rincon were shot while trying to escape.

One of the witnesses, Gilberto Contreras Ramirez, 22, was in Tapia's office yesterday morning, waiting for San Diego police detectives to interview him. The second witness was identified by Tapia as Jose Robles Estrada, 18.

Reyes, Rincon and a third man, Jose Ramiro Martinez, 17, were sighted on the U.S. side of the border by Cole while he was patrolling westbound on the south levee of the San Diego-Tijuana flood-control channel, said investigators.

Cole parked his vehicle, got out, approached the three Mexicans and placed them under arrest. Ramiro was placed in Cole's vehicle. Immediately afterward, Reyes and Rincon began struggling with Cole.

While grappling with Reyes and Rincon, Cole saw Ramiro escape from the rear of his vehicle. In the scuffle, Cole was forced down the south bank of the levee and brought to his knees.

(Continued on B-4, Col. 1)

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3-20-79

Views Differ On Shootings

(Continued from Page B-1)

"At this point Cole made his decision (to fire his weapon)," said Franco.

San Diego County Coroner Dave Stark said Reyes was shot once in the chest, "lacerating his heart, lung and liver." Stark said the man had a wound in his back, where the bullet came out.

Rincon was listed in satisfactory condition at University Hospital with a bullet wound in his left shoulder. The wound indicates that Rincon was shot from the

back, investigators said.

San Diego Police homicide detectives said they hoped to complete their investigation by tomorrow and then present their findings to the San Diego district attorney's office, where a decision will be made on whether or not to prosecute Cole.

Franco said his agency is supporting Cole unless the detectives' findings prove other action is warranted. Cole, who has been with the Border Patrol for more than 20 years, remains on duty, said Franco.

Alien shooting being probed

By ROBERT DIETRICH

The weekend shooting death of an illegal alien by a senior Border Patrol agent is under investigation by the FBI and San Diego police.

The identity of the man killed while handcuffed to a fellow border runner and in Border Patrol custody has not been determined, the coroner's office said today.

The man he was handcuffed to, Benito Hernandez, 21, was wounded in the left shoulder during the incident and was reported in satisfactory condition today in the University Hospital jail ward.

Police said the agent involved, Dan Cole, a supervisory patrol officer, gave the following account:

Cole was on patrol about 10 p.m.

See ALIEN, B-3

Tab
3-11-79

★Alien

CONTINUED FROM B-1

Saturday near the U.S. section of the Tia Juana River flood control channel when he spotted three persons run from the Mexican side of the border.

He arrested them, handcuffed two together and tried to place the third in the rear of the Jeep-like patrol vehicle.

That prisoner escaped, and the two handcuffed prisoners attacked Cole, forcing him to his knees and grabbing his baton.

At that point, Cole drew his revolver and fired.

The coroner's office said today it did not know whether the dead man was struck in the front or back of his body.

A Mexican newspaper yesterday quoted a man who said he is the person who broke away from Cole in another version of the incident. The man, Jose Ramiro Martinez, 17, told reporters his two companions had been shot in the back.

His identification of the wounded man, however, did not match the name determined by San Diego police.

Martinez said the name of the dead man is Efen Reyes, 25, of San Luis Potosi, Mexico.

A Border Patrol official said Cole will undergo an Border Patrol internal affairs probe of the incident as well as the FBI and police investigations.

Priest claims being beaten by Customs officers

By JESSICA WATSON
Times Staff Writer

The pastor of Our Lady of The Light Catholic church, largest in El Paso, reported Tuesday he was taken down, stripped and beaten by U.S. Customs officers in an early-morning detention after crossing the Bridge of the Americas.

The Rev. Jesse Munoz, making the accusations, said he was ordered from the car he was driving while returning from what he termed was "a rescue mission" by a Customs officer and sent to quarters inside the Customs building where he was told to strip.

"I was thrown against the wall five times inside an office they have for questioning," Munoz said. "I was stripped of my clothes. They slapped me down

when I tried to say anything. They were taking off my socks, and I asked why. As I was about to say I was Father Munoz, one said, 'Oh, you're just another Mexican S.O.B.'"

Munoz said after the incident, which he said occurred at 2:50 a.m., he went for treatment to the office of Dr. Fernando Jimenez.

Jimenez, late Tuesday, confirmed he had found Munoz to be suffering acute trauma and sprained shoulders and upper back.

Repeated attempts to contact Customs officials for their version of the incident proved fruitless. William Hughes, director of Customs, was reported out of his office and unavailable.

Joy Hughan, supervising inspector who was in charge of the office during a later shift, said she

knew "only what I was told," and that she was not authorized to disclose what that was.

Officer Hughan said she would phone her supervisor to let him know *The Times* was inquiring about the incident and wished him to provide the Customs account of what happened. That supervisor never called.

George McAlmon, an attorney contacted by Munoz, said he plans legal action against the government.

Munoz said that, when he went to say Mass at dawn at the Dolan Street Chapel, he "couldn't even lift the chalice."

Munoz said he tried to contact Charles Perez, director of Immigration and Naturalization. He said Perez is a member of Our Lady of The Light Parish,

but he was unsuccessful. Customs is not under the jurisdiction of INS, but Munoz said he had hoped Perez might intercede for him.

When the Customs officials finally did acknowledge his true identity, Munoz said, "everybody apologized to me."

Munoz, 39, has been pastor of Our Lady of The Light for 11 years. He said it was not the first time he had noticed animosity on the part of U.S. officials at the bridges, but "physical assault is new."

He said he has reported the badge numbers of the two officers who assaulted him.

He said he had gone to Juarez to assist a vacationing couple from Colorado Springs in making their return to El Paso after they had sampled Juarez night life.

FBI investigating abuse charge

By JESSICA WATSON
Times Staff Writer

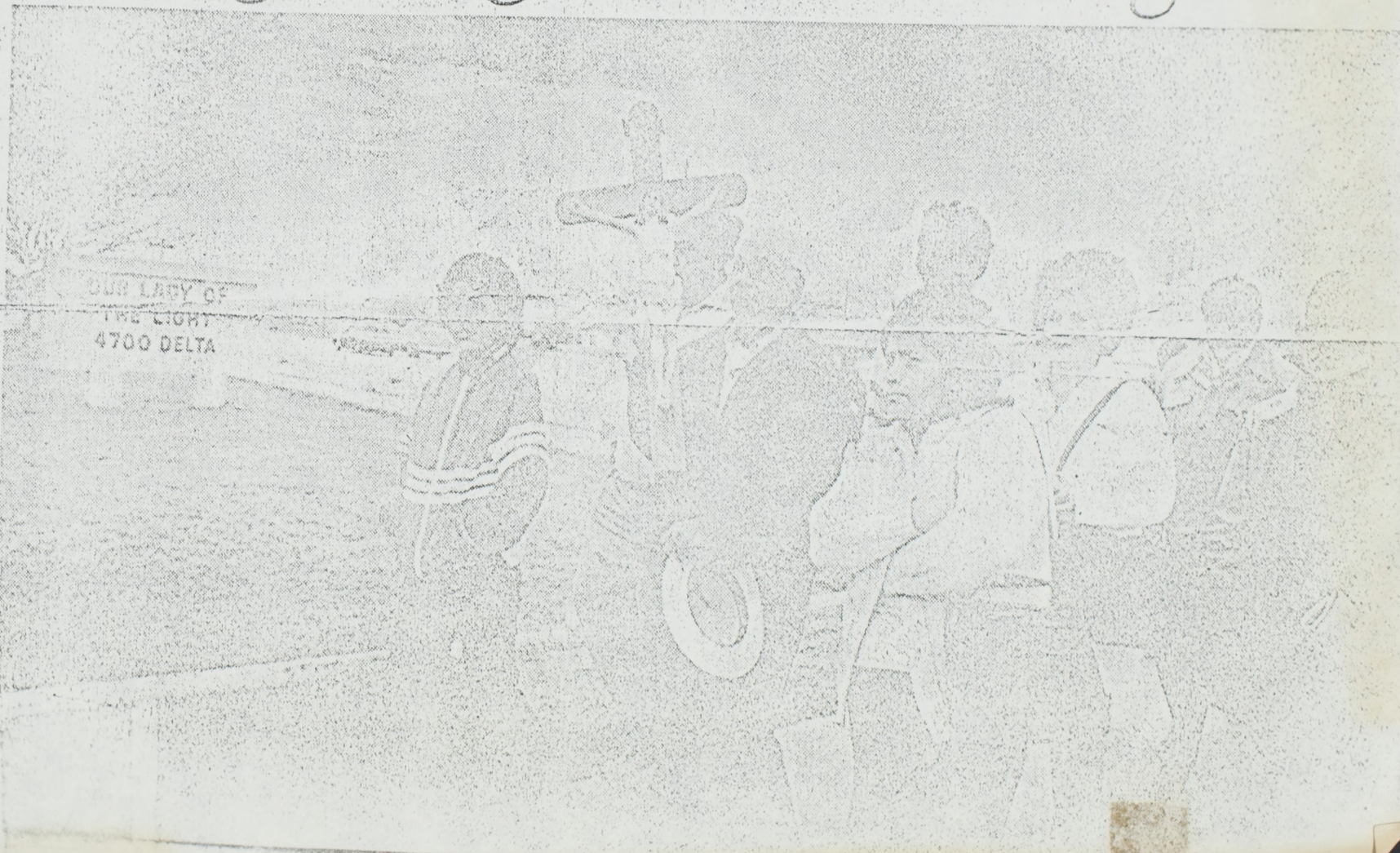
About 100 persons marched silently Wednesday in front of Our Lady of the Light Church to protest "actions of government agents stationed at the border."

The Rev. Jesse Munoz, pastor of the church, Tuesday accused Customs inspectors of "stripping me down, throwing me against the wall five times, slapping me down," in an early-morning "detention" at the bridge. He added that the abuse occurred before he was given a chance to identify himself.

The El Paso FBI office Wednesday began a preliminary investigation of Munoz's allegations to determine whether his civil rights were violated, assistant agent in charge Robert Ivey said.

Meanwhile, Customs spokesmen said the incident is being investigated by their internal affairs agents.

"We don't know what happened ourselves," said Charles Conroy, spokesman for the Houston Customs Region. "What we are doing is trying to find out what really did happen. We are in the process of interviewing all the people involved, including Father Munoz and the Customs inspectors. We are getting written statements from the inspectors," the public affairs officer said. The incident was reported at the Bridge of the Americas



Customs studies priest's charge

By KEN FLYNN

U.S. Customs officials initiated an investigation into a report alleging a Roman Catholic priest was beaten by officers on the Cordova Island bridge at 2:50 a.m. yesterday.

The Rev. Jesse Munoz, pastor of Our Lady of the Light Catholic Church, 4700 Delta, called a press conference yesterday afternoon to announce he had been "brutally mistreated" by American customs officials upon returning from a "rescue mission" to Juarez.

MUNOZ SAID the agents, a black and an Anglo, pulled him out of the car, threw him against the wall of the interrogating room five times, stripped him, beat him and called him "just another Mexican S.O.B." before he was able to identify himself as a pastor.

A Customs officer, speaking anonymously, said "it didn't happen that way" but declined further comment because the case is under investigation.

Ivan Chapuis, deputy U.S. Customs director, said his agency began an investigation of the incident. He said Munoz did not file a complaint with the agency and indicated witnesses were being interviewed.

THE REV. DIXON Hartford, chancellor of the Diocese of El Paso, said he was "very surprised" Munoz did not call the Chancery yesterday. He said he did not hear about the alleged incident until contacted by The Herald-Post.

"The Diocese will be looking into this matter from our angle," Hartford

Bishop Patrick Flores was out of town and unavailable for comment.

MUNOZ SAID he received a phone call from Max Martinez and Glenda Miller, both of Colorado Springs, Colo., his house guests, who reported they were in Juarez and had lost the way home.

The pair passed through Customs safely, but Munoz said he missed them in passing.

"My shoulder was hurting so badly Tuesday morning that I couldn't lift the chalice at morning mass," Munoz said.

THE PASTOR said he went to Dr. Fernando Jimenez who provided him with a disability certificate indicating he had received a sprained right shoulder and upper back. He said the doctor did not take x-rays.

Munoz said he declared his citizenship and told officers he was not

bringing anything into the U.S. He said he was told to drive to station Number Two.

Before he could identify himself, the pastor alleged, the agents pulled him out of the car and slapped him against the wall. He was still not able to identify himself when the two men dragged him inside the interrogation room, slapped him around, stripped him and refused to allow him call a lawyer.

HE SAID HE finally identified himself as a priest and was released with apologies.

"What would have happened if I were not a person of social standing?" he asked at yesterday's press conference.

Munoz said the black man's badge number was 13540 but he did not get the number of the Anglo inspector, whom he described as bearded, five

feet, eight inches tall, with brown hair.

Munoz said he would permit his attorney, George McAlmon, to decide whether he would sue the U.S. Customs Service.

from the inspectors," the public affairs officer said. The incident was reported at the Bridge of the Americas.

Efforts to obtain comments from El Paso Customs officers again were unsuccessful Wednesday. However, agent Vince Moore said an investigation is automatic when charges as serious as Munoz' are made. Moore, an internal affairs agent, is conducting the Customs investigation here.

A diabetic, Munoz Wednesday recounted more of his "humiliation" at the bridge. "I asked them if I could use the bathroom. I was told to shut up. Then I showed them my health card that says I'm a diabetic. I wanted to call a parishoner who helps me with my illness. They refused. I ended up urinating in my pants. It was very humiliating," he said.

Moore confirmed that any Customs inspectors found guilty of such behavior could lose their jobs. "If it were to prove out that Munoz' allegation is substantiated, somebody could possibly lose his job," he said.

Emphasizing the point that Customs officials do not know the facts surrounding Munoz' detention, Conroy said, "If it is established there was any wrongdoing, appropriate disciplinary action will be taken against the persons responsible. The range of action depends on what happened."

The Customs spokesman said his agency's investigation should be concluded early next week. "We expect to be through by Monday or Tuesday next week," he said.

PARISHIONERS, BEARING CROSS, MARCH IN PROTEST OF ALLEGED ABUSE OF PRIEST

—(Times staff photo)



Committee on Chicano Rights, Inc

Congresswoman Elizabeth Holtzman
2238 Rayburn House Office Building
Washington, D.C. 20515

March 21, 1979

Dear Congresswoman Holtzman:

Our organization is requesting a full scale Congressional investigation of the U.S. Border Patrol. We are accusing the U.S. Border Patrol of committing illegal acts and abuses involving the human and constitutional rights of both undocumented persons and U.S. Citizens of Mexican ancestry. We are hereby petitioning your committee to initiate a full scale Congressional investigation into the following:

1. The March 17, 1979, killing of Efren Reyes with a 357 Magnum by the U.S. Border Patrolman Daniel Cole and the wounding of his companion Benito Rincon. At the time Reyes and Rincon were shot, both men were handcuffed and were reported to have been shot in the back!
2. The massive violations of human and constitutional rights by the Border Patrol at the international border and in the Chicano Community. The latest killing of Reyes and the wounding of Rincon involving the U.S. Border Patrol is not an isolated incident, but the "tip of the iceberg" of such violations. It is apparent to us that the Border Patrol is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one.

Because of the lack of supervision and adequate training the Border Patrolmen have in essence become a law on to themselves.

Additionally, we request that your committee conduct an investigation into the entire operation of the Border Patrol and investigate the following documented cases of illegal and unconstitutional acts which have been committed by the Border Patrol over the past 10 years:

- a. Shooting and killing of individuals
- b. Beatings
- c. Rapes
- d. Sexual abuse of women
- e. Breaking into homes

Congresswoman Elizabeth Holtzman

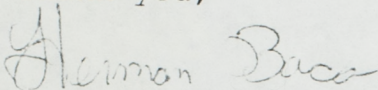
March 21, 1979

Page 2

- f. Stopping persons in the streets, airports, bus depots, etc., on the basis of race and without reasonable suspicion.
- g. Stopping of persons from entering places of worship.
- h. Boarding public transit buses and interrogating persons on the basis of race and without reasonable suspicion.
- i. Collaborating with the K.K.K.
- j. Entering schools to question children.
- k. Strikebreaking and involving themselves in labor disputes.
- l. Mistreatment at detention camps.

Our committee believes that a congressional investigation is not only necessary but imperative at this time. Any further delay can only inflame the already volatile situation along the border and lead to further confrontations and violence. We will be awaiting your response to this urgent matter.

Thank you,



Herman Baca
Chairperson

cc: President Jimmy Carter
President Jose Lopez-Portillo
Attorney General Griffin Bell
Commissioner Leonel Castillo
Senator Alan Cranston
Senator S. I. Hayakawa

Congresswoaman Elizabeth Holtzman

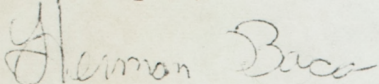
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Page 2

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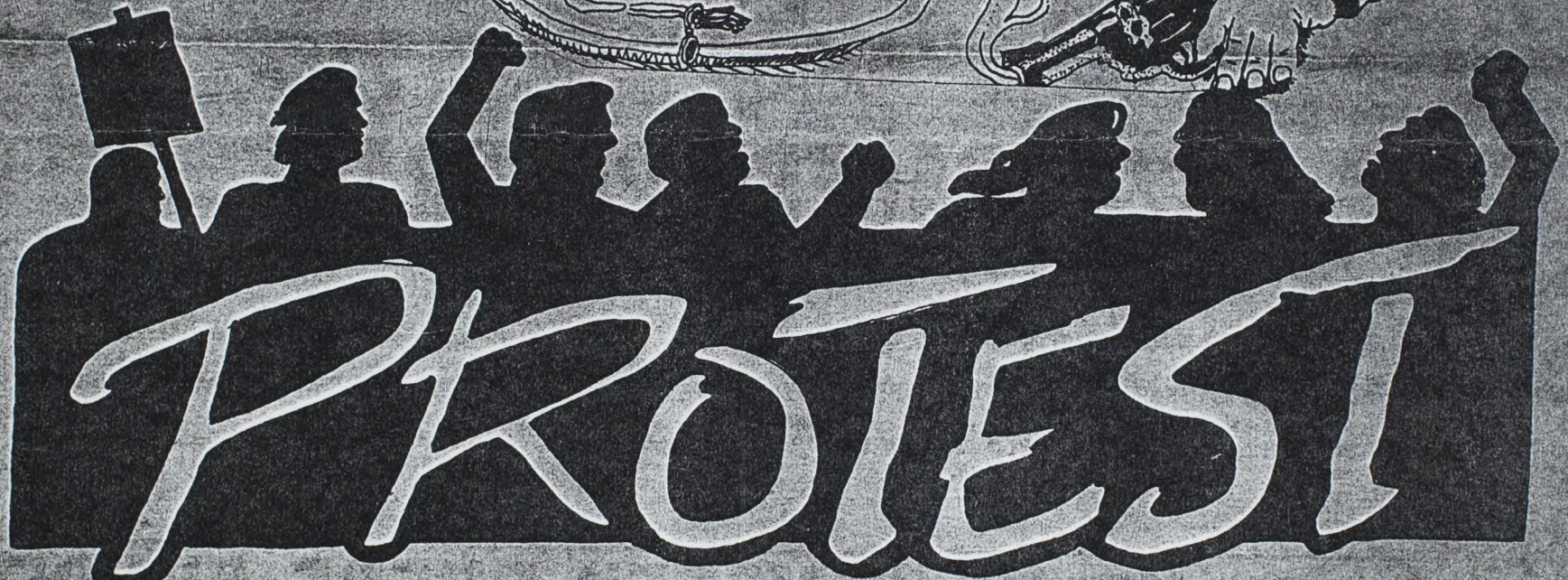
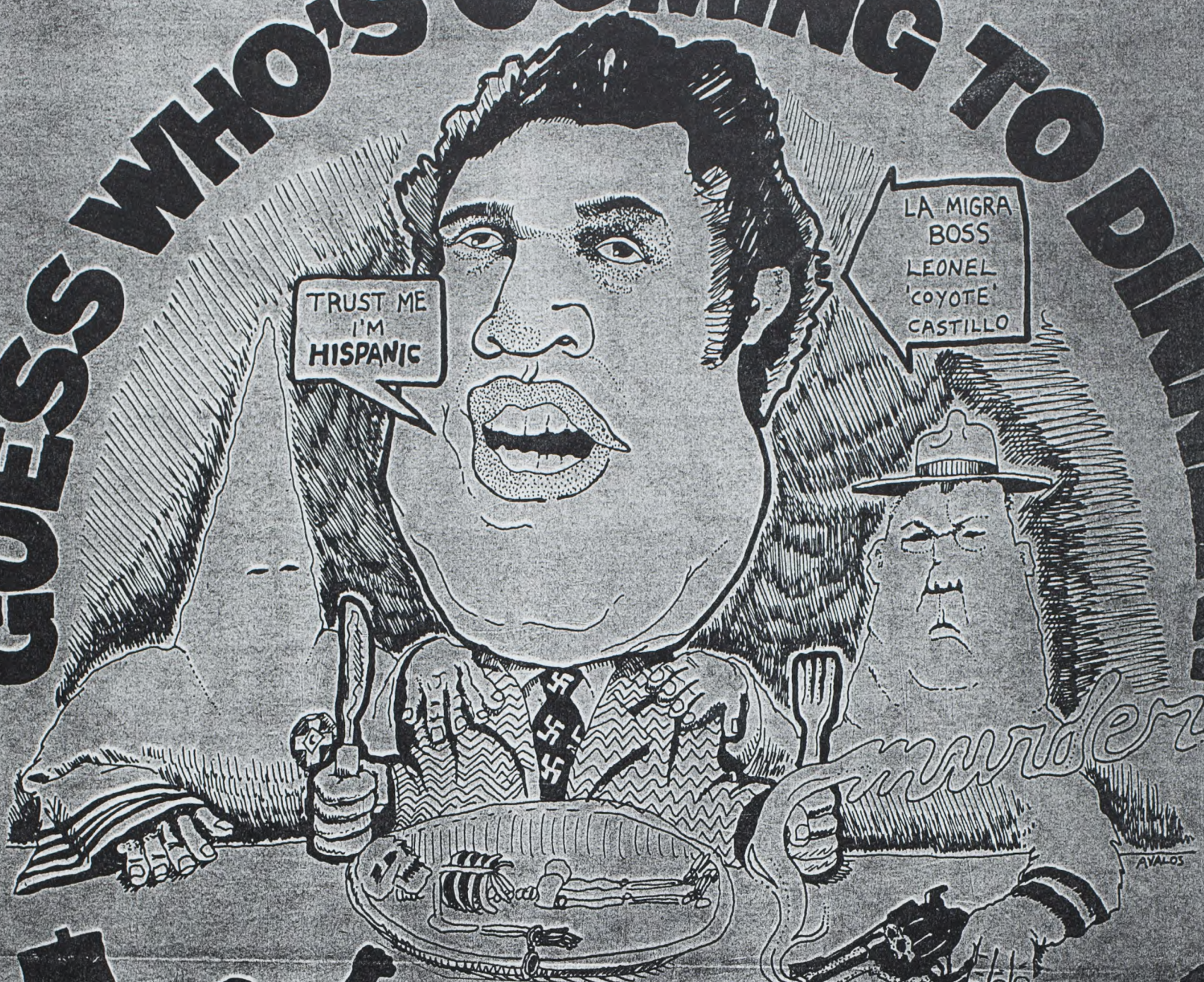
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Herman Baca
Chairperson

cc: President Jimmy Carter
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Attorney General Griffin Bell
Commissioner Leonel Castillo
Senator Alan Cranston
Senator S. I. Hayakawa

GUESS WHO'S COMING TO DINNER?



**FRIDAY, APRIL 6, 1979, 11:30 A.M.
U.S. GRANT HOTEL, 326 BROADWAY
SAN DIEGO, CALIFORNIA**

PICKET AND DEMONSTRATE TO PROTEST: The shooting, beatings, rapes and killing of individuals by Border Patrol Agents, La Migra's collaborating with the K.K.K., Border Patrol strikebreaking! Would Christians honor Judas? Would the Jews honor the head of the Gestapo? Why should Chicanos honor the head of the Immigration and Naturalization Service (La Migra)? **CHICANOS, HAVE SOME SELF-RESPECT,** Join us and all people seeking justice to protest for an hour at the barricades!



**SPONSORED BY:
COMMITTEE ON CHICANO RIGHTS, INC.
1837 HIGHLAND AVENUE, NATIONAL CITY, CA. 92050
FOR INFORMATION: (714) 474-8195**



YA BASTA! (PROBE OF BORDER PATROL CALLED FOR)

The Committee on Chicano Rights (CCR) has written a letter to Senator Edward Kennedy, Chairperson of the Senate Judiciary Committee and to Representative Elizabeth Holtzman of the House Immigration Sub-committee requesting a full-scale Congressional investigation of the U.S. Border Patrol. The CCR, with a long history of involvement in border and immigration-related issues, feels intervention is necessary- if further Border Patrol abuses and violence are to be prevented. The CCR is waiting for a response from Senator Kennedy and Representative Holtzman and will at that time provide documentation on the charges that have been made against the Border Patrol.

Editor's Note

March 21, 1979

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2. The massive violations of human and constitutional rights by the Border Patrol at the international border and in the Chicano Community. The latest killing of Reyes and the wounding of Rincon involving the U.S. Border Patrol is not an isolated incident, but the "tip of the iceberg" of such violations. It is apparent to us that the Border Patrol is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one.

Because of the lack of supervision and adequate training the Border Patrol have in essence become a law unto themselves.

Additionally, we request that your committees conduct an investigation into the entire operation of the Border Patrol and investigate the following documented cases of illegal and unconstitutional acts which have been committed by the Border Patrol over the past 10 years:

- a. Shooting and killing of individuals;
- b. Beatings;
- c. Sexual abuse of women;
- d. Breaking into homes;
- f. Stopping persons in the streets, airports, bus depots, etc., on the basis of race and without reasonable suspicion;
- g. Stopping persons from entering places of worship;
- h. Boarding public transit buses and interrogating persons on the basis of race and without reasonable suspicion;
- i. Collaborating with the K.K.K.;
- j. Entering schools to question children;
- k. Strikebreaking and involving themselves in labor disputes;
- l. Mistreatment at detention camps.

Our committee believes that a Congressional investigation is not only necessary but imperative at this time. Any further delay can only inflame the already volatile situation along the border and lead to further confrontations and violence. We will be awaiting your response on this urgent matter.

Thank You,

Herman Baca

Herman Baca
Chairperson

cc.
President Jimmy Carter
President Jose Lopez Portillo
Attorney General Griffin Bell
Commissioner Leonel Castillo
Senator Cranston
Senator Hayakawa

You Can Help!

WRITE SENATOR EDWARD KENNEDY, 431 RUSSEL OFFICE BUILDING, WASHINGTON, D.C. 20510 OR CONGRESSWOMAN ELIZABETH HOLTZMAN, 2238 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515

SEND ANY DOCUMENTATION OF ABUSES OR UNCONSTITUTIONAL VIOLATIONS TO THE CCR AT 1837 HIGHLAND AVE., NATIONAL CITY, CA. 92050

WRITE THE CCR A LETTER OF SUPPORT ENDORSING THIS EFFORT

SEND A FINANCIAL CONTRIBUTION

U. S. Immigration Service
Officer In Charge
P.O. Box 11-C
San Ysidro, Ca 92178

174

April 3, 1979

Dear Sir

I am writing to you to file a complaint against two of your Immigration Officers, Officer Ellis and Officer E. M. Clooney.

On April 2, 1979 coming home from Tijuana my daughter 2½ years old was asleep in our station wagon so we got sent to secondary inspection. When I explained to a Customs Officer what was going on he signed the yellow slip of paper and then said I had to see an Immigration Officer, then that is when Officer M. Clooney was called, so I explained to him that my daughter was asleep. He insisted in talking to her so I patted my daughter on the butt to wake her up. He then took my 2½ year old daughter from inside of my station to the rear of the vehicle and started to ask her questions and calling her "Chiquita". We had informed him that her name was Sara Joyce Sanchez but

he kept calling her Chicquita.
 My wife informed McCloney
 that my daughter did not know
 the meaning of Chicquita since
 she does not understand Spanish
 but he kept questioning my
 daughter like is if she was a
Common Criminal. One thing led
 to another and Officer McBoney
 got real nasty and challenged me
 to come back when he got off
 of work to fight it out, that
 is when Officer Ellis started to
 tell me that I would end up
 with 2 broken arms and 2 broken
 legs and called me a fucking
Mexican and Mexican trash.

I informed the officer that
 I was a disabled Veteran due
 to the injuries I received in
 World War 2 and Korea. That is
 when I told them that I would
 file a complaint against them.
 At that time Officer Ellis took
 my station wagon license
 number and asked for my

name which I gave him. He
 said "If you file a complaint
 against me I will 'fix you'!"
 By then Officer McCloskey had
 signed the yellow slip of
 paper but would not let us
 leave, I explained to him
 since I had been cleared by
 Customs and Migration he had no
 cause to hold us any longer,
 but he refused to let us go. Finally
 I suggested that my wife and
 child could stay there and I
 would come home and return
 with my daughters birth
 certificate but she said no and
 that is when I became aware
 that I was being illegally
 detained. I entered the office to
 seek help from someone in
 the office to report the two
 so called officers that had
 harassed and threatened me.
 If you only would have
 seen the nasty manners and
 conduct unbecoming to an

Immigration Officer you would
have been ashamed of them.

I write to you hoping you
can put a stop to this abuse
and harassment that so many
people go through but don't
report it. Also while I was
inside the building Officer Ellis
kept talking to my wife and
harassing her. Are your officers
supposed to ask people to come over
after he gets off work? What a
shame and disgrace seeing the
conduct of these two Immigration
Officers. In my estimation both
are racist or in need of more
training. Thanking you kindly,

Sincerely,

Joseph D. Ranning
8326 Blapton Lane
Van Nuys, Wash DC
L. Castillo, Wash DC
Lemon Grove, Calif
Norman Baca, San Diego 92045
phone 464-4385

Al Fuero Común Remiten el Caso del "Pollero" Mexicano Baleado

SAN DIEGO.- Los detectives del Departamento de Policía de San Diego dejaron en manos del fiscal del fuero común el caso del mexicano Guillermo Lozano Carrasco, de 19 años, quien fue herido de un escopetazo por el agente Tom Curvinus, de 29, de la Patrulla Fronteriza.

Uno de los investigadores quien pidió omitiéramos su nombre, dijo que correspondía a las autoridades superiores determinar si el asunto quedará bajo jurisdicción de la policía federal, por haber ocurrido los hechos en zona federal y estar involucrado un elemento de una cor-

poración de este nivel gubernamental.

Mientras tanto, Herman Baca, director del Comité en Derechos Chicanos, dijo ayer haber recibido un comunicado procedente de la oficina del Senador Edward Kennedy, "por lo que es casi seguro que tendremos que viajar a Washington a presentarle la lista de casos en que los oficiales de la Patrulla Fronteriza han atacado a mexicanos".

La duda sobre cuál corporación está facultada para investigar y atender los incidentes violentos en la franja fronteriza de San Ysidro con Tijuana, ha

crecido a raíz de la determinación del fiscal del Estado Ed Miller, de no procesar al supervir Dan Cole, de la Patrulla Fronteriza, por la muerte de Efrén Reyes y las lesiones de Benito Rincón, en hechos ocurridos el 17 de marzo pasado.

Extraoficialmente se informó que el llamado cuerpo de seguridad (Task Force) que el Departamento de Policía de San Diego tenía comisionado en el área fronteriza, para tratar de evitar actos criminales en contra de indocumentados, dejó de actuar porque las autoridades federales no lo veían con "buenos ojos".

EL MEXICANO

S-24-79

Stencils

S-25-79

Alien is stable after gunshots

A 19-year-old illegal alien was reported in stable condition at University Hospital after being shot by a border patrol agent in what officials describe as a rock throwing incident along the Tia Juana River flood channel.

Guillermo Lozano Carrasco, was shot in the legs and stomach by agent Tom Corvinus, 29, reportedly after he and other aliens smashed the window of a car driven by a border patrol agent.

An officer had reported six aliens throwing rocks along the north side of the Tia Juana River channel near Virginia St.

His car window, officials said, was smashed by a rock and he called for assistance.

Five officers, Corvinus included, arrived and two fired shots into the air. Corvinus shot Carrasco from about 50 feet

Border Patrol Agents Ask For Congressional Probe Of Operations

By MICHAEL D. LOPEZ
Staff Writer, The San Diego Union

Local Border Patrol agents, angered by claims of Chicano activists that they have "murdered, raped and physically abused" illegal aliens, have asked for a congressional investigation into operations along the border.

At a press conference yesterday, Ronald J. Farber, president of the local chapter of the National Border Patrol Council, said, "Our membership has agreed that the time has come to take a stand and do something. Our men are being accused by Herman Baca (chairman of the Committee for Chicano Rights) of committing crimes, while the fact is that we are dedicated law enforcement officers whose hands are being tied by lack of men and equipment."

Farber said he has sent a telegram to Rep. Elizabeth Holtzman, D-N.Y., urging her to initiate "a prompt, on-site investigation" into the performance of local Border Patrol agents.

Muriel Watson, a spokesman for the agents, said they are particularly upset with statements being made by Baca and his National City-based organization.

Baca's group wrote Sen. Edward Kennedy, D-Mass., and Holtzman demanding a congressional investigation into what he termed "documented cases of illegal and unconstitutional acts which have been committed by the Border Patrol over the past 10 years."

Those acts, he said, included alleged shootings and killings of aliens, beatings, rapes and sexual

abuse of women, breaking into houses and strikebreaking.

In the letter, Baca charged the Border Patrol "is now totally out of control and is nothing but a lawless agency which is accountable and responsible to no one."

Watson said Baca and others have been making similar charges in the Mexican press.

Baca made his charges against the Border Patrol March 21 following an incident where an agent, Dan Cole, killed one illegal alien and wounded another when he said they jumped him. The two men were handcuffed to each other at the time.

A spokesman for the district attorney's office said the results of an investigation to determine whether the shootings were justified are expected this week.

In Washington, Immigration and Naturalization Service Director Leonel Castillo said yesterday that Border Patrol investigators are cooperating with the FBI in a separate investigation of the shooting incident, results of which are expected by the middle of the week.

Castillo said that the FBI investigates all such incidents, because Border Patrol agents are federal employees.

At yesterday's press conference, Randy Williamson, a Border Patrol line supervisor, said "We are getting caught in an increasingly tight pincher movement. We are under orders to 'show the flag' by our presence along the border and we are, as a result, being subjected to attacks and assaults. Still, we are receiving no support from our superiors or from the American people and we want them to decide just what our role should be."

Jeffrey Otherson, a Border Patrol agent, said agents are put in an "untenable position."

"We have to know whether the public wants us to act as professional law enforcement officers and do our job, or do we go up to Chula Vista and drink coffee?" Otherson said. "Without the equipment, manpower and support we should have, we're just wasting the taxpayers' dollars and giving the American public absolutely nothing for their money."

4-1-79
S.D. Union

DA Will Not File Charges In Manacled-Alien Slaying

By MICHAEL D. LOPEZ

Staff Writer, The San Diego Union

District Attorney Edwin Miller said yesterday that he will not issue a criminal complaint against a senior Border Patrol agent who shot and killed a Mexican alien and wounded another on March 17 when the two men attempted to escape while handcuffed together.

In a decision expected to trigger renewed protest from local Chicano activists and Mexican officials, Miller said supervising Border Patrol agent Dan Cole, 49, probably would have been charged if he had been a state law enforcement officer.

State law prohibits the use of deadly force against fleeing misdemeanants, but, because Cole is a federal agent, Miller said his actions come under the jurisdiction of federal law, which holds that resisting arrest or escape from a federal officer is a felony that probably justifies Cole's use of a gun.

"With the reasonable prospect at this case, if brought to trial, could be removed to federal court and tried under federal rules," Miller said, "it becomes more clear that the prospect of obtaining a conviction has become so diminished as to preclude charging agent Cole."

Local Chicano activists, led by the committee on Chicano Rights, earlier sent telegrams to congressmen to protest the shootings and other incidents that they called evidence of a pattern of brutality against Mexicans along the border by Border Patrol agents.

Some Mexican officials also called for an investigation of the shootings in the wake of the Chicano protests. In a letter explaining his decision, Chief of Police William Kolender said, "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 opinion that the activity in which

(Efren) Reyes (who was killed by Cole) and (Benito) Rincon Hernandez were engaged at the time they were shot constitutes a chargeable felony under federal law."

Miller's letter added, "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 . . . by the ranking federal legal authority in this district."

The results of Miller's investigation of the case, first disclosed in

yesterday's letter to Kolender, showed that Reyes, 23, of San Luis Potosi, and Rincon Hernandez, 22, of Mexico City, were shot while they were struggling to escape from Cole, who had just arrested them about 30 yards inside the U.S. border.

A third alien arrested with the two, Rogelio Mendez Diaz of Guatemala, escaped back into Mexico while Cole struggled with the handcuffed men.

Miller said his investigation disclosed that "neither of the handcuffed men made any move to strike or kick the agent, nor did either of

(Continued on B-6, Col. 1)

Agent Will Not Be Charged In Alien Killing

(Continued from B-1)

them make any move to suggest that they were reaching for a concealed weapon. The agent had not, however, determined that neither of them was in possession of some weapon."

Cole and his superiors claimed after the incident that the agent shot the men in self-defense, while Rincon Hernandez and Mendez Diaz claimed the two victims were shot in the back.

Miller rejected the latter contention, however, "on the

basis of indisputable physical evidence that the shots entered both men from the front."

Rincon Hernandez has not been charged with a federal felony, Miller said. He said U.S. Attorney Michael Walsh "advised that his decision not to charge Rincon Hernandez was based on the fact that the man already had suffered substantially as a result of the confrontation with the officer."

Police sources said Mendez Diaz voluntarily returned from Mexico to aid in the investigation.

Miller said the legal understanding of the case on the part of federal authorities "complicates an already difficult situation," and that, "viewed from the perspective of whether or not this shooting was justifiable as having been in self-defense, the picture is no less clouded."

He noted that Cole was on duty "in a combat zone atmosphere" of the border, and earlier that night had been the target of rock-throwers along the Mexican zone.

Saying that his was a difficult decision reached only after "long and painful reflection," Miller said he did not condone the conduct of the Border Patrol agent and that he did not believe the shootings were justified.

"But I am bound to make my decision in conformity with the law as I understand it to be," Miller said.

In alien shooting death

No agent prosecution

The District Attorney's Office will not prosecute a Border Patrol agent who shot and killed a Mexican alien and wounded another March 17 when the two handcuffed to each other, tried to escape.

But District Attorney Edwin Miller this week said agent Dan Cole, 49, probably would have been charged if he had been a state law enforcement officer.

MILLER SAID state law prohibits the use of deadly force against fleeing persons suspected of misdemeanors. But because Cole, a supervising agent, is a federal officer, his actions come under the jurisdiction of federal law.

Federal law, Miller said, holds that resisting arrest or attempting escape from a federal officer is a felony that probably justifies use of a gun.

"With the reasonable prospect that this case . . . would be removed to federal court and tried under federal rules," Miller said, "it becomes more clear that the prospect of obtaining a conviction has become so diminished as to

foreclose charging Cole."

FOLLOWING THE March 17 shooting local Chicano activists sent telegrams to congressman protesting the shootings and demanding an investigation.

In a letter to San

Diego Chief of Police William Kolender, Miller said he'd been advised by U.S. Attorney Michael Walsh that the actions of the two aliens "constitutes a chargeable felony under federal law" which justifies the use of deadly force.

While Miller said he

could find nothing to justify the shooting, he said, he "must be mindful of the manner in which federal law is understood . . . by the ranking federal legal authority in this district.

MILLER'S investigation revealed that Efren Reyes, 23, who was killed and Benito Rincon Hernandez, 22, were shot while they were struggling to escape from Cole, who had apprehended them about 30 yards this side of the border.

Miller said his probe showed that "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."

Miller added that Cole had not yet determined they were unarmed.

Cole and his superiors said the agent shot the men in self-defense, while Hernandez and another alien who escaped back into Mexico said the two were shot in the back.

Miller, however, said there was "indisputable physical evidence that the shots entered both men from the front."

Public meet set on health needs

Community health needs of Chula Vista, National City and Bonita will be assessed Wednesday at a public meeting conducted by Health Systems Agency of San Diego and Imperial counties (HSA).

The meeting will begin at 7 p.m. in the Chula Vista High School cafeteria, 820 4th Ave.

It was called to give residents of the three target areas an opportunity to help in the planning of improved community health care services by speaking out on needs, concerns and priorities.

HSA's Subarea Advisory Council V, comprised of 30 South Bay residents, is sponsoring the meeting.

Some of the needs already identified by the council include health education in public schools, family planning services, dental screening in schools, dental care for low-income and senior citizens, primary health care services, and mental health services.

HSA, the local/federally-mandated health planning agency, is involved in developing one-year and five-year health plans for San Diego and Imperial counties.

Input from residents is to be incorporated into those plans.

Barbara Sanders of Chula Vista, an advisory council member, will be moderator.

30 MAY 1979

30 MAY 1979

Filled with shootings, chases

Border scene of violence

The San Ysidro-Tijuana International Border just wasn't a good place to be this weekend.

At least five persons were injured in separate shooting incidents late Sunday night.

Border bandits allegedly opened fire on a group of 100 illegal aliens coming into the United States and up through Spring Canyon. One injured man reportedly was taken to Tijuana hospital for treatment, and another was taken to Chula Vista Community Hospital.

Others sustained lesser injuries.

In another incident, a Border Patrolman reportedly shot a Mexican national.

There also were incidents of rock throwing attacks on Border Patrol agents.

Another Mexican National, Maria Acuna, 35, of Zacatecas, Mexico, was killed in an accident at 5:40 p.m. Sunday at Lone Star and Harvest Roads near Brown Field.

The driver of the car, Juan Rodriguez, Tijuana, was arrested and charged with manslaughter in connection with the fatal accident. Officers said the trunk of Rodriguez' car contained at least four other aliens, two of whom were arrested by Border Patrol agents while others escaped.

Another man was arrested after a high-speed chase from downtown San Diego Monday morning which ended when he reportedly crashed his vehicle into a roadside barrier about a quarter-mile from the border.

California Highway Patrol officers reported that the chase reached speeds of 100-mph as the man and officers sped south on I-5 from its intersection at Hwy. 94 at 9:15 a.m. Monday.

Officers reported the man ignored lights and siren, and wove in and out of traffic for the almost 18-mile pursuit. When captured at the border, he allegedly was "uncooperative" and refused to identify himself and later was taken to University Hospital for treatment of injuries sustained in the crash.

COULD BEGIN FRIDAY

S.D. Union
5-3079

Farm Workers Union Readies Melon Strike

By RAY KIPP
Staff Writer, The San Diego Union

The United Farm Workers Union plans to resume strike pressures on Imperial Valley growers with a general strike against the areas's \$15 million melon crop.

The threatened walkout could begin as early as Friday as Cesar Chavez' union widens its 4-month-old walkout.

"We're not prepared to say exactly when it will be, but there will be a strike," union spokesman Marc Grossman said yesterday.

However, a union bulletin being circulated among workers calls for a general walkout of the melon workers — strikers and non-strikers — between June 1 and June 6.

Grossman would not confirm the possibility that the walkout might be postponed several days until the harvest — delayed because of cold weather and late planting — is in full operation.

But when it comes, it will be directed at melon growers in the Imperial Valley, Blythe, Mendota and Yuma, Ariz., areas.

Up to 2,000 workers could be affected in the Imperial Valley area alone during the June harvest season, according to Ron Hull of the Imperial Valley Vegetable Growers Association.

Many growers believe Chavez is anxious to return his strike to the valley where he has had the most success in the walkout that has concentrated primarily on lettuce growers since it began Jan. 20.

When the strike began in the Imperial Valley, Chavez was able to force the 11 growers targeted for strike activities to suspend or move their harvest efforts or band together to try to salvage one field at a time.

By concentrating his strike forces at the U.S.-Mexico border crossing at Calexico, Chavez was able to effect general work stoppages throughout the valley at times while keeping constant pressure on 11 of the 28 growers negotiating contracts with his union.

However, as the strike expanded to other parts of the state and into Arizona, the union has had less success in keeping the growers from harvesting.

Strike activities have continued in the Imperial Valley, with pickets visible almost every day and with minor incidents from time to time but without a major harvest effort to focus on.

Although the cantaloupe and watermelon harvest involves about 8,100 acres compared with more than 40,000 acres of lettuce land, it could provide a rallying point for the workers, Hull said.

Growers are concerned about a general strike that would hit all the growers instead of those now being struck by the union because few of the struck growers planted large melon crops this year.

"But a general strike, if it is a success, could be bad," said Claude Finnell, Imperial Valley agriculture commissioner. "We're dealing with a sensitive crop and if the weather is right (hot), a couple of days could do a lot of damage."

Mario Saikhon, one of the first growers to be struck by the United Farm Workers, planted only 200 of the 1,200 acres of melons he normally would have planted.

"With that small amount of acreage, we'll be able to harvest with local labor," Saikhon said yesterday.

He said growers will use machines and hourly paid help in the event of a union walkout in the fields.

Like many Imperial Valley growers, Saikhon planted cotton this spring instead of labor-intensive crops.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

SYS 10/1-C

San Ysidro Port of Entry
San Ysidro, Ca.

June 8, 1979

Mr. Richard L. Lawrence
138 W. Maple Street
San Diego, Ca. 92103

Dear Mr. Lawrence:

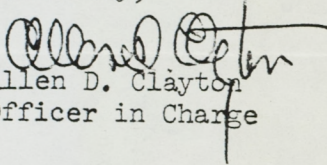
Thank you for your letter describing your unpleasant experience at the San Ysidro Port of Entry when you were entering the United States on May 16, 1979. The policy of the Immigration Service is to review thoroughly any complaint of discourtesy and to initiate corrective action as it is appropriate.

The attitude and demeanor of our officers is of particular concern to us. The officers are under a mandate to conduct themselves with courtesy, consideration and respect in all their contacts with the public.

I have called in Ms. Reyes and counseled her regarding her actions. She is a new officer in training. I assure you such an action will not occur again.

It is only through interested citizens, as yourself, that such actions are brought to my attention. If you ever have a problem again, please ask for a supervisor or myself.

Sincerely,


Allen D. Clayton
Officer in Charge

C.T. 6-13-79

U.S. 'deals' cited in alien case

By WILLIAM POLK

The government has made a series of "deals" with known criminals — including offering them immunity — in order to build an alien-smuggling conspiracy case against suspended U.S. Customs inspector Robert Lee Worrell, his attorney has charged.

In Worrell's federal court trial that opened yesterday, defense attorney Leslie E. Osborne Jr. — challenging the credibility of expected key witnesses against Worrell — lashed out at government tactics he described as "an affront" to the jury's intelligence.

Worrell, 54, of 8880 Fletcher Parkway, La Mesa, is one of two customs inspectors facing charges of conspiracy and accepting bribes to allow "numerous" vehicle loads of illegal aliens to pass undetected through their border inspection gates at the San Ysidro Port of Entry. The acts allegedly occurred between 1978 and April. The other inspector, Charles

Henry Morgan, 57, of 3234 Veralee Drive, will be tried later in a separate trial.

Osborne's comments were in response to Assistant U.S. Attorney Howard Allen's opening statement in the Worrell trial. The prosecutor was relating some of the difficulties the government faced in obtaining testimony from persons considered key witnesses.

Allen told of offering immunity in the Worrell case to Jose Robles, a suspected alien smuggler living in Mexico, in exchange for his testimony. He said the government also promised to recommend a sentence of six months and a probationary term for another alien smuggler, Stephen Paul Novobilsky, a defendant in a previous alien case that resulted in conviction of Customs Inspector Alexander Ralston Trench.

Novobilsky and admitted alien smuggler Miguel Angel Carrillo Gonzalez are both defendants in the current case against Worrell. Allen made no reference to specific promises made to Carrillo Gonzalez. But he said Carrillo Gonzalez was awaiting sentence on a guilty plea entered in the case and has agreed to cooperate with the government, a factor judges generally take into consideration when sentencing a defendant.

Noting the proposed gov-

ernment witnesses' criminal backgrounds, Osborne said:

"The government would dare to parade before you ladies and gentlemen of the jury known criminals who would lie or say anything the prosecution wants them to say in order to keep (them) from spending substantial time in jail.

"And Mr. Allen dares to ask you to believe the testimony of witnesses the government already has promised the keys to the back door of the jailhouse. I submit that's just too much to ask of anyone."

Allen told the jury witnesses he will produce — including Border Patrol investigators — can place Worrell as a key conspirator in the alleged smuggling case.

The first witness called yesterday, Border Patrol investigator Frank Petraglia, told of seeing known alien smugglers talking and signaling to confederates to determine which gates Worrell and Morgan were working. The investigator said he watched both men pass vehicle loads of illegal aliens through inspection gates.

PATROLMAN ACQUITTED IN SHOOTING

Border Patrolman David Louis Krohn has been acquitted on a charge of shooting a fleeing illegal alien in the back.

A Superior Court jury deliberated nearly four days before acquitting Krohn yesterday on charges of assault with a deadly weapon and attempted murder.

Krohn had been charged with shooting Abel Reyes in an Oct. 21 incident.

Testimony during the trial, held before Superior Court Judge William T. Low, revealed that on-duty weapons of all the border patrolmen in the area on the night of the shooting were examined by Border Patrol officials and none had been fired.

However, Krohn, 29, of Bonita, had authorization to carry an off-duty weapon, and he testified during the trial he had thrown the nearly new weapon away shortly after he was charged with the shooting.

Border Agents Urged To Avoid Use Of Force

By BILL OTT

Staff Writer, The San Diego Union

Citing continued violence along the border, U.S. Attorney Michael H. Walsh is urging Border Patrol officers to use utmost restraint in efforts to curb the flow of illegal aliens into the United States.

Walsh told border patrolmen yesterday to avoid force whenever possible, saying that "violence begets violence."

He also cautioned officers they could be held personally liable for damages in civil suits if they make a wrong decision such as wounding someone under questionable circumstances.

Walsh, accompanied by assistant U.S. attorneys Peter K. Nunez and Donald F. Shanahan, met with the officers personally as they gathered for shift changes at the border.

As of 4 p.m. yesterday, they had carried the message to about 150 officers who work "on the line" along the border, which has been described as a battleground.

Some officers have complained of hazards ranging from guns being fired at them to rocks and bottles being hurled at patrols.

Walsh, Nunez and Shanahan met with officers at 8 a.m. and 4 p.m. Monday and at 8 a.m. and 4 p.m. yesterday.

The meetings follow a four-point agreement reached last week between federal officials and Mexican officials headed by Baja California Gov. Roberto De La Madrid in an effort to cool the simmering violence along the border.

In that agreement, De La Madrid offered to establish a hot line between the Border Patrol and Mexican authorities, promising immediate response from both sides to assist in violent or potentially violent situations.

The agreement also calls for a coordinated plan to stop border ban-

(Continued on B-9, Col. 1)

Border Patrol Officers Urged To Avoid Use Of Violence

(Continued from B-1)

ditry and a campaign against organized alien smugglers.

In the meetings with Border Patrol officers, Walsh cautioned the agents that federal policy permits them to use deadly force (guns) only in three circumstances — in self-defense, in defense of the life of another officer, or in defense of an innocent third party. Use of force in any other circumstance carries a threat of criminal prosecution, disciplinary action and possible civil liability on both the government's and the officer's part.

Shanahan, who would be the as-

sistant U.S. attorney to defend any agents in civil actions, said: "We want these agents to know just what their legal rights and responsibilities are. They are personally liable if they make a wrong decision. Their personal assets are on the line."

Walsh is emphasizing beefed-up patrols, two-man assignments in the most dangerous border areas, walkie-talkies carried by agents and the availability of backup officers. Citing these improvements, he is telling agents, if possible, "get help, don't shoot."

Customs Inspector's Trial Opens In Smuggling Case

The San Ysidro border crossing was described in federal court yesterday as "a sluice gate through which a flood of illegal aliens passes daily" with customs inspectors working under adverse and trying conditions.

Defense attorney Leslie E. Osborne Jr. offered this description to a jury in the courtroom of U.S. District Judge Howard B. Turrentine, where customs inspector Robert Lee Worrell went on trial on charges of receiving bribes in a conspiracy to smuggle aliens.

Osborne said the trial will bring to

light that customs inspection lanes become a "cursory thing" when cars are backed up with inspectors working daily under a pall of exhaust fumes.

He said Worrell was working as other inspectors worked, passing through cars "in a very perfunctory manner . . . He acted in a fashion he was instructed to — courteously, efficiently."

Further, Osborne said, most of the prosecution witnesses who will be called to testify have criminal records and "do not know the meaning of truth." By and large, he said, they

have agreed to testify under deals to avoid lengthy prison terms.

Assistant U.S. Attorney Howard A. Allen, however, told the jury that he will present computer records from the period Sept. 8, 1978, through April 9, 1979, involving the license numbers of 44 suspected alien smuggling vehicles that passed through the border, with 41 of the 44 going through Worrell's inspection lane.

The prosecution contends that surveillance by investigators will show that known smugglers communicated verbally and by signals with accomplices to determine which traffic lanes Worrell was working so aliens could be illegally driven across the border. Cash bribes were allegedly involved.

Another customs inspector, Charles Henry Morgan, also is charged in the alleged conspiracy and is scheduled to stand trial separately. Five other individuals also are charged in the conspiracy allegations, all former Tijuana residents.

Border Patrolman Is Acquitted

A Border Patrol officer yesterday was acquitted of assault with a deadly weapon in the Oct. 22 wounding of a Tijuana man who had slipped back across the border into Mexico when he was shot in the back.

Found innocent of the charge by a Superior Court jury was David Louis Krohn, who never was identified as the man who allegedly fired the shot that wounded Abel Reyes.

Krohn had remained on duty pending outcome of trial, but was removed from line patrol along the border.

According to testimony, Krohn had carried a second gun in addition to his service weapon, but had tossed the second weapon into San Diego Bay after he was accused of wounding Reyes.

Witnesses, including Reyes, testified they had crossed the border into the United States and had been chased by agents. Reyes, according to testimony, had pointed out a hole in the border fence for others to return to Mexico. He also had fled back through the hole and.

Baby's Death In Tijuana Blamed On Red Tape

By LEW SCARR

Medical Writer, The San Diego Union

Manolo Augustin Alberto's death certificate probably will list acute dehydration as the cause.

But red tape may be the real killer.

The 18-month-old boy, an American citizen, died in a Tijuana hospital Monday morning after efforts to get him to a hospital in this country were blocked by a tragic series of delays.

Final arrangements had been made to clear his transfer to University Hospital, but by then he was dead.

Federal and county officials in the United States and Mexico and hospital officials and physicians in both countries have been able to piece together this account:

Manolo, American-born, but living with his mother, Irma Alberto, in El Salvador where the mother is a citizen, became ill, apparently with some kind of intestinal disorder.

When the boy tried to eat, he vomited, leading to a loss of fluids, malnutrition and eventual dehydration. Traveling with her sick son, Alberto got as far as Tijuana.

She crossed the border illegally, leaving the baby with a sister in Tijuana.

Robert Mitton, deputy district director for the Immigration and Naturalization Service here, picks up the story:

"On June 15 (last Friday) at 3 a.m. a light blue vehicle arrived at the border. There were two young females and a baby. The females

(Continued on B-4, Col. 1)

S. D. Union
6-20-79

Red Tape Blamed In Death Of Baby

(Continued from B-1)

said they were both citizens and they said they were taking the baby to the United States for medical treatment."

Mitton said the women admitted that neither was the baby's mother, that they did not know the mother and that they had picked the baby up on a Tijuana street corner and were trying to get him to the United States because he was an American citizen.

"The inspector was aware that the child was sick, but in her opinion was not terminal. The instructions our people gave to the two young ladies were get the baby's mother. We don't know if they were kidnaping the baby or smuggling the baby.

"If there were a health emergency, get the mother and we will process her and the baby and get them to a (U.S.) hospital," Mitton said the women were told.

"(The inspector) gave the women a couple of bucks to get milk for the kid and sent them back with the request they appear with the mother.

"To the best of our knowledge that is the only contact the Immigration Service ever had."

Ralph Benson, chief of protection

of American citizens for the American Consulate in Tijuana, continues:

"We were called at about 3 o'clock Friday afternoon by the civil hospital here saying they had the child. We sent an officer to see the child and he said the baby was suffering from second degree malnutrition."

Through an aunt living in Los Angeles, the consulate determined that there were no funds to care for the child in the United States and the San Diego County Welfare Department was contacted. County Welfare and University Hospital made arrangements here for Manolo to be received.

"We anticipated the child could be moved Friday night," Benson said. "However, the state district attorney (in Tijuana) had to investigate the case because the child may have been abandoned.

"They said they could not issue their report until Saturday and that is why the child was not transferred Friday night.

"In between, however, the aunt called the hospital and told them she would come and pick up the child after all on Friday evening.

"And about 9 o'clock that night two people paid the hospital bill and tried to take the child to the United

States."

Benson said the young women, probably the same two encountered by the immigration officer, even tried to have the baby transported to Los Angeles by airplane but the hospital said this was impossible.

By 5 p.m. Sunday, the way was cleared for Manolo to be transferred to University Hospital by ambulance. But the University Hospital physician, Dr. Robert Kahn, pediatric chief resident in the infant intensive care unit at University, was unaware of earlier arrangements by Dr. Charles Landers in the hospital emergency room and by the County Welfare Department for the transfer.

Kahn already had called Tijuana General Hospital and was told the baby was in stable condition, so he deferred action until Monday.

"The hospital (Tijuana) told us Sunday morning that the child was improving, and this was verified by an American representing a Chula Vista church who saw the child early Sunday afternoon."

But when Kahn called about 8:30 a.m. Monday to make final arrangements for transfer, he learned the baby had died. Time of death was 8:20 a.m.

Border Buildup Funds Assured: Rep. Van Deerlin

BY RIVIAN TAYLOR
Times Staff Writer

With assurances from House and Senate appropriations leaders, a San Diego area congressman said Friday he is confident that about 240 new positions will be funded for the U.S. Border Patrol's Chula Vista sector.

Meanwhile, local Border Patrol officials announced Friday they will prosecute all cases involving military personnel who smuggle illegal aliens by circumventing patrol checkpoints.

The officials said about 25% of the 500 smugglers caught each month are military personnel. They added that the patrol has identified six or seven smuggling rings involving military personnel, each of which brings at least 100 illegal aliens into this country every month.

In Washington, Rep. Lionel Van Deerlin, (D-Calif.) said he and Reps. Bob Wilson, (R-Calif.), Clair W. Burgener, (R-Calif.) and other key congressmen agreed not to push for extra funding for the Border Patrol in the House in exchange for a pledge from Rep. John Slack, (D-W. Va.), chairman of the House Appropriations subcommittee, which handles funding for the Border Patrol, that Slack will accept a Senate amendment to increase the annual Border Patrol appropriation by \$14.4 million.

Van Deerlin said Slack did not want the House bill to contain the extra funding because the West Virginia Democrat was dissatisfied with Leonel Castillo, commissioner of the Immigration and Naturalization Service, the Border Patrol's parent agency.

"I'm absolutely confident the funding will be approved. Everyone has given the go sign," Van Deerlin said. "If it comes out of the Senate, and we have been assured it will, there's no question Slack will accept it in conference."

Van Deerlin's office said the Senate Appropriations subcommittee on State, Justice, Commerce and the Judiciary approved Friday an amendment adding the \$14.4 million for the Border Patrol to its appropriation bill. That bill is scheduled to go before the full Senate Appropriations Committee next week.

Van Deerlin said the \$14.4 million
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Van Deerlin Says Congress Will OK Border Buildup

Continued from First Page

will create 495 new permanent positions, with about 240 of the agents and support personnel assigned to the Chula Vista sector which includes Border Patrol stations at Campo, El Cajon, Temecula and San Clemente, as well as the main border crossing at San Ysidro.

The Chula Vista sector now has 521 agents and support personnel, 325 of whom work out of San Ysidro. Van Deerlin said most of the new personnel will be assigned to San Ysidro.

U.S. Atty. Michael Walsh, who earlier in the day recapped his office's efforts in dealing with violence at the border to the San Diego Chamber of Commerce, said he welcomed more manpower for the Border Patrol.

Walsh said additional manpower was needed "so safer procedures can be employed."

He told the chamber audience, "The most important question which remains in this whole unpleasant business is the follow-up, or lack of it, from the American side. Put bluntly manpower is an important issue."

The U.S. attorney also said in an interview that his office will attempt

to prosecute all military personnel apprehended for bringing illegal aliens into the country

Bill Seltzer, assistant chief patrol agent for the Border Patrol's Chula Vista sector, said an increasing number of military personnel are using Camp Pendleton to circumvent the patrol's checkpoint in San Clemente.

He said smugglers use their military identification to enter the sprawling Marine base north of Oceanside, drive through it and exit north of the San Clemente checkpoint. He added that the patrol has even encountered instances of people using stolen military identification and disguises to travel through Camp Pendleton and circumvent the San Clemente checkpoint.

"This is a serious offense and we have to put a stop to it," Seltzer said. "We're going to make certain military personnel involved in transportation of illegals will be prosecuted."

"We've got to stop them going around that damn checkpoint."

Seltzer said in the past about 40% of those apprehended — both military and nonmilitary — have been prosecuted.

Curb Needs Practice

7-26-79

There are those who complain that the trouble with our new lieutenant governor, Mike Curb, is that he keeps trying to run out on the field and score a touchdown while his contract entitles him only to a seat on the bench.

But, what the heck. Maybe he's just trying to prove that he's one of the big kids so that when negotiation time rolls around in a few years they'll let him try out for the varsity.

After watching him for the past few months, I figure he needs all the practice he can get.

Take, for example, Curb's latest foray into San Diego to "develop a better understanding" of primitive living conditions endured by Mexican farm workers, most of whom are illegally in this country.

The lieutenant governor breezed into town, peeled off his coat and took a walk in the sun over freshly plowed ground where a farmer had responded with a bulldozer to county orders to clean up the filthy canyon camp where his fieldhands lived. Then Curb climbed over a hill to take a brief look at an adjacent canyon where many of the same workers had moved to live once again in squalor.

"Shocking," he said. "It is a shocking situation." Finally he mouthed a few cliches about welfare checks taking away the American incentive to work and the need to treat Mexican farm workers with respect and went on his way.

Now I already can hear the cynics among us beginning to laugh. But they don't appreciate fully the niceties of the politics game.

Curb's visit won't help the plight of the Mexican farm worker in Southern California one bit.

But it did give the lieutenant governor an opportunity to practice the old "on site inspection" ploy, which is one adaptation of the basic "get to where the cameras are pointing" trick.

It's an act every aspiring politician must have in his repertoire. And if Curb is going to move off the bench someday it's a move he's got to perfect.

The San Diego visit wasn't really very good. The timing was off. He should have arrived before the bulldozer. And his homework hadn't really been done.

Cliches are fine but they've got to be accompanied by "a three-point program" or a "two-pronged attack."

All certainly was not lost, however. Curb got many printed inches in the newspapers and a good amount of television camera time.

What Curb really needs is some time at the feet of the masters to sharpen his technique.

There are such masters. The best I have ever known in any league is Los Angeles County Supervisor Kenneth Hahn.

Hahn seems to have slowed down a little in recent years. Age causes all of us to mellow. There was a time, however, when Hahn could not be topped for his unerring ability to find the camera's eye.

They tell this classic story of Hahn in his prime, many years ago when major league baseball was new to California and the recently transplanted Brooklyn Dodgers had taken up temporary residence in the Los Angeles Coliseum. A special night was planned to honor a member of the Dodgers team who had been so badly injured in a traffic accident that he would never play again.

Hahn's colleagues on the Board of Supervisors had a hand in the planning of the event and they went all-out to keep Hahn from hogging the publicity.

The event was scheduled for a night when Hahn was to be out of town or committed elsewhere. The other supervisors were to be on stage. One or two were to make brief speeches. Hahn was not even allocated a seat.

At last, his colleagues were convinced, they had ol' Kenny blocked.

Well, the big night arrived. The stadium was darkened except for a single spotlight on the gate through which the injured Dodger was to enter.

As the drum roll ended, the wheelchair slowly emerged. As it made its way, bathed in light, across the Coliseum turf the television cameras whirred without a pause.

And pushing the wheelchair — that's right — was Supervisor Kenneth Hahn.

So get with it, Curb. You still got a ways to go.

County Office Asks Cutoff Of Chicano Federation Aid

By SUZANNE CHONEY

Staff Writer, The San Diego Union

Despite the Chicano Federation's selection of a new executive director, the appointment of more board members and an intense search for a new home, the county Department of Human Services is recommending that funding for the federation be cut off.

"Performance of the Chicano Federation during this funding crisis does not warrant" refunding, said director Robert Caulk in a letter to the Board of Supervisors. "There continues to be ongoing controversy between the (federation) board and community," and "fiscal and management areas need improvement."

"I want to be firm with the federation, not cripple them," said Supervisor Jim Bates, who yesterday said he is not sold on cutting the federation's funding.

The federation is expected to announce today that Irma Castro, a lecturer in Mexican-American Studies at San Diego State University, will become its new executive director.

Supervisors last month gave the federation until Aug. 1 to select a new director, fill most of its board vacancies and find a new location.

Continual staff squabbling, the lack of executive board members to provide direction, and the federation's having only seven directors since 1971 were among the reasons the county grand jury in June recommended the county cut its \$500,000 funding to the federation.

The grand jury also cited problems in the mismanagement.

The grand jury

Ave. site because of clashes with the Chicano Park Steering Committee.

"We've been doing most of the things the board asked us to do," said Danny Martinez, federation chairman, who was confused over Caulk's recommendation.

"We've filled three-quarters of the seats on the (22-member) board," he said. "We are looking at sites on Eleventh Street, across from the San Diego Community College and in Linda Vista. But it is very expensive to find a comparable space, and that will take us awhile. But we are moving in that direction."

S.D. Union 7-26-79

Curb Eyes Swiss Plan For Foreign Workers

By BOB STUDER
Copley News Service

SACRAMENTO — Lt. Gov. Mike Curb yesterday called for the development of a permit system for foreign workers possibly patterned after that used in Switzerland.

Curb, as he had earlier this week, said that some sort of permit system should be developed so that Mexican citizens will be allowed to enter the U.S. to work in the fields and at other jobs.

The state Commission on Agriculture, which Curb chairs, began studying an agreement Curb said has been working well since 1965 between Switzerland and Italy and which could serve as a model for an agreement between the United States and Mexico.

"Under that agreement," Curb said, "if an employer in Switzerland needs a certain number of workers and cannot find them in his own country, he is in a position to ask for them from the Italian government. Those workers then are given proper health checks and they then are admitted to Switzerland on legal work permits and pay taxes to Switzerland on their earnings. In return, they are entitled to whatever services they get."

"I likewise feel that California should also have such a guest worker program," Curb said, "so that at least those who work are given proper respect. We simply cannot continue allowing these people who are here illegally in this country and thus are at everyone's mercy, to live under the conditions I saw in San Diego County."

Curb visited a camp of undocumented workers in San Diego County last week.

"These people were living under conditions that were almost unimaginable," he said. "We found that the area where about 1,000 of them lived, not all of whom were actively at work on the farm, had been bulldozed, apparently at the request of the local health department."

Curb said "if it continues to be a fact that American workers are not willing to take these jobs that are now being filled by illegal aliens, and that appears to be the case, then we are going to have to have some kind of a guest worker program."

"Agriculture is an \$11 billion industry in California. It needs workers to fill these jobs. It is an issue that must be resolved quickly."

Curb pointed to a Rand Corp. study which he said found that out of 2,200 aliens deported to Mexico, the jobs they left were filled after their departure by still other illegal aliens.

"Only one out of 17 jobs over an 18-month period were replaced by an American worker," he said.

A guest worker program, Curb

said, would have to be implemented on the federal level. He intends, he said, to bring the influence of the Commission on Agriculture, the Commission of the California Economic Development Commission — all of which he chairs — to bear on the issue. He also, he said, has arranged to address the federal commission on immigration headed by Rubin Askew, on the guest worker proposal.

"Either we as a state and nation are going to have to change the ways we handle our own welfare recipients to force them into accepting such low pay low skill labor jobs, or we are going to have to institute some kind of a guest worker program," Curb said.

S.D. Union 7-24-75

Alien Farm Worker Tax Provision Backed

WASHINGTON (UPI) — The House last night defeated an attempt to end the exclusion of alien farm workers from federal unemployment taxes paid by their employers.

House members voted 325-85 against the amendment by Rep. Fortney Stark, D-Calif., to a bill making some administrative changes in the work of the National Commission on Unemployment Compensation.

After disposing of the Stark amendment, the House approved the bill by voice vote.

S.D. Union

7-24-75

Chicanos in capital for probe

Local Chicano activist Herman Baca and three others are off to the nation's capital this week to seek a congressional probe into what they claim are "increasing violations of human, civil and constitutional rights" by federal border officials.

Baca said the group will cite the deaths of two children who unsuccessfully sought to cross the border for medical treatment and the shooting death of a Mexican national handcuffed by a Border Patrol officer.

THE FOUR-MAN delegation, which represents Baca's Committee on Chicano Rights, the United California Mexican American Assn. and the San Diego Legal Aid Society, will hold a series of meetings with congressmen, Justice Department officials and Mexican Ambassador Hugo Margain, Baca said.

"The issue of children dying at the border — two since March — handcuffed individuals being killed and wounded, beatings, shootings and sexual attacks on women, have become commonplace and have prompted this trip," Baca said.

BACA SAID the group hopes to "expose the dehumanizing symptoms of this country's national immigration policy and an effort to prove to the American public that President Carter's human rights program is debunked on the issue of immigration."

Baca said the group will meet with Sen. Edward Kennedy (D-Mass.), chairman of the Senate Judiciary Committee; Rep. Elizabeth Holzman, of the immigration subcommittee; Sen. Alan Cranston (D-Calif.); Rep. Ed Roybal (D-Los Angeles), chairman of the subcommittee on appropriations and chairman of the Chicano Caucus; Justice Department officials and Margain.

BACA CHARGED the group has documented at least seven cases of border violence and has information on more than 30 other cases the he classifies as a "strong sampling" of civil rights violations.

But Baca hinted that the deaths of two children will be the main sources of protest.

Manolo Augustine Alberto, 2, died last month, three days after he was refused entry into the United States.

A second child, Mario Alberto Canedo, 4, died last March after officials reportedly delayed permission to cross for medical treatment.

THE WHITE HOUSE

WASHINGTON

September 12, 1979

202
9-15-79

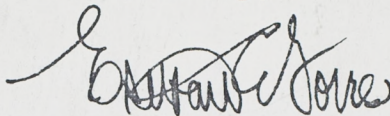
Dear Mr. Garcia:

Hamilton Jordan has asked me to respond to your letter of August 14th.

I have carefully reviewed the Petition for a Congressional Investigation submitted by the Committee on Chicano Rights, Inc., the Legal Aid Society of San Diego, Inc., and your organization, the United California Mexican-American Association. Since it is a petition to the Congress, the ultimate decision is left to that body. However, I am very aware of the situation, not only in California, but all along the United States-Mexican border. Consequently, I have been in contact with the office of the Chairman of the Hispanic Caucus, Congressman Edward Roybal, with respect to your request and have been assured that your petition is receiving attention.

If I can be of any further assistance to you, please do not hesitate to contact me.

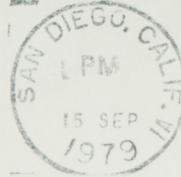
Sincerely,



Esteban E. Torres
Special Assistant to the President
for Hispanic Affairs

Mr. Alberto R. Garcia
State President
United California Mexican
American Association
318 East San Ysidro Boulevard
San Ysidro, CA 92073

United California Mexican American Assn.
318 East San Ysidro Blvd.
San Ysidro, California 92073



Herman Baca, Chairman
MAPA
1839 Highland Ave.,
San Diego, CA 92050

Los Angeles Times

MONDAY, OCTOBER 22, 1978

Resistance to INS Raids Urged at Hispanic 'Summit'

BY MARK FORSTER

Times Staff Writer

Climaxing a "summit conference" of top Hispanic community leaders Sunday at East Los Angeles College, Mexican-American leaders urged peaceful resistance to renewed neighborhood raids by U.S. immigration agents.

The meeting attracted about 100 Hispanic leaders from California and several other states and preceded the second annual rally for Hispanic unity, attended by more than 4,000 persons in the college stadium.

Farm labor leader Cesar Chavez and Mario Obledo, California secretary of health and welfare, were the featured speakers at the rally attended by a number of East Los Angeles political and community leaders.

Obledo was the top political figure at the private morning session, which focused on Hispanic participation in the 1980 census, on voter registration and on immigration.

The chief concern at both the morning meeting and afternoon rally, however, was the resumption of res-

idential raids and the impact it could have on an accurate 1980 census of the Hispanic population.

After the morning session, Obledo said East Los Angeles community groups will organize Operation Resistance "to refrain from cooperating with the Immigration and Naturalization Service in any way or fashion."

Operation Resistance will feature a telephone hot line for members of the Hispanic community threatened by the residential raids, a spokesman for the group said. The hot line will be operated by the One Stop Immigration Law Center in Los Angeles, he said.

In addition, a demonstration to protest the raids is scheduled for noon today outside the Los Angeles federal building, the spokesman said.

INS officials here decided last August to resume the practice of sending agents into areas where illegal aliens live. That method of enforcement had

Please Turn to Page 20, Col. 4

HISPANICS

Continued from First Page

been curtailed two years ago by former INS Commissioner Leonard Chapman in favor of raids on places where undocumented workers are employed.

Hispanic leaders said the residential raids could sabotage an accurate 1980 census of the Hispanic population, a key to possibly increasing Mexican-American political representation through reapportionment of political districts following the count.

During an impromptu press conference, Chavez criticized the raids as "Gestapo-like tactics." The farm labor leader said he has contacted congressmen and President Carter to protest the raids.

"It's most ridiculous in this country

in this day and age," Chavez said about the raids. "We don't need that kind of activity in this country."

Speaking at the rally, Chavez urged the Hispanic audience to be counted in the 1980 census. The labor leader also suggested that elections should be held on weekends to make it easier for workers to vote and that anyone who pays taxes should be eligible to vote.

Assemblyman Art Torres (D-East Los Angeles), speaking at the rally, called for the removal of Los Angeles district immigration Director Joseph Howerton unless the raids are halted.

Rep. Robert Garcia (D-N.Y.), head of a House subcommittee on the 1980 census, was scheduled to appear at both the morning meeting and afternoon rally but was not present because of a death in his family, a spokesman said.

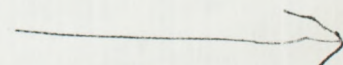
One East Los Angeles community leader who attended the closed morning session said Hispanic groups will demand from every presidential candidate a commitment to support total amnesty for undocumented aliens and an end to immigration raids.

The Hispanic leaders also discussed strategy for a voter registration drive among Mexican-Americans in California.

The statewide drive will be coordinated by the Texas-based Southwest Voter Registration Education Project which has conducted such drives in 125 cities in six southwestern states, said William C. Velasquez, the project director.

Velasquez said the Southwest Voter Registration Education Project has filed 43 lawsuits in the six-state region under provisions for "one man-one vote" representation.

OVER



Por Nuestra Dignidad y Honor Alzamos Nuestra Voz

For Our Dignity & Honor We Raise Our Voice

LA PRENSA

SAN DIEGO



VOL. III No. 38

1950 Fifth Ave

San Diego, Ca. 92101

Sept. 21, 1979

HISPANIC GROUPS VOTE AGAINST CARTER

HISPANIC GROUPS VOTE AGAINST CARTER

Senate Judicial Committee chaired by Senator Ed. Kennedy and the U.S. House of Representative Sub-Committee on Immigration chaired by Congresswoman Elizabeth Holtzman.

Furthermore the CCR also recommended to the conference participants that they also withhold any political support or endorsement from Gov. Brown and other perspective candidates take a position calling for ending the violence involving the violations of human, civil and constitutional rights against persons of Mexican/American ancestry by Border Patrol and Police Officers, and end the policy of militarizing the U.S./ Mexican Border. By vote of the Organizations attending the Conference (MAPA, LULAC, AMERICAN G.I. FORUM, MELDOF, LA RAZA UNIDA, among others) the above recommendation were approved.

SAN DIEGO... Herman Baca Chairman of the San Diego based Committee on Chicano Rights in testimony before the 1st. Hispanic Civil Rights Conference in Sac. Ca. urged National Chicano & Latino leaders attending the conference to "withhold any political support, help or endorsement to President Carters expected 1980 presidential bid, because of his immigration policies and his administrations inaction in resolving the growing number of police brutality cases." In essence we will be proposing to our community that a "Dump Carter"

campaign be implemented in Chicano/Latino communities thru-out the U.S. According to Baca "The issue of police brutality by the local police and the U.S. Border Patrol has reached "epidemic proportion" in the S.W. resulting in the massive violations of human, civil and constitutional rights of all persons of Mexican ancestry.

The Committee on Chicano Rights also recommended to the Civil Rights Conference that it endorse its call for full scale congressional investigations by the U.S.

BRUTALITY, RIGHTS VIOLATIONS ALLEGED**Probe Planned Of Border Situation****(Continued from B-1)**

portedly told Baca that he would discuss it with Mexican President Jose Lopez Portillo and "raise the issue" with President Carter.

Among the cases contained in the report was the May 29 shooting of 16-year-old Martin Zarate of Tijuana.

Border Patrol officials at the time of the incident contended that the youth was wounded in the legs by robbers at the border.

However, in a sworn statement, the boy claimed that he and a companion were wounded by a shotgun blast from a helicopter, presumably belonging to the Border Patrol. Another case contained in the document is that of 18-month-old Manolo Alberto, who died in Tijuana June 16.

The boy, who was to be admitted to a San Diego hospital after three days of red-tape delays, documents show, was denied entry into the United States, although two friends of his mother produced a birth certificate showing him to be a U.S. citizen.

The women said they were accused by U.S. customs officials of kidnapping the child and allegedly were told the child was not seriously

ill. They went back to Tijuana, they said.

Yet, a report from Tijuana General Hospital, where the child was admitted, indicated the infant was suffering from extreme malnutrition and dehydration. Baca said that federal law permits entry of illegal

aliens into the United States when they are deemed to be in need of emergency medical care.

Baca, who said local lobbying efforts began in March following the fatal shooting by a Border Patrol agent of Efren Reyes, called the trip to Washington "a victory."

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Hearings To Probe Border Situation

By **RICARDO CHAVIRA** and **BILL OTT**

Staff Writers, The San Diego Union

Charges of brutality and human rights violations along the United States-Mexico border will be the subject of House subcommittee hearings in October.

Rep. Edward Roybal, D-Calif., confirmed that an appropriations subcommittee, of which he is the ranking member, will hold hearings on the border in California, Arizona and Texas.

Meanwhile, Sen. Alan Cranston, D-Calif., urged Sen. Edward Kennedy, D-Mass, chairman of the Senate Judiciary Committee, to open hearings into the situation.

Locally, U.S. Attorney Michael Walsh was accused yesterday of paying only "lip service" to complaints of U.S. Border Patrol brutality.

The charges came from five staff attorneys for Federal Defenders Inc., which provides legal services in federal court for the indigent, including undocumented immigrants.

Walsh called the attack "a cheap shot."

One of the attorneys for Federal Defenders, a group of attorneys who serve as public defenders under contract with the Federal government, said of Walsh's brutality complaints, "(It's) like a washing machine. Whatever you put in comes out clean."

Walsh replied that every brutality complaint lodged has been "fully investigated."

The actions came as the result of a three-day lobbying effort in Washington, D.C., by Herman Baca, chairman of the Committee on Chicano Rights.

Joining Baca for meetings with congressional leaders and U.S. Department of Justice officials were Alberto Garcia, president of the United California Mexican American Association; Carlos Vasquez of the San Diego Legal Aid Society, and San Ysidro businessman Carlos Scolaro.

Cranston said in a letter to Kennedy that the federal government "is failing to prevent needless violence and bloodshed" along the border, adding that "continued neglect of developments . . . can only worsen matters."

Baca said that he presented documentation to congressmen and government officials with whom he met detailing 20 cases of alleged unjustified shootings, beatings and inhumane treatment by U.S. immigration and customs officials.

He said that he also gave Mexican Ambassador Hugo Margain a copy of the 150-page document, who re-

TIJUANA PAPER SAYS MAN SUCCUMBS S.D. ⁷⁻¹⁰⁻⁷⁹
FROM BEATING AFTER ARREST AT BORDER ^{Union}

A Mexican citizen arrested here June 24 and turned over to Mexican authorities died in a Tijuana hospital three days later after apparently being beaten, a Tijuana newspaper reported yesterday.

ABC newspaper said conflicting versions of the death of Francisco Javier Beltran left unresolved whether he had been beaten by U.S. or Mexican authorities or by inmates in the Tijuana municipal jail.

According to the report filed by the jail, Beltran was turned over to the Mexican state police for being drunk in public and "bothering the American immigration officials."

After checking the records last night, the Border Patrol was unable to confirm an arrest.

A Mexican defense attorney who wishes to remain unidentified confirmed the ABC report that Beltran was turned over to Mexican authorities from the United States.

"Beltran was the victim of a brutal beating before he was jailed," he said. "According to the guards and

inmates, he was hurt when he arrived. Instead of calling someone to help, they put him in an isolated cell. He did not want to be arrested and put up a fight, but that was not where he received his wounds."

Baja California, another Tijuana newspaper, reported that three guards at the jail were forced to call upon two others for assistance to subdue Beltran.

The state police have accused two inmates, Salvador Perez Rodriguez and Donato Gamboa, of the beating in the jail. ⁷⁻¹⁰⁻⁷⁹

CARMEL VALLEY AREA SITE

^{S.D. Union 7-10-79}
Crackdown Planned
On Illegal Alien Camp

One of many makeshift settlements of illegal aliens in the county is targeted for a shake-up because of substandard housing and other health code violations, county sanitation chief Dan Bergman said yesterday.

Bergman said his office plans by next week to notify owners of lands in McGonigle Canyon near Carmel Valley, now occupied by several hundred illegal aliens, that they must demolish the shanties and clean up the litter that is strewn widely about the area. The land is within the city of San Diego.

A large-scale crackdown on other similar encampments, however, is not expected, Bergman said.

Officials of the county Division of Sanitation, state Health Department and U.S. Border Patrol last week went to the McGonigle camp to investigate a report on conditions there.

"We found an accumulation of cardboard-type dwellings in the canyon and brush. There were no toilets and no approved potable water supply. Apparently they've been using irrigation water for bathing, cleaning and cooking," Bergman said.

Many of those living in the camp work in nearby agricultural fields.

"We're checking the tax assessor rolls to determine ownership and once we have that we'll issue abatement notices. If they don't comply in a timely manner, our next step

would be to request a hearing with the (San Diego) city attorney's office," he said. Bergman said he would then ask the city attorney's office to file a criminal complaint against the landowners if there was not "a good faith effort" to comply with health ordinances.

"If we become aware of any others we'll investigate them but we don't know the scope of the problem," Bergman said. He said if his office receives other calls about encampments, officials would be sent to investigate.

Meanwhile, James C. Heinecke, assistant chief U.S. Border Patrol agent, said his office has no plans to raid the McGonigle camp. "We'd dearly love to, but we have our other priority commitments," he said.

Heinecke said normally the Border Patrol agents assigned to farm and ranch checks would probe the area, but these checks have been curtailed in order to crack down on entry of illegal aliens at the border.

Frank Wernsing, San Clemente Border Patrol checkpoint agent, said he estimates that "many thousands" of illegal aliens live in similar settlements in North County agricultural areas, including some in Oceanside, Carlsbad and Escondido.

He said no federal law bars employment of undocumented workers so their employers do not face charges.

30 JUL 1979

Concessions please Hispanics

TRIBUNE News Report

WASHINGTON — Twenty-four hours after they opposed the nomination of Benjamin Civiletti as the next attorney general, Hispanic groups lobbying here won concessions from the Justice Department and endorsed the appointment.

The endorsement was given in exchange for major promises from the Justice Department that it will respond more vigorously to Hispanic allegations of police brutality and other civil rights violations.

Following a 2½-hour meeting Thursday with five Hispanic leaders, Civiletti appeared before Sen. Edward Kennedy's Senate Judiciary Committee yesterday and said he would establish a Hispanic advisory board to alert the department to civil rights violations in housing, education, jobs and law enforcement.

Civiletti also said civil rights enforcement units will be created in certain U.S. attorney's offices and the FBI will be directed to list Hispanic victims separately in national crime reports. They now are listed as white.

Another promise Civiletti made was that he would order an immediate study of activities and policies of the U.S. Border Patrol and cut off federal grants to police departments found guilty of a "pattern and practice" of brutality toward Hispanics.

"We got more than we thought we would," said Fax Rafael Arreola, supervising attorney for the Legal Aid Society of San Diego. "It's taken a long time."

Although Civiletti's nomination to succeed Griffin Bell, who resigned, never was in jeopardy, strong unified charges that Civiletti played a key role in alleged Justice Department indifference to Hispanic concerns caught the Senate Judiciary Committee by surprise.

The committee yesterday completed three days of hearings on President Carter's nomination of Civiletti and is slated to vote Tuesday on a recommendation to the full Senate. Easy Senate confirmation is expected, but action will have to be taken next week to avoid a month-long delay, since Congress will be in recess from Aug. 3 until after Labor Day.



PONDERS — Attorney General designate Benjamin Civiletti pauses before answering a question

as he appears before the Senate Judiciary Committee in Washington. — AP photo

7-28-79

BORDER DELAYS DESCRIBED**INS Assailed In Child Death Cases**

By **RICARDO CHAVIRA**
Staff Writer, The San Diego Union

SAN YSIDRO — The life of an 18-month-old United States citizen who died in a Tijuana hospital last June after being refused entry into San Ysidro for medical treatment could have been saved if border officials had followed established policy, a U.S. Customs inspector testified here yesterday.

Barbara Capolungo made that allegation before a House subcommittee hearing held to determine how delays developed that kept two children from being allowed quickly into the United States for treatment. Both children died before they could be taken across the border.

Capolungo, testifying before the subcommittee on treasury, post office and general government of the House Appropriations Committee, chaired yesterday by Rep. Edward Roybal, D-Calif., and attended for a time by Rep. Lionel Van Deerlin, D-Chula Vista, said following the established policy of granting a "medical parole" would have allowed Manolo Alberto, 1½ when he died June 18 in a Tijuana hospital, to receive more advanced treatment than he was given in Tijuana.

However, she said, Immigration and Naturalization Service (INS) inspector Mary Louise Burns refused to grant the parole, which allows any person in need of emergency medical

care, regardless of citizenship, to receive treatment in the United States.

Capolungo testified that she saw the baby, a native of Los Angeles, on the night of June 15 at the Customs inspection station here, accompanied by his aunt and a friend of his mother.

The two women told Capolungo that they were taking Manolo to Van Nuys, where he would be placed in a hospital, she said. When one of the women, Guadalupe Alonzo, showed Capolungo the child, she determined the child to be "near third stage malnutrition."

Capolungo added, "He looked like a Biafra baby. He had sunken eyes with a blank look. His stomach was distended. He had pitted arms and legs and there was no fat or meat on him."

Capolungo said she holds a degree as a social worker in nutrition and is familiar with the symptoms of malnutrition. The child, she said, showed signs of suffering from severe malnutrition caused by a diet high in carbohydrate and low in protein.

Burns, she said, accused the women of having bought Manolo's birth certificate. She quoted Burns as telling them, "I can tell he's Mexican without looking at his birth certificate."

She said Burns was "rude and offensive" in questioning the women. Capolungo said such manner of questioning is often used by the

INS. James O'Keefe, INS district director, said his agency does not tolerate such behavior.

Burns reportedly told the women they would have to take the child back to Tijuana. A supervisor found no fault with that decision, Capolungo said, and the women returned to Tijuana.

O'Keefe said the baby was in a Tijuana hospital within 35 minutes after being turned away at the border, adding that he received speedier treatment than if he had been taken to Van Nuys. The child died in Tijuana June 18, at which time he weighed just over 6 pounds.

Testimony in the Alberto case and that of 4-year-old Mario Canedo, a heart patient who died at the border crossing March 20 of a cardiac seizure, indicated a lack of coordination between Customs and INS in the handling of Mexicans seeking emergency medical care in the U.S.

Witnesses described the granting of emergency clearance at primary inspection stations, followed by delays and, in the case of Manolo, refusal of entry at the secondary station.

Roybal, who held similar hearings here in 1972, said he was surprised by the lack of coordination between the two agencies seven years later.

Testimony showed that while Customs might clear a person for emergency care, once it determined

the person carried no contraband, INS had to give final approval.

In both cases investigated yesterday, clearing secondary inspection, and INS officials, was the hitch, testimony showed.

A tearful Guadalupe Canedo Astorga, an aunt of Mario Canedo, related how she was quickly allowed through a special inspection gate reserved for emergency crossings only to be told to "take a number and sit down" while her nephew died in the secondary inspection station.

Judy Franklin, the Customs inspector who let the Canedo vehicle through the special gate, told the committee that she called personnel at the secondary station, advising them that Mario needed an ambulance.

Rafael Arreola, a San Diego Legal Aid Society attorney representing the Canedo family, told the committee that the woman was ordered out of the vehicle and into a waiting room.

She said that as the child weakened, she became desperate at not being attended and walked out of the room.

Raymond Seewold, supervising Customs inspector on duty at the secondary station that day, said that because Canedo left her car, ambulance attendants could not find the child.

"When the ambulance got there," sobbed Canedo, "the child held on to me tightly and died in my arms."

At one point during the all-day hearing, Herman Baca of the Committee on Chicano Rights and Roybal accused each other of putting political considerations above humanitarian concerns.

Baca, called as a witness, said that looking into just two cases would not produce results. He reportedly gave Roybal and other congressional leaders a 150-page document detailing 23 alleged cases of human rights violations along the border.

Baca also objected to holding the hearing at the Customs offices.

Roybal denied the allegations and said that the hearings were not politically motivated. "I don't represent anyone in San Diego," he said.

He called Baca ungrateful, noting the fact that he (Roybal) so far is the only congressman to respond to requests for hearings on the border.

Baca and several followers walked out of the hearing following the exchange.

Roybal said he plans to present findings and recommendations to the full committee for possible action when Congress reconvenes next month.

U.S. To Seize Vehicles Used In Alien Smuggling

By **HOMER CLANCE**
Staff Writer, The San Diego Union

The Border Patrol soon will begin seizing vehicles used to smuggle aliens into the United States, federal officials said yesterday.

U.S. Border Patrol officials and Assistant U.S. Attorneys Tom Coffin and Steve Petrix said they want to begin the seizure program as soon as possible.

The seizures are authorized under legislation that became effective in May.

A vehicle is subject to forfeiture when the government establishes that it was used to transport aliens illegally, and that the owner knew or had reason to be-

lieve it was being used for that purpose, Coffin said.

"Before this law, there was no provision for forfeiting vehicles used strictly for transporting illegal aliens," said Coffin, acting chief of the criminal division.

The U.S. Customs Service long has had legal authority to seize vehicles used in the transportation of narcotics, he said.

Seized vehicles can be used by government agencies or can be sold at auction, he added.

Petrix said implementing instructions to enforce the new law — the actual mechanics to be used by Border Patrol agents — have been issued by the Immigration and Naturalization Service in Washington.

He added, however, that officers must be trained in the procedures to be used in enforcing the law.

"The INS has never been involved in such a thing — it is an entirely new procedure. Vehicles must be transported to a seizure lot.

"Notifications must be given to the registered owner and the legal owner. There is an awful lot of paperwork in the program. Provisions for hearings on the seized vehicles must be established. We've got to train people to do something they have never done before."

William Selzer, assistant chief of the Border Patrol's Chula Vista sector — which includes the San Ysidro port of entry — said the Border Patrol wants to begin enforcement as soon as possible.

Last year the Border Patrol apprehended 18,000 alien smugglers in this area, Selzer said. More than one million illegal aliens were apprehended nationwide, and one third of them were caught along the 18-mile stretch of border here, he said.

Between 500 and 600 alien smugglers are caught each month in this sector, Selzer said. He said 615 were caught in May, 513 in June, and 481 in July.

✓ Finger of blame pointed

8-12-79

Two deaths at border probed

(Continued from Page A-1)

ther search needed to emergency.

"I waited there a long time," she said.

According to Canedo Astorga, she became desperate and left her car.

But, she reported, "an officer said, 'I don't care. You go down there so they can check your identification.'"

She went back and was told an ambulance was on the way. But "when the ambulance arrived, the child got hold of my clothes and died in my arms."

FLANKED by Van Deerlin and a Treasury subcommittee staffer, Roybal took a hard look at that death and the death of Manolo Alberto, an 18-month-old U.S. citizen, who died of starvation June 16 — three days after U.S. officials denied him entry into the U.S.

Testifying in the death of Alberto were family friend Lupe Alonzo, an American citizen, and customs inspector and social welfare graduate Barbara Capolungo, whose frank testimony gave the hearings an almost surrealistic tone.

Calling on supervisors after seeing the emaciated Alberto, Capolungo "involuntarily" said "this baby is starving." The child, she said, "looked like a Biafra baby. He had no fat or muscle."

'I was deeply disturbed. A baby was dying in front of us.'

"The baby's skin was dry and loose. On the neck and stomach there was an unusual infection.

"In my own mind," Capolungo went on, "the baby was in third stage malnutrition, when the body starts consuming its organs to sustain itself."

CAPOLUNGO also described her futile efforts to get the child help and the incredible bureaucratic snafu that occurred because of the overlapping roles of customs and Immigration and Naturalization Service officers.

According to Capolungo, Lupe Alonzo and Alberto were first met at the border by primary inspector Phillip Rihard who, thinking there might be narcotics in the car, sent them through to secondary inspection.

Though it was customs people who first saw the dying child — and could have cleared him for passage — the disposition of Alberto at that point became the responsibility of immigration officers.

THE DECISION to either let the child in or turn him back fell upon Immigration officer Mary Louise Burns and her superior, Hank Owens, neither of whom appeared to defend

themselves at the hearing. The subcommittee's jurisdiction covers only customs, so immigration officials could not be asked to testify.

Capolungo said immigration agents in their secondary inspection, "start off angry in the hopes to catch the person off guard."

According to Capolungo, Burns said, "I can tell he's Mexican without looking at the birth certificate," that turned out to be a valid American one issued out of Los Angeles.

"I was deeply disturbed," Capolungo said. "A baby was dying in front of us."

"She (Burns) said the birth certificate was not the baby's and that she was sending the baby back to Mexico as an alien. Burns had taken the women (carrying Alberto) back to Mexico without my knowledge."

AS IT turned out, there was a solution. Alonzo could've gained a medical parole that would have allowed the child entry.

But no one told her — Capolungo because she feared being charged with "interfering with" immigration officers, and Burns, for whatever reason she and Owens had.

Critical in the deaths of both babies was the fact that neither was accompanied by police or ambulance — a must for speedy passage.

AT THE hearings both Van Deerlin and Roybal made clear something should be done to prevent such a recurrence.

During testimony, Van Deerlin told the crowd he wants to "see we don't have similar problems."

He proposed a "trans-border ambulance service," the establishment of which he left in the hands of local government officials.

Van Deerlin's was the only concrete idea for change proposed by officials. Because the hearing was held to investigate, it often took the tone of a trial where no verdict would come.

BLAME FOR the deaths inevitably turned toward Immigration officials — who had the final say in both cases.

And though given no chance to testify, the INS in a release from commissioner Leonel Castillo, revealed there would be a probe.

According to the release circulated at the hearing, Castillo has been asked by Rep. Elizabeth Holtzman, chairwoman of the House subcommittee on immigration, "to look into charges made by members of the San Diego community that the service acted improperly in several instances."

Castillo also pledged "action" against any individuals found to have committed some wrongdoing.

CAPOLUNGO, Cañedo Astorga and Alonzo were among many to testify. The line-up included a regional customs director, San Diego Legal Aid Society director Rafael Arreola — who had clearly organized the chilling testimony — and others.

Regional Customs Director Manny Najera told the subcommittee of changes made since the deaths, but he lamented the overlapping authorities of customs and INS.

Instead of merely directing needy persons to secondary inspection, Najera said, officials now place a marker on cars carrying persons needing emergency attention.

Another change, Najera said, concerns the passage of persons from primary to secondary inspection. In the past, he said, cars were simply marked and passed on.

'The child looked like a Biafra baby. He had no fat or muscle.... The baby was in the third stage of malnutrition where the body starts to consume its organs!'

Now, he said, needy persons are escorted to the secondary point by an officer who is to ensure they get attention.

IN ADDITION, Najera promised Roybal he would receive in a week recommendations to coordinate the overlapping roles of INS and customs, both of which work the border but have sometimes similar and sometimes different jobs.

"I would like to find some way where directives could be made applicable to both services," Najera said.

Despite the changes, it was Arreola who had the last word.

"For Alberto Cañedo," Arreola said, "University Hospital was the only alternative."

Yet, he said, "INS refused to issue a multiple-entry visa, forcing the mother and child to wait each time."

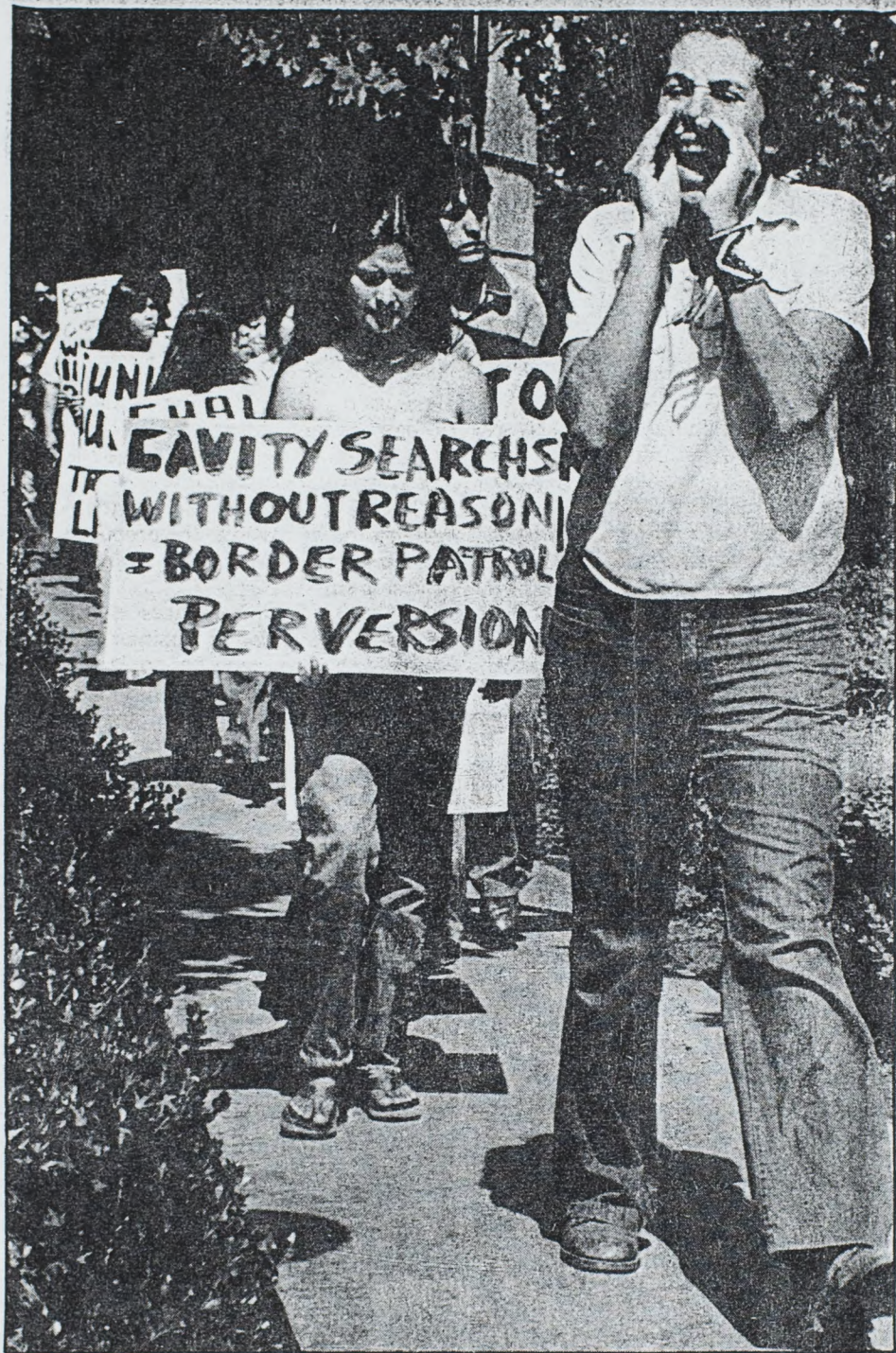
Manolo Alberto, he said, "was arbitrarily denied admission to the United States despite his grave condition."

Arreola described Alberto as anemic, in third stage malnutrition and second stage dehydration.

"His pictures," Arreola said, "clearly show the seriousness of the problem."

"Even in death," Arreola concluded, "Manolo remained a victim."





PROTESTERS PICKET AND SHOUT OUTSIDE BORDER HEARING
Congressmen inside were looking into reasons for deaths at border

Star-News photo

Congressman hears testimony

Finger of blame pointed in two border deaths

By ROBERT GOLUM
Star-News Staff Writer

It was the early morning hours of March 20, and the heart of 4-year-old Alberto Cañedo was beating its last beats.

As if his final act had to be a last grab at life, the stricken youth — suffering complications of open heart surgery which had taken place in San Diego — reached up and with a deathly grip, clutched the clothing of the aunt who held him.

But that last grab at life went unanswered. He expired in the arms of an aunt desperately trying to get him medical attention in the United States.

THAT IS the chilling tale told this week by Guadalupe Cañedo Astorga who on March 20 was delayed at the international border as she tried to head north for medical help. Without a multiple-entry visa they had had to wait for clearance during each crossing for medical attention.

Sometimes crying, Cañedo Astorga told a congressional subcommittee — in San Diego to investigate Cañedo's and another border death — the sad tale of how her nephew died in her arms as the two waited to head north.

"Whatever happened to me I don't want to happen to someone else," Cañedo Astorga told the subcommittee, headed by Rep. Ed Roybal (D-Los Angeles) and attended by Rep.

Lionel Van Deerlin (D-Chula Vista.).

CANEDO ASTORGA'S testimony was among the highlights of the day-long hearing attended by some 80 persons, but heard by some 300 listening to loudspeakers outside the U.S. Customs Building in San Ysidro.

The hearing was held not to effect any change, but to gather evidence — evidence that eventually pointed to the Immigration and Naturalization Service as the chief decision-making body involved when the two children died.

"I asked them to give me attention, and they didn't pay any attention to me," Cañedo Astorga testified.

"The day of the death a Mexican police officer — I told him the child was very sick — went to the front of the line (border) and told an officer the child was very sick.

"When the (U.S.) officer approached me," she said, "I uncovered the child and she saw he was very sick."

WHAT HAPPENED next, according to hearing testimony, is what used to be standard operating procedure at the border.

Cañedo Astorga, with babe in arms, was directed to secondary inspection, accompanied by a small yellow slip that can indicate anything from fur-

✓ Please turn to back page, this section



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Chula Vista Star-News

EDITION

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8-11-79

4 Aliens Robbed, Woman Raped

Four undocumented Mexicans were beaten and robbed and their woman companion was raped shortly after they crossed the border into the United States late Thursday night, police reported yesterday.

Bill Robinson, information officer for the San Diego Police Department, said the four men and the 32-year-old woman were assaulted and robbed of \$550 by six men. Three of the suspects were armed with knives.

The incident occurred half a mile east of the San Ysidro port of entry.

Robinson said the five victims were turned over to the U.S. Border Patrol for deportation.

OUR READERS WRITE:

Federal Defenders' Role In Stopping

The Beating Of Aliens

10-8-79
SAN Diego Union

Misleading is the best way to describe recent claims of U.S. Attorney Michael Walsh, endorsed by *The San Diego Union* (Sept. 28), that five attorneys from Federal Defenders impeded a government investigation of Border Patrol brutality.

The remarks by the Federal Defenders attorneys on July 26, 1979, that the United States attorney's office was not vigorously pursuing cases of aliens being beaten and abused by Border Patrol agents, followed one year of frequent complaints from the Federal Defender's office to Mr. Walsh and his subordinates that this type of activity was occurring.

The implication that the five attorneys knew an investigation was taking place is incorrect. It is illogical and irresponsible to suggest it was our purpose to disrupt this investigation. Our purpose in speaking out was to bring a halt to the all-too-frequent beatings of defenseless aliens by Border Patrol agents. Apparently our efforts have had some effect.

Mr. Walsh should be commended for taking action and pursuing prosecution where it is warranted. However, we find unpersuasive his suggestion that those who observe government abuses and direct complaints

to the proper places, should continue to remain silent in the wake of government inaction.

We are very disappointed that *The Union*, a representative of the free press which recently decried a Supreme Court decision barring the media from criminal trial proceedings, would endorse Mr. Walsh's preference that First Amendment rights not be exercised in the face of government abuse. We are certain *The Union* would understand our "eagerness to see abuses stamped out" if it had seen time and time again the swollen and beaten bodies of our clients.

CRAIG E. WEINERMAN

CRAIG E. FENECH

EUGENE G. IREDALE

Trial Attorneys

Federal Defenders of San Diego Inc.

Immigration Commission Leader Named

Carter Appoints Theodore Hesburgh, Notre Dame President

By RICARDO CHAVIRA

Staff Writer, The San Diego Union

President Carter announced here yesterday the appointment of the Rev. Theodore Hesburgh as the new chairman of the Select Commission on Immigration and Refugee Policy.

Hesburgh's appointment was made known to commission members at a Tuesday meeting in Washington, D.C. The 62-year-old Hesburgh, president of the University of Notre Dame, replaces former Florida governor Reubin Askew.

Mr. Carter offered Hesburgh the post late last month. Hesburgh has been president of Notre Dame for the last 27 years and is former chairman of the U.S. Civil Rights Commission.

Expected to play a key role in immigration law reform, especially as it applies to illegal aliens, the commission is just now beginning work in earnest.

The commission was created by Congress last year to evaluate existing laws governing immigrants and refugees and to suggest changes.

Cruz Reynoso, a commission



THEODORIE HESBURGH
... replaces A skew

member and an associate justice of the state's 3rd Appellate District, praised the selection of Hesburgh.

Reynoso said he has followed the career of Hesburgh since Hesburgh

served as chairman of the Civil Rights Commission.

"I saw that he had a great deal of sympathy for the suffering of the underprivileged," Reynoso said.

Recognized as one of the nation's best known Roman Catholic leaders, Hesburgh in 1973 called for the establishment of an international agency to grant world citizenship. He said that measure would help break down "the one great remaining divider of humankind, national sovereignty."

Hesburgh, the former U.S. ambassador to the United Nations conference on science and technology for development, will preside over the commission as it begins public hearings around the nation next month.

The 16-member commission is expected to submit its report to the President and Congress on Sept. 30, 1980.

Recently, Hesburgh was a finalist for the job of U.S. ambassador to the United Nations to replace Andrew Young.

Hesburgh will continue to serve as president of Notre Dame.

Walsh Warns Carter On Border Problems

By GEORGE E. CONDON JR.

Politics Writer, The San Diego Union

U.S. Attorney Michael Walsh warned President Carter yesterday that illegal immigration is out of control at the U.S.-Mexican border here, but Walsh said there is little the federal government can do about the situation now.

Riding in the President's limousine from Lindbergh Field to the Hyatt Islandia Hotel, where Mr. Carter gave the first of two San Diego speeches, Walsh said the President "asked me if it (the border) was under control."

"I told him no," said Walsh later.

"Then he asked was there any imminent prospect of getting it under control," said Walsh. "I said no."

Walsh said Mr. Carter "recog-

nized this as a serious and intractable problem" but (did not hold out hope for a prompt federal attack on the problem.

"I don't think there are any major steps to be taken soon," said the U.S. attorney, adding that local actions can be more important now than anything the federal government can do.

As a short-term example, Walsh said steps taken locally have almost eliminated the problem of Border Patrol officers shooting Mexicans trying to enter the United States.

"Not a single one has been shot since we took those steps," he said. "Six or seven were shot in the six weeks before."

While in San Diego, Mr. Carter also was lobbied by two county supervisors. Supervisor Jim Bates

alerted Mr. Carter to the Chamber of Commerce drive to secure a pair of rare pandas from the Peoples Republic of China.

Bates asked the President to use his influence with Chinese leaders to get the pandas for the San Diego Zoo.

Supervisor Tom Hamilton, who was at the meeting with the President, said Mr. Carter promised "he'd do what he can through the diplomatic circles to help San Diego."

Hamilton also asked the President to schedule one of his town meetings in San Diego. He said Mr. Carter expressed interest but was noncommittal about when he could plan such an event.

LA PRENSA SAN DIEGO 09.12.79

THE INS/BORDER LOG

This week we bring you the story of Victor Ojeda Anguiano who was brutally beaten by the INS/Border Patrol. In bringing you these actual cases of what is happening, we do so with the aim that the American public will become aware of the actual situation existing along our borderlands. We note that the Copley Press still is carrying major stories attempting to whitewash or cover up what is daily occurring. We find it inexcusable that these beatings are still occurring along our borders. President Carter, who will be here this Thursday, will be provided with a complete file of these cases appearing in La Prensa San Diego. U.S. Attorney Walsh, Mayor Pete Wilson, The Board of Supervisors, in fact, no major Anglo institution aside from the Ecumenical Council, which tried to hold a Mass at Friendship Park along the border in protest against the brutalities but was prevented from doing so, has risen their voice in condemnation of what is daily being perpetrated by Border Patrol Agents against defenseless aliens. These are not "made-up stories" but actual happenings. The question remains... Why is it that La Prensa San Diego is the only newspaper that dares expose what is going on!!!! Is it because those that are involved are Mexican Aliens??? They too are human beings. YA BASTA!

10-12-79



VICTOR OJEDA ANGUIANO, el joven de 21 años, golpeado por la Border Patrol.

October 12 1979

LA PRENSA SAN DIEGO 10-12-79

Cont from pg 2

THE CASE OF VICTOR OJEDA ANGIANO

I am twenty-one years old and a native of Mexico from San Luis Potosi, Mexico.

In June of 1979, I entered the United States with my second cousin and my cousin's Uncle. We came to work in the area of North County. It took us about four days to reach the ranch where my cousin had worked before. The ranch is located between Escondido and Ramona. They gave us work and my job was to prune or trim avocado trees. After two and one half months, after the planting season ended, all of the workers left and I remained to do the watering of the fields.

I knew my boss to be Steve and he would give instructions for my daily chores. My duties consisted of watering all of the fields and checking the small avocado trees. Steve also kept track of my hours and gave me my paycheck.

During the time I was working, I remember seeing the "Migra" drive by on a regular basis, but never did they drive up to the ranch or slow down to check around.

On or about September 4, 1979, I woke up as usual. I got to work at about 6:30. I grabbed the pliers for opening the valves and started to make my rounds. At about 10:A.M., as I was walking between the rows of trees, I saw a light green wagon with two men in light green uniforms, that I knew was the "Migra". (Border Patrol) I began to walk away from them and I saw them get out of the wagon. I then started to run a short way and they began to run after me. At no time did they say a thing to me. I remember them catching up to me. I felt two blows to my head with such force that I fell to the ground unconscious. The next thing I remember was waking up in the hospital four or five days later, still in a daze. On the day I woke

up, my second cousin, Steve and my cousin's Uncle came to see me. They told me that on the day that I was beat up, I had been found by another worker on the ranch, an older American man. I was told that two Sheriffs came to see me, but that I was not able to answer their questions because of my condition.

I was at the hospital until September 13, 1979. They treated me for a **fractured jaw, broken right leg, broken left arm,** and **blows to the head** that caused by eyes to swell shut. I was released to Mr. Ruiz, a friend who took me to Tijuana. Mr. Ruiz took me to the General Hospital, but I was refused admittance. I spent one night at a hotel and then taken to the Red-Cross Hospital. There they performed an emergency surgery on my jaw because of a serious infection. I have been at the Red Cross since then.

4 Indicted Officers Said Suspended

10-13-79
By SUSAN JETTON
Staff Writer, The San Diego Union

Four border patrolmen indicted on federal charges stemming from alleged brutality to aliens, have been suspended without pay from the Border Patrol pending completion of their trial, Border Patrol sources said last night.

The four men, Jeffrey Otherson, Bruce Brown, Dirk Dick and Daniel Charet, reportedly were told yesterday by patrol officers to turn in their badges, guns and other patrol equipment. Their trial is scheduled to begin in federal court Nov. 13.

The sources said the four men will be notified officially Monday morning of the administrative action by Chula Vista Sector Chief Don Cameron.

Cameron, who heard arguments on the administrative action earlier this week, was in Washington Thursday and yesterday meeting with David Crosland, acting director of the Immigration and Naturalization Service (INS).

Deputy Sector Chief Al Franco said yesterday afternoon the matter "had been deferred until Monday morning," and declined further comment.

However, sources inside the Border Patrol said last night that the men were suspended without pay as of the close of the business day yesterday.

Since the Sept. 25 indictment, they have been on administrative leave with pay. They are due to receive one more paycheck for this past week.

The four were indicted by a federal grand jury of conspiracy to defraud the government by obstructing the lawful functions of the government and failure to properly perform their duties as border patrolmen as a result of incidents July 3 and 4, when they allegedly beat aliens. Charet also is charged with perjury before the grand jury stemming from an obscene remark he allegedly made to a female alien.

The four patrolmen could not be reached last night for comment.

Other patrolmen reacted with anger and disbelief last night after hearing of the suspensions. "They were condemned by one man without even the right to face their accusers or go before a jury of their peers," one patrolman said.

"We're not commenting on their guilt or innocence in a criminal matter," said a patrolman, who, like the others interviewed, asked that he not be identified for fear of disciplinary action by his superiors.

"We're arguing about the rotten way they've been treated. They're being made an example without due process." The patrolmen said they believe the action was ordered by higher-ranking officials in Washington. "These men have been convict-

(Continued on B-6, Col. 1)

FBI Probes Alien Beatings

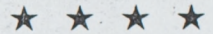
(Story on Page B-1)

MOSTLY SUNNY

Mostly sunny through tomorrow with a temperature range of 62 to 78 degrees in the coastal strip, 50 to 85 degrees inland. Details, Page A-11.

The San Diego Union

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SDU 10 OCT 79

FBI Probes Charge That Aliens Beaten

By RICARDO CHAVIRA

Staff Writer, The San Diego Union

The FBI is investigating allegations that Border Patrol officers beat and violated the civil rights of undocumented aliens and, in some cases, legal U.S. residents of Latin-American ancestry, an FBI spokesman in Washington, D.C., confirmed yesterday.

Law enforcement sources said that the FBI probe grew out of the indictment of four Border Patrol officers on charges of brutality against aliens and a subsequent FBI investigation of a reported attempt to harm witnesses expected to testify against the officers.

The allegations under investigation involve incidents that purportedly occurred in the San Diego area between 1974 and June of this year. Only a few cases are being investigated, according to the FBI spokesman.

But neither he, nor a Department of Justice official who confirmed that the probe is under way would disclose details of the cases.

"It's not a large scale thing," said the FBI spokesman, "but we are looking at some cases referred to us by the Justice Department."

The allegations originally were brought to light in July during a trip to Washington by Herman Baca, chairman of the Committee on Chicano Rights and representatives of the Legal Aid Society of San Diego and the United Mexican American Association.

During that trip, Baca and the others met with several legislators and Justice Department officials to request congressional hearings on what they claimed was a widespread pattern of violence and civil rights violations perpetrated by Border Patrol officers against undocumented Mexican immigrants and legal Hispanic residents.

To support their charges, the group presented documents detailing 10 alleged incidents in which Border Patrol officials shot, beat and deprived Mexican aliens and Hispanics of their civil rights.

In response to the visit, U.S. Rep. Edward Roybal, D-Los Angeles, convened a one-day hearing in San Ysidro in August to hear testimony about two of the 10 cases. Witnesses and Customs officials testified about the deaths of two children, Manolo Alberto and Mario Canedo, who died

Charge That Aliens Beaten Probed

(Continued from B-1)

of illnesses before immigration authorities would allow them to enter the United States.

Law enforcement sources said that Department of Justice officials did not ask the FBI to look into the cases brought to their attention until after the indictments and the alleged attempt to harm witnesses.

Border Patrolmen Jeffery Othrer-

son, Bruce Brown, Dirk Dick and Daniel Charest were indicted last month on charges of conspiracy to defraud the government by interfering with lawful government functions and depriving aliens of their civil rights in a series of beatings.

The supposed attempt to tamper with witnesses — Border Patrolmen Steve Iverson, Blake Brown and Brent King — involved the loosening of the lug nuts on the left front tire of

the car used by the witnesses.

While it was not clear which of the 10 alleged incidents presented by Baca and his companions are under investigation, a copy of the documents supporting the allegations has been obtained.

Among the incidents described is the February shooting of Margarito Balderas. According to his notarized statement, he was confronted by a Border Patrolman as he walked into the United States near the San Ysidro Port of Entry.

The officer reportedly pointed a pistol at Balderas, who said he then turned to walk away. "The officer said, 'Stop, put your hands up,' and I did," said Balderas.

"I felt two shots hit me," he continued, "managed to stay standing a few seconds and then had to lie down."

A hospital report indicated that Balderas was shot with a .357 Magnum pistol in both right and left forearms. He also was cut on the right arm, the report showed.

Balderas said that as he lay on the ground the patrolman who allegedly shot him, Robert Reidell, then kicked him and cut his arm.

It could not be learned if there was an investigation of the allegations.

Another shooting involved 16-year-old Martin Zarate. His notarized statement indicates that he was shot in the legs from a helicopter in May as he crossed from the Colonia Libertad section of Tijuana into the Spring Canyon area.

A University Hospital report indicates that the youth was shot in both legs with a shotgun. Zarate said that within 10 minutes patrolmen arrived to question him and render first aid.

"As I was receiving emergency treatment I could see the helicopter still hovering above us," said Zarate.

Following the incident, Border Patrol officials said that Zarate was shot by border bandits.

Also contained among the cases is that of Luciano Ortiz, a native of Puerto Rico, who in a sworn statement charges that Border Patrolmen apprehended him in August of 1978 while he fished at Imperial Beach.

He said officers at the Chula Vista Border Patrol station beat and kicked him repeatedly when he reportedly refused to "sign some papers explaining my rights and other things."

Ortiz said that he told officers he was a U.S. citizen but that they refused to believe him.

"My forehead, the side and back of my head were banged against the

At Border Patrol trial

Trainees describe brutal acts

Prosecution witnesses this week testified about an alleged beating and kicking incident as the trial got under way for four Border Patrol agents charged with brutalizing illegal aliens.

As the trial in U.S. District Court entered its third day Friday, Border Patrol trainee William E. Tatu related details of an alleged Aug. 1 incident, in which agent Dirk Dick of Chula Vista is accused of kicking an unidentified alien in the face.

DICK AND AGENTS Jeffery Otherson, Bruce Brown and Daniel Charest are being tried by a jury of seven men and five women before U.S. District Court

holding area where he apparently dropped from exhaustion.

Tatu said when the alien, looking "like he couldn't run any more," dropped to the ground in a sitting position, leaning back on his elbows, Dick kicked him with the sole of his boot, not his toe.

He told U.S. Attorney Michael H. Walsh it was a hard kick.

Under cross-examination by defense attorney Nelson Brav, Tatu said the "kick" was accomplished with an extension of the leg from an upright position.

Brav said the move could have been a force to hold, rather than a kick. Tatu also told

ACCORDING TO Freselli, the alien's hand "began to swell . . . to the point you couldn't recognize his knuckles."

He said the alien never admitted making an obscene gesture at the patrol craft, and Brown and Otherson eventually gave up their interrogation and put him back into a van.

Freselli identified Otherson, Brown and Dick as participating in at least two beatings, but said he had not voluntarily become a government informant.

HE INDICATED he testified before a federal grand jury only after learning he had been secretly taped by investigators while discussing the alleged beatings with a fellow trainee, Darrell Brewer.

Brewer reportedly prompted the government's investigation through a complaint.

A cross-examination by defense attorney Michael McCabe concentrated on purported inconsistencies in Freselli's testimony.

Freselli's testimony followed opening trial statements by Walsh and two of four defense attorneys, who gave sharply contrasting views of circumstances surrounding the charges against the suspended agents.

WALSH ACCUSED the four officers of engaging in a "criminal partnership" that deprived the government of its lawful functions through beatings that not only amounted to vigilante justice, but deprived the aliens of their civil rights.

Defense attorneys Joseph Milchen and Nelson Brav told the

jury the patrolmen involved were dealing with lawbreakers and, in some instances, used reasonable force while working under adverse and sometimes dangerous conditions.

Brav emphasized that when the aliens were processed for return to Mexico there were no complaints of beatings, and, he said, Mexican officials refused to accept returned aliens who are seriously injured.

WALSH TOUCHED on an alleged radio code that was used in the conspiracy, referring to the term "Delta Henry," words not normally used by agents in their transmissions.

He contended, "Delta Henry, of course, means the designated hitter (or agent designated to mete out punishment)."

Later, Freselli also testified that he heard an unknown agent July 3 broadcast on the agency's radio that "maybe he (an alien) should go see Bruce."

According to the government, the radio message referred to agent Bruce Brown, who later allegedly beat the alien with his nightstick and gloved hand.

This testimony raised the possibility that a fifth agent may have participated in an alleged conspiracy to beat illegal aliens near the Mexican border.

WALSH HAD said before the trial that other Border Patrol

agents may be linked to the alleged beatings or verbal abuse of aliens July 3 and 4 and Aug. 1, and that other indictments may result.

The trial's third day also saw Chula Vista sector Border Patrol Chief Donald Cameron called to the stand by Walsh.

Cameron gave lengthy testimony on regulations allowing only force necessary to make an arrest and to detain an alien. He said officers cannot draw their sidearms, even to fire warning shots or to round up groups of aliens.

Cameron said an agent can draw his gun only in self-defense, in defense of a fellow officer or to protect a threatened third party.

ACCORDING TO the sector chief, use of unnecessary force by agents could have a "disasterous effect," creating an image that the Border Patrol condones abuse.

He added that undue force also could touch off retaliation by aliens and "disrupt international relations."

Questioning Cameron, Walsh focused on earlier defense testimony that no complaints of mistreatment had been filed on alleged incidents of July 3-4 and Aug. 1.

Public interest in the trial grew, and the third day, the courtroom was filled with nearly 100 spectators.

Judge Howard B. Turrentine.

They are charged with mistreating aliens, depriving them of their civil rights and interfering with lawful functions of the government.

Public interest in the trial grew steadily during the first three days, with the courtroom on the third day filled with nearly 100 spectators, including many off-duty patrol agents.

Tatu, called as a prosecution witness, testified he was working with Dick the night of Aug. 1 in a hilly area when a group of aliens was sighted.

HE SAID Dick apprehended one as the group broke up and left him in his custody while Dick pursued another, who was directed to the

Brav he did not hear the alien cry out in pain and did not see any injuries.

EARLIER IN the trial, another Border Patrol trainee described the reaction of an undocumented alien to an alleged beating by border patrolmen, who believed he was the man who made an obscene finger gesture toward a patrol aircraft last July 3.

Gino Freselli, the first prosecution witness called, said the unidentified alien was beaten repeatedly, with stinging slaps from Brown's gloved hand that reddened his face, and blows to his fingers with a nightstick as his hand was held to the floorboard of a transport van.

He said Otherson jabbed his fist into the alien's stomach at least once.

'But far from solution'

Hispanic activists pleased at action

By JAIME GUERRA

Sun Staff Writer

SAN BERNARDINO — Local Hispanic activists Tuesday said the halt to immigration raids into Chicano neighborhoods ordered by U.S. Attorney General Benjamin Civiletti is a step in the right direction, "but far from being a solution to the problem of INS abuses."

Civiletti's order restricts neighborhood raids to "unusual circumstances." It also says the Immigration and Naturalization Service should concentrate its efforts on arresting illegal aliens at their places of employment.

The attorney general cited efforts to identify Iranian students who have violated their conditions of entry into this country as an example of unusual circumstances.

Dr. Armando Navarro, president of Congreso para Pueblos Unidos (CPU), a leader in the move to stop the INS raids, said that Civiletti's order is "basically unclear, but can be called a minor political victory."

"It's a victory in the sense that political pressure was mounted and it reached the top. This being a time of political conscience because of the upcoming elections, Carter has decided to defuse an explosive issue. The order is not a victory per se and it should not mean that we may become complacent. We must continue to address abuses if they continue in an organized manner," Navarro said.

Civiletti called the policy shift "particularly important" because of the 1980 census. He said that census information will not be sought by or divulged to the INS for deportation, exclusion or forced departure from the United States.

The need to count all persons in the United States is separate from the need to seek effective solutions to the problems of illegal immigrations, said Civiletti.

Navarro and other Hispanic

leaders have criticized the neighborhood raids as "a tactical strategy on the part of the INS to drive Hispanics underground and adversely affect the 1980 census."

"Civiletti's concern with the census is a clear indication that protests and defense efforts by CPU and other Hispanic groups have put the Carter administration on notice that "Hispanics are not indifferent nor complacent."

"The attorney general is taking a strong political position, which means there is some reconciliation with the issue raised by CPU and other political groups. Our pressure has had a very positive impact on him," said Navarro.

While not claiming direct credit for Civiletti's action, Navarro referred to the local organized protests over a south Ontario neighborhood raid Nov. 11 and a lawsuit

initially filed by the Legal Aid Society of Orange County on behalf of 10 Hispanic U.S. citizens and legal residents.

"The attorney general's order puts the problem in national perspective. It by no means offers a solution. It is limited in perspective and we already had a temporary restraining order that concerns itself more with the problem locally," he said.

The restraining order was issued Nov. 20 by U.S. District Court Judge David W. Williams in Los Angeles. The temporary order is effective for 45 days or until a permanent order is issued.

Civiletti's order is vague in general," said attorney Carlos Juarez of Inland Legal Services. "The attorney general's statements sound more like a statement of policy than an enforceable order," he added.

"The order (Civiletti's) is not specific in its intent. The restraining order deals more specifically with circumstances under which a person may be questioned by the INS."

Juarez said, "The main objection

to the raids is the manner in which INS agents can break into homes and places of employment and stop people on the streets based solely on their Hispanic appearance, or because they speak Spanish, or because they are located in an area predominately populated by Hispanics."

Juarez and Navarro agreed that neither order offers definite criteria to determine who is an illegal alien.

Monday, Juarez and Navarro will meet in Los Angeles with other Hispanic leaders to decide if more suits will be filed against the INS and to plan strategy to continue monitoring the agency's enforcement methods.

Ontario Latins Threaten Protests Over 'Sweeps'

BY GEORGE RAMOS

Times San Bernardino—Riverside Bureau

ONTARIO—Mexican-American activists here Wednesday threatened to stage protest marches and take legal action to halt the so-called "sweeps" of local Latino neighborhoods by the U.S. Border Patrol.

"We'll go on a hunger strike if it comes to that," Dr. Armando Navarro of San Bernardino vows. Activists were incensed at the alleged role local police departments played in a raid, which under law is the strict domain of immigration authorities, King said.

main of immigration authorities.

The activists castigated the Border Patrol and Ontario police at a news conference called Wednesday to protest Sunday's raid in a Latino neighborhood here in which 159 illegal aliens were rounded up.

The raid was one of the largest conducted against illegal aliens in this area in the last two years.

A 1977 raid touched off similar controversy and local authorities agreed to work only on reliable information of illegal aliens in the area. However, the activists charged the raid was an indiscriminate apprehension of anyone who spoke Spanish.

Bill King, chief patrol agent for the El Centro Border Patrol office, which sanctioned Sunday's raid, said four of his agents were approached by Ontario police about a sweep because of a high crime rate in the area.

"What we did was within the law," King said.

That was disputed by one illegal alien, Juan Cervantes, 28, who said he witnessed the raid.

Cervantes said he saw Ontario police breaking into homes without permission. This allegation was supported by a priest and a 12-year-old boy who witnessed the events.

Cervantes also said that he saw one man—protesting his innocence to a Border Patrol agent—slapped in the face.

Several documents shown by some of the captured men were torn up by Border Patrol agents, Cervantes alleged.

King denied most of Cervantes' assertions, saying he was not aware of any abuses by the four Border Patrol agents who conducted the raid.

Cervantes, King pointed out, was the only man captured who displayed any identification to agents. Those

Kennedy's Border Stand Asked

Four months after a meeting with presidential candidate Sen. Edward Kennedy to discuss alleged Border Patrol brutality, members of the Committee on Chicano Rights yesterday called on him to make known his position on the issue during his visit here next week.

Committee members said that they presented Kennedy, chairman of the influential Senate Judiciary Committee, last summer with a 150-page document detailing reported

cases of brutality, sexual abuses and civil rights violations by the Border Patrol and customs service

"It was made clear to us that the charges would be investigated in judiciary committee hearings," said Herman Baca, CCR chairman. "But as of today, we have heard nothing from the senator or his office."

Baca said that he and other CCR members last week requested a meeting with the senator during his Nov. 30 visit to San Diego

Bullet may have hit copter

E.T.
11-26-79

It's not unusual for bullets to hit U.S. Border Patrol helicopters along the Tia Juana River and it may have been a bullet, not a rock as had been reported, that dropped a helicopter there Friday night, patrol chief Don Cameron said today.

Two agents were hurt in the crash, and a third was injured slightly when a patrol car speeding to the scene of the crash ran off the road.

"At first we thought rocks thrown (by Mexican youths) got into the rotor blades," said Cameron. "That still could be the cause of the crash. But we also suspect bullets."

Federal Aviation Administration officials in Los Angeles confirmed, however, that rocks could cause a helicopter to crash if rotors, blades or other key parts were hit.

Signed by to [unclear]

She's glad to hear Border Patrol chopper

Why do some object to Foxtrot, the Border Patrol helicopter, flying low over their residences.

Could it be that these people have something to hide? Listening to the Border Patrol on the radio I have heard numerous complaints about Foxtrot flying too low.

I used to live in San Ysidro and believe me I really loved having that helicopter hovering overhead no matter what time of the night or early morning. More than once the "bird" lit our whole yard, making it like daylight.

I've said it before, and I say it again, all of the Border Patrol agents, including Foxtrot and Zulu, the plane, need and deserve all of the moral support and aid they can get from all of us citizens.

WINIFRED KING

11-18-79

11-18-79

Resident Alien Tells Of Alleged Beating By Border Patrolman

By BILL OTT

Staff Writer, The San Diego Union

"When I moved my hand (held behind me in an arm lock), he fell down . . . He told me to kiss the ground and I told him I wouldn't even do this for my father."

Apolinar Rivas-Aguilar, 34, a resident alien, thus told a federal court jury yesterday his version of his arrest and alleged beating by border patrolman Jeffery Otherson on March 18, an incident in which Rivas-Aguilar suffered a broken hand.

Rivas-Aguilar's appearance as a witness before U.S. District Judge Howard B. Turrentine was a surprise development in the trial of Otherson and border patrolmen Bruce Brown, Dirk Dick and Daniel Charest on charges of mistreating aliens.

U.S. Attorney Michael H. Walsh called the long-haired, mustached Rivas-Aguilar to the witness stand shortly after the defense rested. Testifying in Spanish through interpreter Dori Smith, the witness unfolded a version of a beating that allegedly continued after his hands were handcuffed behind him.

What Rivas-Aguilar outlined is in sharp contrast to a written report of the incident that Otherson had filed at Border Patrol headquarters. Otherson appeared outwardly calm during the testimony.

The development resulted in a recess to give Otherson's attorney, Michael McCabe, the opportunity to confer with agents who were at the scene. McCabe also asked for any records on arrests of Rivas-Aguilar.

Walsh said there is no arrest record.

Turrentine granted McCabe's request to have the witness photographed and fingerprinted for a further check through the FBI. And Walsh told the defense attorney he would provide him with Rivas-Aguilar's immigration papers.

Rivas-Aguilar is scheduled to take the witness stand again today. As he testified yesterday, a crowded courtroom was held in rapt attention. From the witness stand, he identified Otherson as the agent who allegedly beat him.

Questioned by Walsh, Rivas-Aguilar said he was sure of the date of the incident, March 18, and the time, because his watch was broken. And Walsh produced the broken watch, with its calendar index stopped at that date, and the time stopped at shortly after 8 p.m.

Through the interpreter, Rivas-Aguilar related: "I was arrested close to (Sambo's) restaurant (near the border) where there is a bridge. He (Otherson) told me to sit on the ground and take out my matches, knife and cigarettes . . . I didn't have anything. Since I answered him in English, he was angry with me."

Walsh: "Did the agent respond when you told him you didn't have anything?"

Rivas-Aguilar: "Can I say that bad word?"

Walsh: "Yes, as best as you can recall."

Rivas-Aguilar: Quoting Otherson

(Continued on B-4, Col. 1)

Resident Alien Tells Federal Court Of Beating By Border Patrol Officer

(Continued from B-1)

son's alleged remark, "Okay, you . . ."

The witness said Otherson grabbed his hair and pulled it, then pushed him down. "Then he twisted this arm behind (in an arm lock). I wasn't saying anything. He moved me roughly. When I had my hand back like this, I moved my hand and he fell down . . ."

Rivas-Aguilar said other officers arrived and told Otherson to stop hitting him. Rivas-Aguilar said Otherson was using a nightstick. "I have a bruise on my knee . . . My hand was broken."

Rivas-Aguilar, who came here from near Mexico City, went on to say he was put in a patrol car and later was pulled out by his feet while still handcuffed and that Otherson continued to beat him.

He said one of the other officers told Otherson, "You might go too far." To which Otherson allegedly replied, if he went too far he would throw Rivas-Aguilar into the water. The witness said a lagoon was near-

by

11-29-79
He said he was later taken back to headquarters and handcuffed to a cement block. Rivas-Aguilar said he later signed a blank paper after Otherson told him he would be taken to court if he refused to cooperate and that he would get five years in prison. "He said 'if you don't sign' . . . he reached for his gun . . . He said 'I'll give you a shot between the eyes.'"

After that, he said, Otherson sent him across the border into Mexico. Rivas-Aguilar, who said he now lives in El Cajon, went on to testify that he filed a complaint with Mexican authorities and came forth recently as a witness after becoming aware of the trial from news accounts.

Otherson, in his written report of the incident, said Rivas-Aguilar and four other illegal aliens were arrested about 9:30 p.m. after they came out of a concrete sewer tunnel that opens into this side of the border. Otherson's report states he ordered the aliens out of the tube and Rivas-Aguilar said, "What do you want,

man."

The agent, who has been suspended pending trial, said in his report he ordered Rivas-Aguilar to sit with the other aliens and he refused. The officer said he decided to handcuff him for a search and he refused to cooperate, so he grabbed his clothing and forced him against the north wall of the "tubes."

He was then handcuffed and taken to headquarters, where he said he did not want medical attention. Otherson reported that Rivas-Aguilar was returned to Mexico and Mexican immigration officers were notified of the circumstances and his complaints.

Otherson, in earlier testimony yesterday, denied any intent to deceive the Border Patrol when he applied for a job, with his dismissal from the Covina Police Department in his background.

He was dismissed while a probationary officer for allegedly failing to cooperate in an internal probe into his prior contact with marijuana.

TRIAL OF BORDER AGENTS BEGINS

Trainee Tells Of Alien Beating

By **BILL OTT** And **SUSAN JETTON**

Staff Writers, The San Diego Union

"There was some moaning, but he didn't verbally cry out. It appeared like he was trying to be machismo, but there were also some tears running down his cheeks."

A Border Patrol trainee offered this description to a federal court jury yesterday, telling how an undocumented alien reacted to an alleged beating by border patrolmen who believed he was the man who made an obscene finger gesture toward a patrol aircraft last July 3.

The trainee, Gino Freselli, 29, was the first witness called by U.S. Attorney Michael H. Walsh as four border patrolmen went on trial before U.S. District Judge Howard B. Turrentine on charges of mistreating aliens.

Freselli's testimony followed opening trial statements by Walsh and two of four defense attorneys, who gave sharply contrasting views of circumstances surrounding the charges against suspended agents Bruce Brown, Jeffery Otherson, Dirk Dick and Daniel Charest.

Walsh accused the four officers of engaging in a "criminal partnership" that deprived the government of its lawful functions through beatings that not only amounted to vigilante justice, but deprived the aliens of their civil rights.

Defense attorneys Joseph Milchen and Nelson Brav, told the jury of seven men and five women that the patrolmen involved were dealing with lawbreakers and, in some instances, used reasonable force while working under adverse and sometimes dangerous conditions.

Milchen pointed out that Brown had been commended by the government for his outstanding service. Brav emphasized that when the aliens were routinely processed for return to Mexico there were no complaints of beatings. Further, he said, Mexican officials refused to accept returned aliens who are seriously injured.

But Freselli, responding to questions by Walsh, said the unidentified alien on July 3 was beaten repeatedly, with stinging slaps from Brown's gloved hand that reddened his face, and blows to his fingers with a nightstick as his hand was held to the floorboard of a transport van.

Otherson, Freselli testified, jabbed his fist into the alien's stomach at least once.

Describing the alien, Freselli said, "His hand began to swell ... to the point you couldn't recognize his knuckles." He added that at no time did the alien admit making an obscene gesture at the patrol craft and

Brown and Otherson eventually gave up their interrogation, putting him back into the van.

"At any time did the alien resist?" Walsh asked.

"No," Freselli said.

"Did he try getting away in any fashion?" Walsh said.

"No."

Freselli testified he was in the transport van with Otherson and that while taking the alien to the scene of the alleged beating Otherson expressed some doubts about taking him (Freselli) along because he was still a trainee.

(Continued on B-12, Col. 1)

Condemned Killer's Removal Is A Surprise

By **WILLIAM A. FURLOW**

Staff Writer, The San Diego Union

Condemned killer Billy Lee Chadd has been taken to Las Vegas to stand trial for a murder there — a charge he apparently intends to fight.

But neither the lawyer trying to keep Chadd out of the gas chamber here nor the state prosecutor in Chadd's appeal against his death sentence knew until yesterday that Chadd had been moved from San Quentin to Las Vegas about six weeks ago.

Chadd, 24, pleaded guilty earlier this year to charges of murdering, raping and torturing Linda Hewitt, 26, of Mira Mesa, and asked to be executed. The only trial for Chadd in the Hewitt death was to determine whether he should be sentenced to life in prison without possibility of parole or death. A jury decided he should die, and Superior Court Judge Earl H. Maas Jr. ordered on June 6 that he be executed in the gas chamber.

Shortly before he was sentenced, however, Chadd apparently had second thoughts about his willingness to be executed, and he now is cooperating with his lawyer on his appeal.

Chadd's attorney for his appeal, Harold Tyvoll, said no extradition proceedings were held before Chadd was taken to Nevada in early October to stand trial in the death of Delmar Bright, a hotel porter.

Deputy Attorney General Pat Benke, who is representing the state in Chadd's appeal, also said she learned just yesterday that Chadd had been taken from California.

(Continued on B-12, Col. 1)

11-27-79

U.S. orders home round-ups of aliens halted

WASHINGTON (UPI) — Reacting in part to complaints from Hispanic groups, the Justice Department has ordered a halt to neighborhood round-ups of illegal aliens, except in special circumstances.

Attorney General Benjamin Civiletti yesterday ordered the Immigration and Naturalization Service to end the raids, partly in response to outcries from Hispanic groups over neighborhood sweeps by immigration agents in Los Angeles.

He said the action was "particularly important in the light of" the 1980 census count.

"The need to count all persons in the United States is a matter separate from the need to seek effective solutions to the problems of



BENJAMIN CIVILETTI

illegal immigration," said the attorney general.

"Accurate counting . . . might be severely handicapped and full census responses chilled by a misperception of resident investigations and appre-

hension about disclosure of census information."

Civiletti stressed the Justice Department position that no census information will be sought by or divulged to INS for any purposes leading to deportations, exclusions or coerced departures from the United States.

He said the INS will now focus its enforcement efforts on employment-related investigations, except in unusual circumstances.

He cited as unusual circumstances investigations of smuggling operations centered in resident locations; threats or physical harm to illegal aliens, resident aliens and citizens; the hunt for fugitive lawbreakers hiding in homes; instances of flagrant abuse of immigration laws; and

cases such as the "urgent current effort to identify out-of-status Iranian students because of the crisis abroad."

But Civiletti said in a memo to acting INS Commissioner David Crosland that in all instances of fu-

ture residential investigations, there must be a reasonable ground to believe a violation of immigration law has occurred, and a written basis for the reasonable ground standard will be required for each specific raid.

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Time to Hear

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FOR THE BEGINNING AT 11:30

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Jesus Cordona
mentally Retarded

U.S. Officer Arrested in Rape-Slaying of Illegal Alien

Federal Protective Service Employee Linked by Lab Tests to Brutal November Assault at Border

By **TED VOLLMER**
Times Staff Writer

12-79

A 24-year-old federal officer was arrested Thursday and held without bail in the brutal strangulation and rape last Nov. 25 of a teen-age Mexican alien at the border.

Michael Edward Kennedy of Chula Vista was linked to the slaying of Maria Lopez de Felix, 19, through FBI lab comparisons of his palm print, blood type and hair samples, authorities said.

FBI special agent Roger Young told reporters in San Diego that Kennedy was arrested without incident at his home after issuance of a federal complaint by U.S. Magistrate Edward Harris.

Kennedy, appearing in street clothes, entered a not-guilty plea before Harris late Thursday and a preliminary hearing was scheduled for Feb. 8.

Young said the case against Kennedy, an employee of the Federal Protective Service since 1978, was given the "highest investigative priority" by his office.

Kennedy also was questioned last year about the strangulation of another Mexican woman. Authorities said that, while Kennedy was questioned and released in that case, the investigation now will resume.

According to an FBI affidavit supporting the criminal complaint against Kennedy, Lopez de Felix tried to enter the United States at the San Ysidro checkpoint by hiding in her

sister-in-law's car.

Authorities said she was trying to cross the border to join her husband, believed to be an undocumented worker who was living in Riverside. After her discovery, she agreed to return to Mexico and was released.

Kennedy told investigators that he met Lopez de Felix at an Immigration and Naturalization Service building and escorted her to the checkpoint where she crossed into Mexico.

Authorities believe the following chain of events then occurred:

Both Kennedy and Lopez de Felix walked along the border fence on opposite sides and the woman either reentered the United States through an unchecked turnstile or a hole in the barrier. A red suitcase believed to have belonged to her was later discovered in some bushes on the U.S. side of the border.

The woman then was apparently allowed through a security gate that had an easily picked lock and then through another gate secured only by masking tape.

Kennedy, authorities believe, used a pocketknife to slit the tape. Adhesive residue matching the masking tape was discovered on a pocketknife seized in a search of Kennedy's home, according to the affidavit.

Lopez de Felix then was taken to a building containing an unused detention room, where she was raped and strangled, according to authorities.

After the slaying, the woman's partially clothed body was dragged outside the room and left in a hallway. It was not discovered until the next day.

The suspect then allegedly returned to the site and tried to cover up the crime by using the woman's shawl to brush away signs of a struggle, the affidavit said.

Evidence found at the scene linking Kennedy to Lopez de Felix's murder included two cigarette butts matching Kennedy's brand, three hairs in the woman's shawl matching Kennedy's, and paint scrapings. The same type of scrapings, which authorities said came from the detention room floor, were found on a uniform worn by Kennedy.

On Dec. 5, authorities said, Kennedy was scheduled to meet with the FBI to provide a blood sample and palm print. The suspect, however, failed to show up. Instead, he left a note saying that he was fleeing across the border because he might otherwise "confess to a crime I didn't commit."

It is unclear whether Kennedy actually fled the country.

Kennedy had worked for the

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SLAYING

Continued from First Page

Services Administration, hires agents to help control border traffic and to guard dignitaries.

Kennedy told U.S. Magistrate Harris that he lives with his parents in Chula Vista and has been working continuously with the service since the investigation began.

His court-appointed attorney, Juanita Brooks, argued that Kennedy should be released to the custody of his parents, indicating that the defendant had strongly suspected he would be arrested for the crime but had not fled.

Assistant U.S. Atty. Thomas Coffin, however, argued for Kennedy's being held without bail, noting that the crime carries a possible sentence of life imprisonment.

Kennedy will face a federal murder charge since the slaying occurred on federal property.

The murder case in which Kennedy was questioned earlier last year involved Ramona Hernandez, whose body was discovered in a shallow grave on the Campo Indian Reservation on March 21, more than a month after she disappeared. Authorities said she had been strangled.

Hernandez had last been seen alive on Feb. 12 when she was returning to the United States after a bus trip to Ensenada.

A problem developed with Hernandez' documents and she was escorted by Kennedy to the INS office. Later investigation revealed that Kennedy had her telephone number in a notebook he carried.

Harry T. ...

Of one charge

Star News

12-9-79

Jury acquits patrolman

A federal court jury this week acquitted Border Patrol agent Dirk Dick, 25, of Chula Vista, of one count of depriving an alien of his civil rights by kicking him in the face.

Jurors, who appeared deadlocked over the remaining charges against Dick and his co-defendants Jeffery Otherson, 31, and Bruce Brown, 33, will resume deliberations tomorrow.

A **GRAND** jury indictment also charges all three with conspiracy and depriving an alien of his civil rights when they allegedly beat him last July 3. Otherson and Brown are accused of another alleged beating last July 1.

Dirk was found not guilty of an alleged kicking incident on Aug. 1, which was not linked to the alleged conspiracy.

The verdict came after five days, or nearly 30 hours, of deliberation by the jury, which earlier cleared a fourth defendant, Daniel Charest, 30, of connection with any beating.

Turrentine during the trial had dismissed the conspiracy count against Charest.

Charest, who still faces a perjury charge stemming from his earlier testimony before the grand jury, has returned to work on a limited basis at a Border Patrol desk job.

In other action Friday, defense attorneys moved for a mistrial when it was learned four jurors had read a newspaper article about another brutality case in which a Marine Corps drill instructor was sentenced for abusing recruits.

However, Turrentine denied the motion after he was assured by the four jurors they were not influenced by the article.

January completion set

Border fence behind schedule

The new 5.6-mile border fence, being erected between the Tijuana beachfront and the San Ysidro port of entry, is running behind schedule.

The project, hotly-contested by Mexican-

American groups when it was approved last year, has been under construction since June.

THE 10-FOOT high "replacement" fence is about half finished, Border Patrol Sector

Chief Donald Cameron reported this week.

The fence, expected to be completed early this month, will be finished around the middle of January, Cameron reported.

He said a section

between the ocean and Spooner's Mesa has been completed, and construction crews are heading east to the San Ysidro port.

The project was initiated under a \$1.8 million Department of Justice program to build eight miles of new fence, 5.6 miles here and 2.4 miles in El Paso, Texas, along the U.S.-Mexico border.

THE NEW fence will have a four-foot high metal sheet, topped by six feet of fine-mesh chain link that is hard to climb.

It is officially known as "replacement," not new fence. Much of the existing 27 miles of fence along the 1,945-mile U.S.-Mexico border is simple chain link that has fallen into disrepair.

Despite the criticism the fence has drawn from Mexican-American groups, who have called it a symbol of "racism," the Border

Patrol is not sure the new fence will help stem the flow of illegal aliens across the Mexican border.

Al Franco, deputy chief of the Border Patrol's Chula Vista sector, was quoted as saying, "Persons determined to make an entry won't be stopped by the fence."

12-6-79

STAR NEWS

12-6-79

1 patrolman acquitted; other cases undecided

One Border Patrol agent accused of mistreating illegal aliens has been acquitted, but three other defendants yesterday were still unsure of their fate as deliberations by a federal court jury continued.

Daniel Charest, 30, was acquitted Tuesday of mistreating an alien who had slipped across the border last July 4.

STILL AWAITING the jury's verdict were agents Dirk Dick 25, of Chula Vista, Jeffery Otherson, 31, and Bruce Brown, 33.

Charest still faces trial Jan. 14 on charges of lying to the federal grand jury about an obscene statement he allegedly made to an alien.

All four agents were suspended by Chula Vista Sector Chief

Donald Cameron after a Sept. 25 grand jury indictment.

According to his attorney, J. William Beard Jr., Charest went to Border Patrol headquarters at San Ysidro to seek reinstatement to his job shortly after the verdict.

CAMERON WAS expected to render a decision after another meeting with Charest.

The grand jury indictment charged all four officers with conspiracy to defraud the government of its lawful functions by alleged abusive conduct, mistreating aliens last July 3 and 4 and depriving them of their civil rights.

Jury deliberations on Charest involved only the last to counts. U.S. District Court Judge Howard B. Turrentine acquitted Charest of the conspiracy charge during the trial.



DOMINGO 2 A-9
MARZO 80

Si Habrá Marcha de los Ku Klux Klanes

SAN DIEGO. Los grupos que reniegan de la próxima, inminente, presencia de los llamados Ku Klux Klanes en Oceanside, California, lugar al norte de este puerto, se reunieron hoy para pedir a las autoridades que les niegue el permiso a los encapuchados para celebrar la marcha que tienen proyectada, durante las horas del día, el quince del corriente mes de marzo.

Al frente de los grupos humanitarios, todos de ascendencia latina, se encuentran Lupe Reyes y Linda Mitchell, quienes están tratando de concien-

tizar a todos los hispanos del sur de California, acerca de la peligrosidad que entraña la presencia de esos individuos que encapuchados no dudan en matar a negros, chinos o latinos que se atraviesen en su sendero racista.

Las autoridades no dieron respuesta alguna a las pretensiones de los latinos y, según se vieron los acontecimientos oficiales, la marcha de los Ku Klux Klanes se llevará a cabo en la fecha y lugar señalados con antelación a la protesta latina en el sur de California.



DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE
SAN YSIDRO, CALIFORNIA



*REC
1-3-80*

REFER TO INV-18
January 2, 1980

Mr. Alberto R. Garcia
Chairman, Community Border Affairs Advisory Council
318 E. San Ysidro Blvd.
San Ysidro, CA 92173

Dear Alberto:

This is in reply to your letter of December 4, 1979, concerning the declarations of Maria Elena Esquivel in which she makes serious allegations against Customs Inspector A.J. Rodriguez who she encountered on November 26, 1979, while crossing the International Border at San Ysidro. Your letter also mentions other incidents which occurred on November 27, 1979, involving Inspector Lonon and Supervisory Inspector Seewald; an incident involving Inspector Pahio and Mrs. Inelda Moreno on November 23, 1979; and an incident on November 28, 1979, involving Inspector Pahio and Messrs. Hector Scolari and Manuel Parra.

I have personally conducted a thorough inquiry into the charges made by Ms. Esquivel. This inquiry included interviews and written reports from those persons having knowledge of the incident in answer to the specific allegations made by Ms. Esquivel. Because of the serious nature of some of these allegations, the matter has been referred to the Office of Management Integrity for investigative consideration. If they concede to investigate, I am certain they will want to also interview Ms. Esquivel personally.

The report submitted by Inspector Rodriguez and my interview with him refutes all the allegations made by Ms. Esquivel. The reports from other inspectors and his immediate supervisor corroborate portions of Inspector Rodriguez's account of the events which transpired during the inspection of Ms. Esquivel.

Ms. Esquivel alleges that Inspector Rodriguez abusively tried to grab her purse, threw half of his body over her person, touching her breast and body with his hands and arms. Inspector Rodriguez stated in his report that after receiving her Immigration and Customs declaration, he requested to see her purse and she refused to allow him to search it. Rather than become involved in a confrontation, Inspector Rodriguez elected to escort Ms. Esquivel to the secondary inspection area where witnesses would be present and the inspection could be completed in a reasonable manner. Inspector Rodriguez denies making any overt movement towards Ms. Esquivel or coming in physical contact with her.

Ms. Esquivel alleges that while being escorted to the inspection area, Inspector Rodriguez grabbed his gun and threatened to shoot her if she played any games with him. Although there are no witnesses to this allegation, I must say in all honesty that I find this difficult to believe. Inspector Rodriguez has been in law enforcement related occupations for approximately ten years and has received intensive training in the proper use and responsibilities of carrying a firearm. Inspector Rodriguez denies threatening Ms. Esquivel or making any overt action towards his weapon which might have been construed by Ms. Esquivel as a threat. The alleged statement made by Inspector Rodriguez, "If you play any games with me, I will shoot you," is vehemently denied by Inspector Rodriguez. I find it unbelievable that any inspector would make such a statement, and much less an inspector such as Gus Rodriguez.

Ms. Esquivel further alleges that upon arriving at the inspection area, Inspector Rodriguez instructed about ten inspectors to search the vehicle for him. Not only do we seldom have that many available inspectors in the inspection area, but also, as a matter of port policy, vehicles are searched by the escorting inspector and not by a group of inspectors working in the inspection area. Inspector Rodriguez did request the dog handler to run his detector dog on the vehicle.

Ms. Esquivel also accuses Inspector Rodriguez of taking her purse by force and throwing the contents on the counter while using abusive language. She also states that a female inspector subjected her to a pat-down as a further harassment. Inspector Rodriguez's report states that he carefully removed the contents of her purse item by item and replaced them in a like manner. This has been corroborated in the reports prepared by the supervisory inspector and senior inspector on duty. As to the pat-down conducted by a female inspector, it is our policy to conduct a pat-down for weapons of all persons being inspected in the secondary office. This precautionary measure is for the protection of other inspectors working in the office and other persons undergoing inspection. With regard to the use of abusive language, all reports submitted by the inspectors involved indicated that Inspector Rodriguez conducted himself in a professional manner and at no time resorted to the use of abusive language.

I have received only favorable reports concerning the manner in which Inspector Rodriguez performs his inspectional duties. All of his supervisors, without exception, consider Inspector Rodriguez as a man of integrity and honesty who conducts himself in a professional manner at all times.

I will reserve my final decision on this matter pending the outcome of our referral to the Office of Management Integrity, but my opinion at this time is in support of Inspector Rodriguez who I believe did not commit any of the actions described in Ms. Esquivel's letter.

Community Border Affairs Advisory Council

E. SAN YSIDRO BLVD.

SAN YSIDRO, CA 92173

714-428-2565

A G E N D A

JANUARY 7, 1980

DATE OF THE NEXT MEETING:

JANUARY 16, 1980.

TIME: 5:00 p.m.

PLACE: U.S. BORDER STATION CUSTOMS SERVICE CONFERENCE
ROOM SAN YSIDRO, CALIFORNIA

1. ROLL CALL.
2. CALL TO ORDER.
3. APPROVAL OF MINUTES OF NOVEMBER 21, 1979.
4. ITEMS OF DISCUSSION.
 - (A) ALBERTO R. GARCIA & HERMAN BACA
CHAIRMAN-C.B.A.A.C.- CHAIRMAN-C.C.R.
BORDER ABUSES, U.S. CUSTOMS PERSONAL
BORDER ABUSES, U.S. IMMIGRATION PERSONAL
5. NEW BUSINESS.
6. OLD BUSINESS.
7. ADJOURNMENT.

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TIJUANA.-Una joven mujer mexicana, no identificada hasta el momento, fue víctima de un brutal ataque al parecer tumultuario y asesinada en despoblado, en la Mesa de Otay, del lado norte de la Línea Internacional.

Al parecer, la víctima era una aspirante a trabajadora indocumentada en Estados Unidos, que se había internado buscando burlar la vigilancia del servicio de inmigración, con tan trágicos resultados.

Las autoridades norteamericanas guardaron esta mañana hermetismo absoluto. Solamente se dijo en la Comandancia de Policía de San Ysidro, que "los detectives en cargados del caso, que tienen el expediente relativo y los datos del suceso, no trabajan los domingos y será hasta mañana cuando proporcionarán alguna información.

ABC investigó que la joven mexicana sacrificada, tiene alrededor de 20 años de edad. Antes de darle muerte, fue atacada sexualmente por él o los victimarios. Y después del ataque, la joven fue muerta a pedradas en la cabeza y materialmente le destruyeron el rostro, en un aparente intento por dificultar su identificación.

Ante la falta de información oficial, se especuló ayer que existen tres posibilidades de este crimen: que los autores sean agentes de la Border Patrol, que en varios casos se han significado por su brutalidad en el trato de indocumentados, a quienes en varias ocasiones han asesinado a sangre fría. Que también pudieran ser alguno de los grupos de "asaltapollos" que operan del lado norte de la línea y que se especializan en asaltar a quienes se internan de

indocumentados a Estados Unidos. Una tercera posibilidad que se mencionó, es que este bestial asesinato sea obra del Ku Klux Klan, que ha estado operando abiertamente a lo largo de la línea fronteriza "en auxilio de las autoridades de Migración" y que también se distinguen por la ferocidad de sus crímenes que invariablemente tienen motivación de discriminación racial.

La Violaron y Mataron a Pedradas

JOVEN ILEGAL FUE ASESINADA

El Cuerpo fué Encontrado en MEsa de Otay. Hermetismo de las Autoridades Americanas. Se cree que fueron Policias de la Border Patrol asaltantes o KKK

[Información en la Pág. A-22

Agents' Conviction Dramatizes Border Tensions

Continued from Third Page

have invested their own money in still more layers of protection—bullet-proof vests for some, black leather gloves for others. A few even have what are referred to, as "sap gloves," with lead inserts in the fingers.

These extra layers say as much about the patrol agent's fear as they do about his potential for brutality.

From the top of the levee, the sweep of the spotlight reveals the other side—men, most of them Mexicans, who are restless with their own fear, robbed of their own humanity by distance and dark, turned into faceless groups that at times become mobs.

Even on the north levee, rock-throwing attacks come regularly, according to the agents. Sometimes the attacks are in earnest, and sometimes they are merely diversionary thrusts mounted by professional alien smugglers to occupy patrol agents while large groups slip up over the levee a few hundred yards away.

On Nov. 23, 1979, the rock throwers in the river bottom took out more than windshields. A rock thrown from the ground was sucked into the tail rotor of the Border Patrol helicopter which was hovering at less than 100 feet. The machine went out of control and crash-landed in the river bottom, well inside U.S. territory.

The rock-throwing continued, even after patrol agents in war wagons attempted to get down to assist the injured Border Patrol crew. A crowd of nearly 300 persons gathered and did more than \$80,000 damage to the copter before patrol agents, reinforced by San Diego police, finally scattered the rock-throwers and rescued the crew, 30 minutes after the crash.

In less than three months this year, 57 Border Patrol agents have been injured seriously enough to require medical treatment.

Serious rock-throwing incidents are being logged 15 times a week, according to Border Patrol officials. Said one senior patrolman: "In the last couple of weeks, violence seems to be escalating. Officers are being rocked in areas as much as a half-mile north of the border and even in downtown San Ysidro."

Random gunfire on the border is routine at night, according to agents, and the patrol is logging an average of three armed encounters a month with aliens.

Last year more than half of the 250 agents at Chula Vista suffered injuries related to violence during apprehensions, according to senior officials of the patrol.

The agents aren't the only ones being injured. In a secret memorandum to the Federal Public Defenders of San Diego Inc., a group that provides attorneys for defendants in federal cases, the group's executive director, John J. Cleary, described 21 incidents in which, he said, border agents used excessive force against a total of 25 illegal aliens.

But the true extent of the border violence is impossible to gauge. Many incidents go unreported. It is a netherworld, especially at night, with the press of immigrants steadily increasing and the morale of the men who are supposed to stop them getting worse.

Law enforcement officers often feel unappreciated but it is hard to find a more disillusioned group than the 250 agents who must patrol the border at Chula Vista.

"I trust a professional alien smuggler more than I do our own politicians," said one of them recently. "At least, the smuggler lives in the same world I do."

He considered attaching his name to his comments, but decided not because he does not want to be "set up" by his superiors, as he feels Bruce Brown and Jeffrey Otherson were.

But he has some very uncompromising ideas about life on the border and he betrays the anger, frustration, re-

'At least, the smuggler lives in the same world I do.'

sentment and isolation that a great many Border Patrol agents feel.

"Chula is no place for idealists," he says. "If you go out and try to be cool, calm, collected and professional, you are going to end up hurt bad, physically, mentally or both."

Border Patrol rules allow agents to use force only in subduing force, he says. "That doesn't work, though," he said. "The other guy doesn't get the first swing at me any more. I've been knocked down too many times."

"All he has to do is look like he is going to swing and I'll let him have it. And down in the river bottom, when I approach a group, I may not have my gun out, but my hand is sure going to be on the butt."

But the agent added, "The typical wet has six starving kids and corrupt government, and he just wants to work like hell and make some money."

That is why the agent favors some kind of guest worker program to deal with the increasing flow of illegal immigrants from the interior of Mexico.

The border has always been a violent place. For a century and a half, it has been contested overtly and covertly by Americans and Mexicans. It has been penetrated thousands of times by raiders, smugglers, adventurers and armies. It has never been very successfully enforced.

And until recently, the border seemed to be a place

apart from the rest of the country. No one cared and no one complained. Said a retiring Border Patrol agent with almost 25 years of service, "Nobody paid any attention to what we did down here. Lots of things, bad things on both sides, never made the papers."

"Fifteen years ago, if a guide or a smuggler gave you a ration of crap, you would take his shoes away, or his shoes and his clothes, and make him walk back to Mexico."

"My god, if we were caught doing that now, we'd be fired in a hot minute."

A variety of factors have brought change to the border, but a few need to be underlined.

First, the number of human beings involved in illegal immigration has risen at a staggering rate, from 61,576 apprehensions in 1971 to 338,681 in Chula Vista last year.

"That's one of the reasons I'm leaving," said Vern Jaques, a senior patrol agent who is retiring after 22 years. "There was once an element of creativity here. Now it's nothing but people-herding."

Jaques recalled the days when a few hundred illegals a month was heavy traffic, and when the relationship between the Border Patrol and the Mexican alien was quite different from what it is today.

"Sign-cutting (man-tracking) was how the job got done, mostly," Jaques said. "Nowadays, you can't follow a man's sign without getting run over by a hundred others."

"And there were many times when a patrol agent would share his lunch and his cigarettes around with the aliens he caught. There was a basic respect then."

Today, Jaques said, "you are talking about very sophisticated border-jumpers, not guys from the interior with hay seeds in their hair but street toughs from Tijuana, urban gang members and hustlers."

Coupled with the change in both size and character of the illegal immigration, according to many Border Patrol veterans, is a decline in the quality of the organization that is supposed to deal with the flow.

"I kind of hate to say this, because I used to be part of an elite organization," said an officer of one of the national Border Patrol unions, "but the quality of people we are getting today has gone downhill."

"Small-town police departments all over the country used to take our rejected candidates," he said. "But now it seems that we are taking the rejects from small-town police departments."

There are those who feel such an analysis is too harsh. "The new men are different," said Assistant U.S. Atty. Peter Nunez of San Diego. "But I don't think they are any worse. As a matter of fact, they are probably better educated and more ambitious."

However, there is at least some basis in fact for the feeling that the Border Patrol has declined, if not in quality at

least in prestige and in support from the federal government.

In 1978, as an effort to recruit more minorities and women, the entry level for patrol agent was dropped from GS-7 to GS-5 on the federal employment scale.

That action, according to Joseph M. Bradley, secretary-treasurer of the National Border Patrol Council, has "hindered the immigration service in recruiting the best candidates and has worked a grave financial hardship on new officers and their families."

In the Chula Vista sector, according to Chief Patrol Agent Donald Cameron, a beginning Border Patrol agent with a wife and two children will make slightly more than \$11,000, a salary that means he qualifies for food stamps.

Added another patrol official, "It's the only job I know where you issue a kid a pistol, handcuffs and a welfare application."

Border Patrol agents are the lowest-paid of federal law enforcement officers, considerably lower-paid than agents of the FBI and Drug Enforcement Administration.

Mismanagement is a problem as well, according to officials at every level of the patrol. Border Patrol senior managers broke into the business during the 1950s, when the patrol was charged with policing the bracero program

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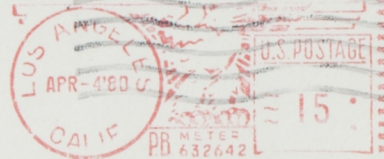


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City

Testimony on education rights of illegal aliens ends

By JORJANNA PRICE
Post Reporter

While the state of Texas is "virtually welcoming" the cheap labor provided by undocumented workers, it discriminates against their children by denying them a public education, a federal district judge was told Thursday at the conclusion of a six-week trial on the education rights of illegal aliens in Texas.

But attorneys for the state maintained in final arguments that admitting alien children would cripple the school systems financially and sabotage the traditional states' responsibilities in education.

Lawyers representing the parents of illegal aliens barred from tuition-free education maintained that innocent children are being punished for unlawful acts committed by their parents.

"The state has failed to examine the long-term costs" of its educational policies although "the

evidence is, undocumented children are here to stay," argued attorney Peter Schey with the National Center for Immigrants Rights in Los Angeles.

He predicted that when the children finally are admitted to school — either by the courts or the U.S. Immigration & Naturalization Service — they will need even more expensive educational services to catch up for the time lost from the classroom.

Schey headed a team of seven lawyers representing the illegal aliens' constitutional challenge to the Texas Education Code which preserves free public education for U.S. citizens and legally admitted residents.

Joined by the Justice Department, the plaintiffs have asked U.S. District Judge Woodrow Seals to declare the policy unconstitutional. An opinion is expected in three months.

Schey attacked arguments by the state of Texas that the admission of school-age illegal aliens would tax the already overcrowded bilingual program and leave border school districts, such as Brownsville, without enough classrooms to house all their students.

Despite the testimony of school officials that bilingual teachers are at a premium, Schey insisted there are teachers in California and New York who can be recruited for Texas classrooms.

Moreover, not all illegal aliens need help with the English language, he said, referring to a 7-year-old Dallas girl, an illegal alien, who testified in the trial in English.

As for the availability of classrooms, Schey said that enrollment is declining in urban areas such as Dallas and Houston where schools are even being closed in minority neighborhoods.

State lawyers have argued that court-ordered desegregation would be upset with the sudden influx of Hispanic children. But Justice Department attorney Lamont Liggett called the assertion "simply preposterous," saying no group of chil-

dren has ever been denied education because of existing desegregation orders.

In rebuttal, Assistant Attorney General Susan Dasher defended a multimillion-dollar state surplus which plaintiffs contend could be used to educate undocumented children without requiring a tax increase or harming existing programs.

"Texas can come up with the money if we want. We can go to the Legislature and it can fund certain projects. But Texas has a financial system. It's imperfect but it is our system.

"Texas has the right to concern itself with the financial integrity of its school districts and that's what it has done with the passage of this statute," she said.

In a study introduced earlier, the state estimated that 111,000 school-age illegal aliens live in the state.

Dasher — who has argued that border districts would go bankrupt trying to educate illegal aliens — called education "an area that has traditionally belonged to the states" and not the federal government.

She said the state does not argue that "children are going to be hurt" by not going to school, but no one is being absolutely excluded in the light of the districts which accept tuition-paying illegal aliens.

As for the plaintiff's argument that illegal aliens pay substantial amounts of taxes, "Everybody pays taxes," she said. "I pay taxes and I don't have any kids in school."

However, plaintiffs would not let Seals forget that Texas is one of the wealthiest states in the nation.

"Texas ranks fifth in wealth and first in the exploitation of cheap undocumented labor," charged Schey. "Yet it can't educate the children of those who pick the fruit, clean the floors and toil in the menial tasks."

Decision promised in 3 months in illegal alien education case

BY NANCY STANCILL
Chronicle Staff

Texas, the fifth wealthiest state, has offered "no rational, compelling reasoning" for a law that excludes "children of those who pick the fruit and wash the floors" from a tuition-free education, Peter Schey, an attorney representing illegal alien children, contends.

But Susan Dasher, an attorney defending the state's education statute, argued that illegal aliens have no constitutional rights and that education traditionally "has belonged to the states."

Schey, Ms. Dasher and U.S. Justice Department attorney Lamont Liggett presented closing arguments Thursday before U.S. District Judge Woodrow Seals, who heard the six-week case.

Seals thanked the attorneys "for one of the best-tryed cases in my 20 years in the courthouse" and promised a decision within three months.

Attorneys for the plaintiffs, 30 illegal alien children in 17 school districts statewide, are challenging a 1975 statute that limits state education aid to U.S. citizens or legally admitted aliens. The Justice Department intervened on behalf of the illegal alien children.

Schey, in a closing argument lasting nearly an hour, said the law exists only because "the state didn't feel like educating undocumented children."

Schey, a Los Angeles attorney who works for the National Center for Immigrants' Rights, said state officials testified that there will be at least a \$324 million surplus at the end of the biennium, while Gov. William P. Clements Jr. has put the surplus at \$1 billion.

The only financial impact of educating illegal alien children would be "a slightly smaller state surplus," Schey said.

He called the state's estimate of 111,000 such children in Texas "grossly exaggerated" but said the state could easily provide education aid to that number.

"The state reaps the benefits of those who toil here," he said.

"It wants the labor (of illegal aliens), takes the taxes they pay, but wants the people of Iowa and Wisconsin to share the costs."

Schey referred to a state argument that Texas as a border state would be faced with added education costs because of the federal government's unwillingness to increase patrols to apprehend illegal aliens from Mexico.

The state, he said, has "entirely failed to evaluate the long-term social costs of not educating the children, because all available evidence indicates they are here to stay."

Ms. Dasher said the state "has the right to concern itself with the financial integrity of its school districts?"

She cited officials' testimony that the low-wealth Brownsville school system is severely overtaxed by the influx of legal aliens.

"If you add illegal aliens, you're going to have more of a problem," she said.

Ms. Dasher, whose closing statement lasted about 20 minutes, said "Texas can come up with the money" but that it is the state's right to protect its resources.

The state statute has not constituted "an absolute denial of education," she said, noting that school districts may admit illegal aliens without state funding if they choose. A number of districts charge tuition, she said.

If illegal aliens "are wealthy enough to pay taxes," Ms. Dasher said, they perhaps can afford tuition.

She said the courts have never held that illegal aliens have constitutional rights. If Seals rules in favor of educating illegal alien children, she said, "the implications of that decision would run greater" in constitutional questions of aliens' rights.

Liggett said the state law is unconstitutional because it denies "education to a specific group of children" on the basis of their national origin.

The state's argument that admitting illegal aliens would upset court desegregation orders is invalid, he said, because "no order has ever countenanced excluding children as a means of implementing a desegregation plan."

Los Angeles Times

WEDNESDAY, MARCH 26, 1980

TEXAS LAWSUIT

Illegal Aliens: Focus Now in Classroom

By **BILL CURRY**
Times Staff Writer

HOUSTON—Each school day, 9-year-old Monica, born in Mexico but now a child of Texas, arrives at the old community center on Canal Street not far from her little frame home that sits on cinder blocks in the city's east side barrio.

Inside, she joins 95 other Mexican children aged 6 to 16 in four crowded classrooms, where they study English and math. There is little time for other subjects at this special school, since promptly at 1 p.m., after only four hours of class, the school doors close on Monica's makeshift education, which costs \$6 a week.

Monica's parents would like her to attend the Houston public school next door to the community center. But as an illegal alien, she and thousands of other children are denied a free public education by the state.

Since 1975, Texas, which shares 1,248 miles of poorly patrolled border with Mexico, has refused to fund the education of illegal alien children. This has prompted cities such as Dallas and Brownsville to bar the children altogether and other cities, such as Houston, to levy high tuitions that are beyond the reach of the impoverished aliens.

So the children, variously estimated at from 10,000 to ten times that number, remain at home or walk the streets. A lucky few, such as Monica, attend the handful of small, struggling alternative schools.

The state's position is now under sharp legal attack by civil rights lawyers, a challenge that will determine only whether these thousands of U.S. residents are ever educated but also the extent of the constitutional rights of illegal aliens.

Since Feb. 19, a suit by the parents of 30 illegal alien children has been playing out amid the wood paneling and marble slabs of a federal courtroom here. The aliens charge that

their rights are being violated, and they want the Texas ban on free education—the only one in the nation—struck down.

The case is expected to be decided later this spring by federal District Judge Woodrow Seals, and the outcome will have lifelong consequences for the children in question.

"We are seeing the creation of a permanent uneducated underclass in American society," says Peters Roos of the Mexican-American Legal Defense and Educational Fund, one of the groups which, with the federal government, is challenging the state.

Adds Peter A. Schey of the Los Angeles-based National Center for Immigrants' Rights: "The question is, are these children going to grow up and remain in the United States? If they are, we need to evaluate the impact on society of forcing illiteracy on them."

It is, Schey said, "the final frontier of the question of exploiting undocumented workers. If Texas can get away with exacting the labor of parents and forcing the child to stay home, the states can do anything."

The Texas law barring state funds for illegal aliens' education is being defended by the state's assistant attorney general, Susan Dasher, who argues that the children have no con-

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12 Part I—Wed., Mar. 26, 1980

Los Angeles Times ★



ALTERNATIVE SCHOOL—Alien children in their classroom in Houston's eastside barrio.

Photo for The Times by F. Carter Smith

Education Focus of Aliens' Texas Suit

Continued from First Page

stitutional right to a free education. She adds that to provide them with one would drain limited state funds from the education of legal residents and citizens, with the big losers being the predominantly poor and Hispanic pupils who are legal residents.

Moreover, Dasher says, cities such as Houston cannot now provide enough bilingual education for their Spanish-speaking community.

If the federal government can deny food stamps, welfare and medical assistance to illegal aliens, the state contends, then the state can deny them an education.

Schey counters by saying that the children's parents are taxpaying workers whose contributions to the state budget merely provide windfall subsidies for others. Indeed, the trial has disclosed that Dallas locates illegal migrant children, enters their names on the rolls of federal education programs, collects federal subsidies on the children's behalf—and then bars them from school.

The issue is not money, Schey says, but unconstitutional discrimination.

Besides having to resolve these legal questions, Judge Seals already has had difficulties with the case. A sociable and low-key person given to personal ruminations on the bench, he casually stated at one point that nothing of worldwide importance had ever been written in Spanish.

After a local professor accused Seals of bias and cited a list of Nobel-prize winners whose native language was Spanish, Seals apologized from the bench, calling his remarks "senseless," "dreadful" and not representative of his feelings for Hispanics.

The first school battle in the state has been won by the children. A federal judge in Tyler ordered schools there to admit about 35 aliens, a decision that is awaiting a hearing by the 5th U.S. Circuit Court of Appeals in New Orleans.

The Houston case probably will be appealed to the same court no matter who wins. Since it involves 17 school districts, and will be decided on the basis of much more testimony and evidence, it is expected to be the case on which the appellate court will base its ruling.

Some Hispanic civil rights groups fear that if the law is upheld, it could influence other states to take similar steps. California, for example, provides free education for illegal aliens, and 30,000 such children are in the Los Angeles schools. But with growing budget problems and angry taxpayers, some see a threat to that state's policies.

Beyond the legalities and the emotions, the Houston case highlighted again this state's peculiar intertwinings with Mexico, a relationship so close that when the peso was devalued several years ago, six Texas border counties were declared an economic disaster area.

Similarly, illegal aliens have become so numerous in several state industries—tourism, agriculture, construction, restaurants—that federal Labor Department investigators recently cracked down and recovered hundreds of thousands of dollars in back wages on behalf of underpaid aliens. Some of the money was passed through diplomatic channels and sent to workers who had returned to Mexico.

As Schey puts it, "If the state is so concerned with the presence of undocumented workers, why don't they start with the workplace instead of the schoolplace?"

It is the daily exchange between Mexico and Texas that led to the current controversy. Faced with Mexican children unable to attend crowded schools in Mexico's border towns, border area Texas legislators in 1975 sought the law ruling out state educational grants for alien children.

Today the state contributes roughly \$1,000 for each child to local school districts, an amount that ranges from about one-half to almost all of a school's educational spending, depending on how much in local taxes is added.

Principals are charged with determining which pupils are properly documented and therefore qualify for a free education. Testifying for the children, however, former U.S. Immigration and Naturalization Service director Leonel Castillo told Seals it requires 13 weeks of special training for an INS employee to be able to determine whether an alien is legal or illegal.

And curiously, Schey notes, some of the children in the court case have been admitted to public schools after errors were found in the principals' determinations.

Schey says that most of the undocumented children are permanent residents and that many will eventually receive proper documents. Meanwhile, their parents pay sales taxes, fuel taxes and federal taxes. Some federal education grants to Texas are based on raw census counts, which include illegals.

Thus the state gets revenue from the illegals, Schey says, but gives them nothing back. The additional costs of

That place is the barrio, with the rundown warehouses, the Spanish billboards, the narrow streets, the low-paying jobs. Maley, a Mexican who married an Irish-American, points across town to the ever-rising skyline of Houston, the corporate cathedrals of Big Oil and Big Law and Big Money, and as she points she invokes the age-old American faith in the power of education.

"I want them to learn English so they can get out of here," she says, "and get over there."

ILLEGAL ALIENS

Continued from 12th Page

educating the children, he says, "amount to cutting back the construction of one freeway by six inches."

The state, however, puts the cost at \$94 million for the current budget—most of a projected \$124 million state surplus.

Houston school officials have testified it would cost \$21.8 million to educate about 14,000 illegal aliens here, a number that Schey says is inflated. He contends there are only about 10,000 in the entire state. (This school year saw 329 children turned down by Houston for lack of proper documentation.)

While the legal arguing goes on children like Monica attend the Instituto Mexicano on Canal Street. They are orderly and anxious children making bilingual birthday cards, labeling in English the parts of an animal cell, preparing for a spelling bee.

They are mixed together—a 9-year-old with the 16-year-olds, a 12-year-old with the 8-year-olds—in a rough reckoning of age, past education and ability. "She's so smart she can be in with 16-year-olds," teacher Lucia Maley says of one 9-year-old girl.

Instituto Mexicano opened last fall with four teachers (three of them certified), four classrooms and a waiting list. It is one of at least three that opened in the state during this school year, a small but growing number of educational opportunities for children like Monica.

Monica's parents are from Matamoros. Her father is a waiter and her mother does cleaning work. For most illegal aliens, no matter how poor their living conditions are here, life is still better—a better house, a car, a job—than in Mexico.

But the mother said she had considered returning to Matamoros if young Monica had been unable to go to any school.

"We feel it's too much," Maley says of the \$6 weekly tuition, which allows a \$75 a week paycheck for each of the teachers. In addition, non-Mexican volunteers drop in to work with students.

The older girls get two hours of typing classes a week, a skill that Maley hopes will help them break the cycle of poverty and exploitation in which their parents are trapped. There is nothing similar yet for the boys, but Maley is hoping for vocational education of some sort for them.

The emphasis is on English, and the children's exposure to other subjects comes only when a language lesson includes, say, science exercises. "There is no time for anything more," Maley says.

Besides tuition, the little school has received some money from churches, the Catholic diocese and a children's relief organization.

On a recent day, a toaster-oven in a hallway served as the kitchen for preparing a student lunch of corn dogs.

"I want them to be able to live in the community and be self-supporting," says Maley of the young faces gathered in her classroom. "If they don't know English, they are going to be in the same place as their parents."

Tear gas used in border riot

Star
News
4-10-80

A confrontation this week between Border Patrol agents and a mob of more than 60 Mexican nationals may have been a "diversionary tactic on the part of organized smuggling operations," Chula Vista sector chief Don Cameron reported.

Unable to disperse the crowd, agents outfitted

in riot gear resorted to tear gas to force the rock-throwing group back across the border, Cameron said.

"We used tear gas because it was better than using bullets," he commented. "At least nobody was killed. It was much more humane to use tear gas than to use other means of force."

The border incident began to take on serious overtones around 8 p.m. Monday and continued until early Tuesday.

About six of the 40 agents on duty in the San Ysidro area at that time were used in the confrontation, which occurred around a quarter of a mile inside U.S. territory.

Cameron said the Border Patrol treated the incident as "a diversionary tactic."

"We've experienced these diversionary moves from time to time, and they are designed to pull our people out of other areas," he said.

This week's incident marked the second time in six months that a

large group of Mexican nationals has pelted agents with rocks.

Last November a crowd of about 60 forced a Border Patrol helicopter to the ground when a thrown rock lodged in its engine. Two pilots were injured.

No one was reported hurt in the latest incident.

Agents Use Tear Gas To Halt Aliens

Border Patrolmen Pelted By Rocks At Tia Juana River

By JESUS RANGEL
Staff Writer, The San Diego Union

SAN YSIDRO — U.S. Border Patrol agents in riot gear used tear gas to disperse an estimated 500 aliens, some of whom attacked the officers with rocks near the north levee of the Tia Juana River, the patrol said yesterday.

There were no reports of injuries, either to the agents or aliens.

According to Donald Cameron, Border Patrol sector chief, a group of Mexicans gathered shortly after dusk Saturday along a half-mile stretch on the south levee of the river, which runs parallel to the international border and is on the U.S. side.

About 2:30 a.m. Sunday, a group of about 500 scurried across the river to a half-mile inside the border, Cameron said. When they came across agents patrolling the area, they started pelting them with rocks about the size of a fist. The incident repeated an hour later, he said, as a group of about 35 officers was hit by rocks.

During the barrages, agents fired seven canisters of tear gas to drive the aliens back to the south levee. About 200 returned to Mexico.

Cameron said that the officers regularly patrol the north side of the river and have riot gear on hand. But the agents have let the Mexicans gather on the south levee because without the completed border fence, that area cannot be defended, he said.

"The agents have no room to retreat toward the river and they wouldn't have any place to retreat to," he said.

Cameron contended that smugglers were creating the confrontations as a diversionary move to get agents pulled there from other areas.

"When they (the smugglers) want to get a group across, they create a diversion because they know we'll send reinforcements to help our men in trouble," he said. "Meanwhile, they're free to run people across at other points."

The attacks were the latest in what has been said to be escalating violence by those attempting to cross the border.

Last Tuesday night, an officer fired three shots in the ground to drive off about a half-dozen Mexicans who attacked him with rocks. The officer was not seriously injured.

Early that morning, agents clad in riot gear had used tear gas to force a group of about 60 Mexican nationals back across the border.

Cameron said the aliens had become bolder in an attempt to gain more ground.

"We've been encountering more and more resistance," he said. "They're banding together in larger groups and charging at us like soldiers in a war."

He said he has requested 50 more agents from outside the sector to reinforce the 15 officers regularly stationed in the river area.

"We just can't back off any further," he said. "If we do, they'll be in the south city limits of Chula Vista."

Seven agents from San Clemente were brought in last night to aid the regular agents. Fifteen officers brought in from the El Cajon office during last week's disturbances will be recalled toward the end of the week if the incidents are repeated, Cameron said.

He said that Tom Metzger, candidate for Congress and a Ku Klux Klan dragon, had offered assistance with arms and uniformed Klansmen. That offer was rejected.

A Klan offer to help patrol the area prompted a furor in 1977. A coalition of area Chicano and other minority organizations protested an announcement by David Duke, Klan national director, that Klansmen from Texas to California would patrol the border.

Leonel Castillo, who was then head of the Immigration and Naturalization Service, refused the action.

Patrol requests 50 more agents

Border Patrol headquarters in Chula Vista this week issued an appeal for reinforcements following two nights of violent confrontations along the border at San Ysidro.

Sector chief Don Cameron said he has requested an additional 50 agents be sent in from outside the sector to back up his troops here.

LOCAL FORCES were stretched just about to the limit by Wednesday night, when 15 extra agents were deployed from the El Cajon station to help on the embattled north levee of the Tia Juana River.

Two nights earlier, six agents had been attacked by a crowd of more than 60 rock-throwing aliens at that location, which is about a quarter-mile inside the United States.

Unable to disperse the crowd, agents clad in riot gear used tear gas to force the rock-throwing aliens back across the border.

TUESDAY night, agent James Bradshaw fired three warning shots into the ground to stave off around six Mexicans who attacked him with a barrage of rocks.

Tear gas was used again to regain control of the north levee and chase the group back to the south side of the river.

Cameron believes both attacks were "diversionary tactics on the part of alien smugglers." He described the Mexicans involved in the confrontation as "street thugs" from Tijuana hired by the smugglers.

By Wednesday night, the agent force in that location had been doubled with deployment of the El Cajon troops. "We had about 30 agents along six miles of border," Cameron reported.

He said the El Cajon contingency would remain on duty along the border for several more nights.

STARNEWS 4-13-80

S.D.U. 4-15-80

Baja Officers Arrest 100 Mexicans During Illegal Sweep Onto U.S. Soil

By RICARDO CHAVIRA and JESUS RANGEL

Staff Writers, The San Diego Union

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Baja California Norte Judicial Police illegally arrested an estimated 100 Mexican undocumented aliens and two San Diego Union reporters early yesterday on U.S. territory.

According to the judicial police agent supervising the sweep, the arrests of the aliens along the south levee of the Tia Juana River in San Ysidro were carried out at the request of U.S. Border Patrol officials. But Donald Cameron, Border Patrol agent-in-charge of the Chula Vista sector, said he knew nothing of the arrests.

"If they (Mexican police) arrested anybody, they did it illegally. They shouldn't have been in there," he said.

Tom Coffin, an assistant U.S. attorney in San Diego, said that a Mexican police officer does not have the authority to arrest anyone on U.S. territory, and a U.S. officer has no authority to arrest on Mexican soil.

About 20 plainclothes police agents from Mexico armed with pistols rounded up men and women along the

south levee, then herded them across the border into Tijuana and into waiting cars and vans. These two reporters were arrested briefly but were released after they identified themselves.

As the sweep progressed at 12:30 a.m. along the south levee, Border Patrol agents were seen driving along the

Tension At The Border, an editorial — Page B-16

north levee training spotlights on Mexicans hiding on sandbars and near the edge of the river.

Cameron insisted that his agents could not have seen the arrests taking place. "They would have told me about anything like that," he said.

In the past, he said, U.S. and Mexican police have conducted joint sweeps with U.S. officials apprehending suspects on the U.S. side of the border and Baja police catching those on their side.

(Continued on A-6, Col. 1)

A-6 THE SAN DIEGO UNION

Thursday, April 17, 1980

Baja Police Officers Arrest 100 Mexicans During Illegal Sweep Onto U.S. Territory

(Continued from A-1)

About 20 plainclothes police agents from Mexico armed with pistols rounded up men and women along the south levee, then herded them across the border into Tijuana and into waiting cars and vans. These two reporters were arrested briefly but were released after they identified themselves.

As the sweep progressed at 12:30 a.m. along the south levee, Border Patrol agents were seen driving along the north levee training spotlights on Mexicans hiding on sandbars and near the edge of the river.

Cameron insisted that his agents could not have seen the arrests taking place. "They would have told me about anything like that," he said.

In the past, he said, U.S. and Mexican police have conducted joint sweeps with U.S. officials apprehending

have in recent nights used tear gas and warning shots to control the crowd.

Herman Baca, chairman of the Committee on Chicano Rights, an organization that monitors border relations, questioned the extent of provocation by aliens against the Border Patrol. He said that yesterday's arrests constituted "a violation of U.S. sovereignty."

"I can't believe that the Border Patrol was unaware of the sweep. Aren't they charged with watching over that area?" he said.

He denounced the use of tear gas, saying it is but one more example of the Border Patrol's "brutal" method of handling the problem of illegal immigration.

A few hours before the arrests, Mexicans gathered on the south levee, as they do almost every night,

did not detain the reporter.

About a minute later, two agents armed with pistols questioned these two reporters. The reporters were allowed to continue walking after identifying themselves.

Again the reporters were confronted by gun-wielding police, who this time placed the reporters under arrest. They were held about 10 minutes while several officers checked their identification.

They were eventually ordered to leave the levee and allowed to crawl into Tijuana through a hole in the international border fence.

Within approximately 15 minutes about 100 men and women were rounded up at gunpoint, then taken to waiting vans and cars on the Mexican side. "The polleros (smugglers) will go to jail," the agent in charge of the operation said, "and the others will probably be released in a day or two."

Asked what he and his companions were doing on the U.S. side of the border he said, "This is a coordinated action, and they asked us to come over here," he said gesturing toward Border Patrolmen about 75 yards away on the opposite river bank.

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JUDGE REJECTS COMPLAINTS; 230 APPREHENDED

Lawyer Protests Treatment Of Aliens Seized In Sweep

By BILL OTT

Staff Writer, The San Diego Union

A Border Patrol sweep that netted about 230 aliens early Monday along the violent South Levee at the federal court with logistics problems yesterday and touched off criticism of the nighttime operation.

As a lengthy series of illegal entry arraignments began before U.S. Magistrate Harry R. McCue, Federal Defenders attorney Eugene Iredale moved for dismissal of all the misdemeanor complaints, saying the approximately 230 aliens already had been subjected to "cruel and

unusual punishment." He said they had been jammed together for long periods in crowded holding tanks at the federal courthouse and — up until noon — had only been fed two meals of beans and burritos since their arrest.

But McCue rejected Iredale's arguments, including a technical challenge that the complaints were "boilerplate," produced on a mass production basis and lacked the required specifics as to probable cause for arrest on an individual basis.

The magistrate said the complaints were specific in stating prob-

able cause that each defendant was in the United States illegally and could produce no proof of citizenship. Each of the defendants, if convicted, could be sentenced to up to six months in custody and be fined up to \$500.

Meanwhile, Border Patrol Sector Chief Don Cameron said more such sweeps are pending, not only to quell violence but to gain back U.S. territory that had been occupied by aliens and smugglers who have used the South Levee along the Tia Juana River as a staging area.

Sunday's sweep, carried out with

the cooperation of Mexican police south of the border, involved use of a helicopter with an infrared scope for night surveillance, spotlights, officers on horseback and tear gas.

Cameron and Bill Selzer, acting deputy sector chief, said tear gas was used to disperse a group of aliens from a small island in the river after patrolmen approaching on horseback were barraged with rocks and bottles. One agent was hurt, but required only first aid and two aliens were charged with assaulting an officer.

In the aftermath of the raid,

Selzer said, "The Border Patrol is not going to cede the southern 500 yards of this U.S. territory to Mexico. The only way to protect it is to patrol in force."

Cameron said 50 officers took part in the sweep, with one column moving along the top of the levee and another column just below. About an equal number of Mexican officers coordinated activities south of the border, Cameron said. Although rounding up aliens, they were concentrating their efforts largely on border bandits and smugglers.

Assistant U.S. Attorney Peter K.

Nunez said the U.S. attorney's office hopes the sweep will help dampen violence along the border, adding that if another operation is necessary, it will be repeated. Assistant U.S. Attorney Douglas Hendricks, in charge of new complaints, agreed, noting the South Levee area was "a dangerous situation. It was getting worse and worse and we thought stepped up prosecution might curb it."

Normally, misdemeanor illegal entry aliens are voluntarily returned across the border without prosecution. (Continued on B-4, Col. 1)

Seizure Of Aliens Protested By Lawyer

(Continued from B-1)

...on, unless the individuals have a long record or smuggling is suspected.

Iredale, outside McCue's courtroom, viewed the sweep with some sarcasm, saying: "If the government feels it is proper to take about 50 poor people from Mexico, hold them for two days and bring them to court en masse, that shows there is a serious effort to seek true justice."

Iredale said U.S. Marshal James Laffoon's staff, faced with the crowding problem, "acted commendably and humanely. They had to send out for lunches. They're trying to feed them and take care of their needs."

Awaiting arraignment, the aliens leaned against the walls of the holding tanks, or stood at the metal grating while others sat on the floor. None appeared ill or injured.

The large number of arrests at one time caused a paperwork processing problem and not until 11:50 a.m. was the first group of about 50 brought before McCue. They filled not only the prisoner's section of the courtroom, but the spectator section

as well. After advising them through an interpreter of their rights, McCue further divided the defendants into groups of five, appointing one attorney to represent each five and setting later court dates, some for May 8 and some for May 12. At 4 p.m., the arraignments were still taking place.

Assistant U.S. Attorney William E. Grauer, in an opening statement to McCue at the start of arraignments, said the arrests resulted from a cooperative effort between the U.S. attorney's office and a Border Patrol task force "to regain the South Levee" area which had become "a no-man's land of violence."

Grauer emphatically denied that some of the defendants had been taken into custody in Mexico and turned back across the border. He said no one taken into custody here was turned back to Mexico, but Cameron said a few women and children were.

McCue asked: "Is this area in the United States of America?" "Yes, sir," Grauer said. "It was an invasion of our sovereign territory."



Committee on Chicano Rights, Inc

San Diego, Ca.

January 29, 1981

FOR IMMEDIATE PRESS RELEASE

The Committee on Chicano Rights at a press conference and demonstration before the Federal Court Building in San Diego, Ca., today denounced and condemned the recent U.S. Supreme Court decision (see attachment) which allows law enforcement officials (Border Patrol agents) to stop vehicles under "circumstances less than those constituting probable cause for arrest and search," according to CCR chairperson Herman Baca.

The Supreme Court with one sweep of a pen has decreed that the protection of the U.S. Constitution and the Bill of Rights no longer applies to the more than 20 million Chicanos/Latinos in the U.S."

"This disgraceful decision is reminiscent of the selective unlawful, and unconstitutional incarceration of Japanese Americans during World War II. And like the Japanese Americans' experience the recent "carte blanche" decision by the Supreme Court will in practice have the effect of targeting every person of Mexican/Latin ancestry in the U.S. to the whims, impulses, and feeling of the INS/Border Patrol or any law enforcement official.



Committee on Chicano Rights, Inc

Furthermore, according to Baca "the Supreme Court decision will also in essence unleash the INS/Border Patrol (an agency recently condemned by the U.S. Commission on Civil Rights, Amnesty International, Religious organizations and numerous Rights groups for it's massive violations of human and constitutional rights) on the Chicano/Latino community much like the German Supreme Court legally unleashed the Gestapo on the Jewish Community in Nazi Germany in the 1930's.

No longer will established law procedures such as due process, probable cause, or search warrants need to be followed and according to the U.S. Supreme Court decision, all that law enforcement officials will need now is to rely on their own experience, "sixth sense", or just have a profile of generally suspicious characteristics (mexican looking) or activities, rather than a reasonable suspicion a crime has been committed, when they want to stop suspects.

In concluding, Baca stated "that we are here today to send a message to the U.S. Congress, the U.S. Supreme Court, and to every single person of this country that we reject the Supreme Court ruling. As a people who have worked to make this country great, as a people who have had it's children bleed on the fields of combat from Germany to Vietnam and even Iran we will not stand



Committee on Chicano Rights, Inc

by and have what is rightfully ours under international treaty (treaty of Guadalupe Hidalgo) and the U.S. Constitution and Bill of Rights stripped from us by nine old relics (Supreme Court Justices) of the past.

If necessary we will advise our people to clog the courts with lawsuits with every denial of civil rights, and if needed we will appeal to every court of human rights in the world, and if needed we will appeal to our people to launch a campaign of civil disobedience. As a rights organization we can not and will not stand here and meekly accept discrimination, racism, apartheid, or colonialism. Nothing will satisfy our people until this dastardly decision is overuled or overturned.

The San Diego Union

SAN DIEGO, CALIFORNIA

a Copley Newspaper

THURSDAY MORNING, JANUARY 22, 1981

Border Patrol's Power To Stop Cars Expanded

From The San Diego Union's News Services

WASHINGTON — In a unanimous ruling yesterday, the Supreme Court improved the Border Patrol's ability to ferret out illegal aliens by broadening the circumstances under which agents may make investigative stops.

Writing for the court, Chief Justice Warren Burger said the test was not whether there was probable cause for agents to stop a vehicle that could be carrying illegal aliens.

"Rather the question is, whether, based on the whole picture, they as experienced Border Patrol agents, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity."

In San Diego, the ruling was hailed at the Border Patrol's Chula Vista sector office. One agent, who requested anonymity, said it appeared that the high court was allowing Border Patrol officers to rely on their own experience and "sixth sense" to legally stop vehicles that may be carrying illegal aliens.

The agent said that attorneys defending accused smugglers of illegal aliens generally argue that the Border Patrol had no probable cause to stop vehicles involved in such cases. The agent said yesterday's Supreme Court ruling significantly eases the patrol's burden in defending its detention of these vehicles.

(Continued on A-19, Col. 1)

PROBABLE CAUSE NOT NEEDED

Court Upholds Auto Searches

(Continued from A-1)

Yesterday's ruling, the chief justice said, was a continuation of previous findings that the Border Patrol may stop vehicles under "circumstances less than those constituting probable cause for arrest and search."

Relying on a hunch that a person, named the "Chevron" after the pattern on his shoes, was leading aliens across the border to a place near Sells, Ariz., officers staked out the highway looking for a truck or camper on a quick trip to and from the border.

Spotting a camper fitting the description, the officers ordered the driver to stop. They found six aliens inside, including a man whose shoes bore a chevron design.

The convictions of the "Chevron" and another smuggler were overturned by the 9th U.S. Circuit Court of Appeals, which held the agents had "no valid basis" for singling out the camper.

In reversing the appeals court, the high court apparently expanded the ability of law enforcement officers to use a profile of generally suspicious characteristics or activities, rather than a reasonable suspicion a crime has been committed, when they want to stop suspects.

Burger said the limited purpose of stopping the vehicle was to ask the occupants about citizenship and immigration status and the reason for the fast trip in a desert

the camper was voluntarily opened.

In another case, the court, in a 6-3 ruling, placed a heavier burden on federal judges preparing to order the retrial or release of a prisoner who claims his rights were violated in a state trial.

Over the vigorous dissent of three justices, the court reversed the dismissal of the first-degree murder conviction of a California man on grounds the methods used by police to identify him were "impermissibly suggestive."

Writing for the majority, Justice William Rehnquist set down tougher guidelines for lower courts to follow in such cases.

First, he said, federal courts must presume state courts acted properly in criminal proceedings. Then, if a federal judge decides to reverse a state verdict, he must explain why federal law does not prohibit him from reviewing the issues already decided by state courts.

Justice William Brennan, joined in dissent by Justices Thurgood Marshall and John Paul Stevens, accused the court's majority of failing to protect the constitutional rights of prisoners.

"It is cruelly ironic that the court would hold the constitutionality of pretrial identification procedures to be a question of law when the effect is to reverse a decision in favor of a prisoner ... but would reject the same conclusion when the effect would be to vindicate such a prisoner's constitutional

~~The~~ CCR today announced that its
Chairperson H.B. ^{has been} ~~will~~ ^{to Phoenix} ~~journey~~ ~~to~~ ~~invited~~ ~~by~~
^{to address}
the N.C. on the H. Case ~~to participate~~ a speaker-
at ^{H. trail} ~~the~~ ~~issue~~ ^{trial} in Phoenix, Ariz.

The N.C. on the H. case

The CCR today announced that it
Chairperson H.B. has been invited by the Nat'l Correlator
on the H. Case ^{& the Arizona statewide meet} ~~to~~ ~~to~~ speak on the sign. of
the H. trail which is now taking place in Phoenix, Ariz.

The Hornigton issue which occurred on Aug (see

^{the} CCR

According to the press spokesperson "The issue of
~~violence against our people & how to defend~~ ~~ourselves~~
~~against it, is of paramount concern~~ ^{interest} ~~to our org.~~

Our organization has been ^{along with hundred of other C/L org.} ~~awaiting~~ ^{from through the justice v.s. crime} ~~the~~ ~~justice~~

will be served or if our community will see another

of ~~justice~~ ^{once again} ~~as we have~~

seen through the Southwest in the past

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verdict ←

(2) Investigate

1-12-81.

- (1) Mailing List - External + Internal (S.D.)
- (2) Colander
- (3) Increase Membership
- (4) Fund Raising
- (5) ^{Broadsheet} White Paper
- (6) Newspaper Article need to be cut - Just
- (7) Letter to Contrib., World Council of Church
- (8) Filing Article
- (9) System to gauge if successful or failure
Com. U-Joint - Chan of Comrod, External
- (1) Develop check part system, ^{outline} goals, time frame, System if successful or failure.
- (2) Telephone + communicate
- (3) Community Meeting (Nov. 3, suggestion)
- (4) Immigration - Commission Recommendation

another were sufficient to buy a variety
of 90147! To the people of Arizona -
Mexican people there - diseases were
beyond the pale of human consideration

Eventually, ~~though~~ because of the
remembrance's process brought about
by the Mexican community - and
~~members of the state there~~

have appalled by the atrocities carried
out in the desert of _____ (arg)

The Homigon case was brought before
the Federal Grand jury.

As we waited five years for justice
but retribution, justice meted out
soon to the father and leader of
these ungodly acts. ~~But~~
Homigon was given his punishment
by the judge of us all and he
died before she could be judged
by or with.

~~Therefore~~, what occurs here, is no
longer the primary issue - what is at
issue

UNITED STATES *v.* CORTEZ

Syllabus

Held: The objective facts and circumstantial evidence justified the investigative stop of respondents' vehicle. Pp. 5-10.

(a) In determining what cause is sufficient to authorize police to stop a person, the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. The process of assessing all of the circumstances does not deal with hard certainties, but with probabilities, and the evidence collected must be weighed as understood by those versed in the field of law enforcement. Also, the process must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Pp. 5-7.

(b) This case implicates all of these principles—especially the imperative of recognizing that, when used by trained law enforcement officers, objective facts, meaningless to the untrained, allow for permissible deductions from such facts to afford a legitimate basis for suspicion of a particular person and action on that suspicion. Pp. 7-9.

(c) The intrusion upon privacy associated with this stop was limited and “reasonably related in scope to the justification for [its] initiation.” *Terry v. Ohio*, 392 U. S. 1, 29. Based upon the whole picture, the officers, as experienced Border Patrol agents, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity. Pp. 9-10.

595 F. 2d 505, reversed.

BURGER, C. J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, POWELL, REHNQUIST, and STEVENS, JJ., joined. STEWART, J., filed an opinion concurring in the result. MARSHALL, J., concurred in the judgment.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CORTEZ ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 79-404. Argued December 1, 1980—Decided January 21, 1981

Based on their discovery of sets of distinctive human footprints in the desert, Border Patrol officers deduced that on a number of occasions groups of from 8 to 20 persons had been guided by a person, whom they designated "Chevron," from Mexico across an area of desert in Arizona, known to be heavily trafficked by aliens illegally entering the country. These groups of aliens proceeded to an isolated point on a road to be picked up by a vehicle; the officers deduced the vehicle probably approached from the east and returned to the east after the pickup. They also surmised, based on the times when the distinctive tracks were discovered, that "Chevron" generally traveled on clear nights during or near weekends, and arrived at the pickup point between 2 a. m. and 6 a. m. On the basis of this information, the officers stationed themselves at a point east of the probable pickup point on a night when they believed there was a strong possibility that "Chevron" would be smuggling aliens. The officers observed a pickup truck with a camper shell suitable for carrying sizeable groups pass them heading west and then observed the same vehicle return within the estimated time for making a round trip to the pickup point. The officers stopped the vehicle, which was being driven by respondent Cortez and in which respondent Hernandez-Lorea, who was wearing shoes with soles matching the distinctive "chevron" shoeprint, was a passenger. Cortez voluntarily opened the door of the camper and the officers then discovered illegal aliens. Prior to trial on charges of transporting illegal aliens, respondents sought to suppress the evidence of the presence of the aliens discovered as a result of the stopping of their vehicle, contending that the officers did not have adequate cause to make the investigative stop. The District Court denied the motion, and respondents were convicted. The Court of Appeals reversed, holding that the officers lacked a sufficient basis to justify stopping the vehicle and thus respondents' Fourth Amendment rights were violated.

SUPREME COURT OF THE UNITED STATES

No. 79-404

<p>United States, Petitioner, <i>v.</i> Jesus E. Cortez and Pedro Hernandez-Loera.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.</p>
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[January 21, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether objective facts and circumstantial evidence suggesting that a particular vehicle is involved in criminal activity may provide a sufficient basis to justify an investigative stop of that vehicle.

I

Late in 1976, Border Patrol officers patrolling a sparsely populated section of southern central Arizona found human footprints in the desert. In time, other sets of similar footprints were discovered in the same area. From these sets of footprints, it was deduced that, on a number of occasions, groups of from 8 to 20 persons had walked north from the Mexican border, across 30 miles of desert and mountains, over a fairly well-defined path, to an isolated point on Highway 86, an east-west road running roughly parallel to the Mexican border.

Officers observed that one recurring shoeprint bore a distinctive and repetitive V-shaped or chevron design. Because the officers knew from recorded experience that the area through which the groups passed was heavily trafficked by aliens illegally entering the country from Mexico, they surmised that a person, to whom they gave the case-name "Chevron," was guiding aliens illegally into the United States over the path

UNITED STATES v. CORTEZ

marked by the tracks to a point where they could be picked up by a vehicle.

The tracks led into or over obstacles that would have been avoided in daylight. From this, the officers deduced that "Chevron" probably led his groups across the border and to the pickup point at night. Moreover, based upon the times when they had discovered the distinctive sets of tracks, they concluded that "Chevron" generally travelled during or near weekends and on nights when the weather was clear.

Their tracking disclosed that when "Chevron's" groups came within 50 to 75 yards of Highway 86, they turned right and walked eastward, parallel to the road. Then, approximately at highway milepost 122, the tracks would turn north and disappear at the road. From this pattern, the officers concluded that the aliens very likely were picked up by a vehicle—probably one approaching from the east, for after a long overland march the group was most likely to walk parallel to the highway *toward* the approaching vehicle. The officers also concluded that, after the pickup, the vehicle probably returned to the east, because it was unlikely that the group would be walking away from its ultimate destination.

On the Sunday night of January 30–31, 1977, officers Gray and Evans, two Border Patrolmen who had been pursuing the investigation of "Chevron," were on-duty in the Casa Grande area. The latest set of observed "Chevron" tracks had been made on Saturday, January 15–16. January 30–31 was the first clear night after three days of rain. For these reasons, Gray and Evans decided there was a strong possibility that "Chevron" would lead aliens from the border to the highway that night.

The officers assumed that, if "Chevron" did conduct a group that night, he would not leave Mexico until after dark, that is, about 6 p. m. They knew from their experience that groups of this sort, travelling on foot, cover about two and a half to three miles an hour. Thus, the 30-mile journey would take from 8 to 12 hours. From this, the officers calculated

UNITED STATES *v.* CORTEZ

that "Chevron" and his group would arrive at Highway 86 somewhere between 2 a. m. and 6 a. m. on January 31.

About 1 a. m., Gray and Evans parked their patrol car on an elevated location about one hundred feet off Highway 86 at milepost 149, a point some 27 miles east of milepost 122. From their vantage point, the officers could observe the Altar Valley, an adjoining territory they had been assigned to watch that night, and they also could see vehicles passing on Highway 86. They estimated that it would take approximately one hour and a half for a vehicle to make a round trip from their vantage point to milepost 122. Working on the hypothesis that the pickup vehicle approached milepost 122 from the east and thereafter returned to its starting point, they focused upon vehicles that passed them from the east and, after about one hour and a half, passed them returning to the east.

Because "Chevron" appeared to lead groups of between 8 and 20 aliens at a time, the officers deduced that the pickup vehicle would be one that was capable of carrying that large a group without arousing suspicion. For this reason, and because they knew that certain types of vehicles were commonly used for smuggling sizable groups of aliens, they decided to limit their attention to vans, pickup trucks, other small trucks, campers, motor homes, and similar vehicles.

Traffic on Highway 86 at milepost 149 was normal on the night of the officers' surveillance. In the five-hour period between 1 a. m. and 6 a. m., 15 to 20 vehicles passed the officers heading west, toward milepost 122. Only two of them—both pickup trucks with camper shells—were of the kind that the officers had concluded "Chevron" would likely use if he was to carry aliens that night. One, a distinctively colored pickup truck with a camper shell, passed for the first time at 4:30 a. m. Agent Gray was able to see and record only a partial license number, "GN 88—."¹ At 6:12 a. m.,

¹The second camper passed them 15 or 20 minutes later. As far as the record shows, it did not return.

UNITED STATES *v.* CORTEZ

almost exactly the estimated one hour and a half later, a vehicle looking like this same pickup passed them again, this time heading east.

The officers followed the pickup and were satisfied from its license plate, "GN 8804," that it was the same vehicle that had passed at 4:30 a. m. At that point, they flashed their police lights and intercepted the vehicle. Respondent Jesus Cortez was the driver and owner of the pickup; respondent Pedro Hernandez-Lorea was sitting in the passenger's seat. Hernandez-Lorea was wearing shoes with soles matching the distinctive "chevron" shoeprint.

The officers identified themselves and told Cortez they were conducting an immigration check. They asked if he was carrying any passengers in the camper. Cortez told them he had picked up some hitchhikers, and he proceeded to open the back of the camper. In the camper, there were six illegal aliens. The officers then arrested the respondents.

Cortez and Hernandez-Lorea were charged with six counts of transporting illegal aliens in violation of 8 U. S. C. § 1324 (a). By pretrial motion, they sought to suppress the evidence obtained by Officers Gray and Evans as a result of stopping their vehicle. They argued that the officers did not have adequate cause to make the investigative stop. The District Court denied the motion. A jury found the respondents guilty as charged. They were sentenced to concurrent prison terms of five years on each of six counts. In addition, Hernandez-Lorea was fined \$12,000.

A divided panel of the Court of Appeals for the Ninth Circuit reversed, holding that the officers lacked a sufficient basis to justify the stop of the pickup. 595 F. 2d 505 (1979). That court recognized that *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975), provides a standard governing investigative stops of the kind involved in this case, stating:

"The quantum of cause necessary in . . . cases [like this one] was established in *United States v. Brignoni-Ponce*. '[O]fficers on roving patrol may stop vehicles

UNITED STATES v. CORTEZ

only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.' " 595 F. 2d, at 507 (quoting *United States v. Brignoni-Ponce*, *supra*, at 884) (citations omitted).

The court also recognized that "the ultimate question on appeal is whether the trial judge's finding that founded suspicion was present here was clearly erroneous." *Ibid.* Here, because, in the view of the facts of the two judges constituting the majority, "[t]he officers did not have a valid basis for singling out the Cortez vehicle," *id.*, at 508, and because the circumstances admitted "far too many innocent inferences to make the officers' suspicions reasonably warranted," *ibid.*, the panel concluded that the stop of Cortez' vehicle was a violation of the respondents' rights under the Fourth Amendment. In dissent, Judge Chambers was persuaded that *Brignoni-Ponce* recognized the validity of permitting an officer to assess the facts in light of his past experience.

II

A

The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of the vehicle here. *Reid v. Georgia*, — U. S. —, — (1980); *United States v. Brignoni-Ponce*, 422 U. S., *supra*, at 878; *Davis v. Mississippi*, 394 U. S. 721 (1969); *Terry v. Ohio*, 392 U. S. 1, 16–19 (1968). An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.² *Brown v. Texas*, 443 U. S. 47, 51 (1979); *Delaware v. Prouse*, 440 U. S. 648, 661 (1979); *United States v. Brignoni-Ponce*, *supra*, at 884; *Adams v. Williams*, 407 U. S. 143, 146–149 (1972); *Terry v. Ohio*, *supra*, at 16–19.

² Of course, an officer may stop and question a person if there is reasonable grounds to believe that person is wanted for past criminal conduct.

UNITED STATES *v.* CORTEZ

Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. See, *e. g.*, *Brown v. Texas, supra*, at 51; *United States v. Brignoni-Ponce, supra*, at 884.

The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations: information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Chief Justice Warren, speaking for the Court in *Terry v. Ohio, supra*, said, "[t]his demand

UNITED STATES *v.* CORTEZ

for specificity in the information upon which police action is predicated is *the central teaching of this Court's Fourth Amendment jurisprudence.*" *Id.*, at 21, n. 18 (emphasis added). See also, *Brown v. Texas*, *supra*, at 51; *Delaware v. Prouse*, *supra*, at 661-663; *United States v. Brignoni-Ponce*, *supra*, at 884.

B

This case portrays at once both the enormous difficulties of patrolling a 2,000-mile open border and the patient skills needed by those charged with halting illegal entry into this country. It implicates all of the principles just discussed—especially the imperative of recognizing that, when used by trained law enforcement officers, objective facts, meaningless to the untrained, can be combined with permissible deductions from such facts to form a legitimate basis for suspicion of a particular person—and for action on that suspicion. We see here the kind of police work often suggested by judges and scholars as examples of appropriate and reasonable means of law enforcement. Here, fact on fact and clue on clue afforded a basis for the deductions and inferences that brought the officers to focus on "Chevron."

Of critical importance, the agents knew that the area was a crossing point for illegal aliens. They knew that it was common practice for persons to lead aliens through the desert from the border to Highway 86, where they could—by pre-arrangement—be picked up by a vehicle. Moreover, based upon clues they had discovered in the two-month period prior to the events at issue here, they believed that one such guide, whom they designated "Chevron," had a particular pattern of operations.

By piecing together the information at their disposal, the officers tentatively concluded that there was a reasonable likelihood that "Chevron" would attempt to lead a group of aliens on the night of Sunday, January 30-31. Someone with chevron-soled shoes had led several groups of aliens in the

UNITED STATES v. CORTEZ

previous two months, yet it had been two weeks since the latest crossing. "Chevron," they deduced, was therefore due reasonably soon. "Chevron" tended to travel on clear weekend nights. Because it had rained on the Friday and Saturday nights of the weekend involved here, Sunday was the only clear night of that weekend; the officers surmised it was therefore a likely night for a trip.

Once they had focused on that night, the officers drew upon other objective facts known to them to deduce a time frame within which "Chevron" and the aliens were likely to arrive. From what they knew of the practice of those who smuggle aliens, including what they knew of "Chevron's" previous activities, they deduced that the border crossing and journey through the desert would probably be at night. They knew the time when sunset would occur at the point of the border crossing; they knew about how long the trip would take. They were thus able to deduce that "Chevron" would likely arrive at the pickup point on Highway 86 in the time frame between 2 a. m. and 6 a. m.

From objective facts, the officers also deduced the probable point on the highway—milepost 122—at which "Chevron" would likely rendezvous with a pickup vehicle. They deduced from the direction taken by the sets of "Chevron" footprints they had earlier discovered that the pickup vehicle would approach the aliens from, and return with them to, a point east of milepost 122. They therefore staked out a position east of milepost 122 (at milepost 149) and watched for vehicles that passed them going west and then, approximately one and a half hours later, passed them again, this time going east.

From what they had observed about the previous groups guided by the person with chevron shoes, they deduced that "Chevron" would lead a group of 8 to 20 aliens. They therefore focused their attention on enclosed vehicles of that passenger capacity.

UNITED STATES *v.* CORTEZ

The analysis produced by officers Gray and Evans can be summarized as follows: if, on the night upon which they believed "Chevron" was likely to travel, sometime between 2 a. m. and 6 a. m., a large enclosed vehicle was seen to make an east-west-east round trip to and from a deserted point (milepost 122) on a deserted road (Highway 86), the officers would stop the vehicle on the return trip. In four-hour period the agents observed only one vehicle meeting that description. And is it not surprising that when they stopped the vehicle on its return trip it contained "Chevron" and several illegal aliens.³

C

The limited purpose of the stop in this case was to question the occupants of the vehicle about their citizenship and immigration status and the reasons for the round trip in a short time span in a virtually deserted area. No search of the camper or any of its occupants occurred until after respondent Cortez voluntarily opened the back door of the camper; thus, only the stop, not the search, is at issue here. The intrusion upon privacy associated with this stop was limited and was "reasonably related in scope to the justification for [its] initiation," *Terry v. Ohio, supra*, at 29.

We have recently held that stops by the Border Patrol may be justified under circumstances less than those constituting probable cause for arrest or search. *United States v. Brig-*

³ In *Brignoni-Ponce, supra*, at 884-885, the Court listed several factors to be considered as part of the totality of the circumstances in determining the existence *vel non* of a particularized suspicion in cases treating official attempts to stem the influx of illegal aliens into our country. Though the list did not purport to be exhaustive, it is noteworthy that several of the factors present here were recognized by *Brignoni-Ponce* as significant in this context; for example, information about recent border crossings and the type of vehicle involved.

UNITED STATES *v.* CORTEZ

noni-Ponce, supra, at 880.⁴ Thus, the test is not whether officers Gray and Evans had probable cause to conclude that the vehicle they stopped would contain "Chevron" and a group of illegal aliens. Rather the question is whether, based upon the whole picture, they, as experienced Border Patrol agents, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity. On this record, they could so conclude.

Reversed.

JUSTICE MARSHALL concurs in the judgment.

⁴The wide public interest in effective measures to prevent the entry of illegal aliens at the Mexican border has been catalogued by this Court. See, *e. g.*, *United States v. Ortez*, 422 U. S. 891, 899-914 (1974) (BURGER, C. J., concurring in the judgment); *United States v. Brignoni-Ponce, supra*, at 878-879.

SUPREME COURT OF THE UNITED STATES

No. 79-404

<p>United States, Petitioner, <i>v.</i> Jesus E. Cortez and Pedro Hernandez-Loera.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.</p>
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[January 21, 1981]

JUSTICE STEWART, concurring in the result.

The Border Patrol officers in this case knew, or had rationally deduced, that "Chevron" had repeatedly shepherded illegal aliens up from the border; that his treks had commonly ended early in the morning around milepost 122 on Highway 86; that he usually worked on weekends; that he probably had made no trips for two weeks; and that trips were most likely when the weather was good. Knowing of this pattern, the agents could reasonably anticipate, even if they could not guarantee, the arrival of another group of aliens, led by Chevron, at milepost 122 on the first clear weekend night in late January 1977. Route 86 leads through almost uninhabited country, so little travelled in the hours of darkness that only 15 to 20 westbound vehicles passed the police during the five hours they watched that Sunday night. Only two vehicles capacious enough to carry a sizeable group of illegal aliens went by. One of those two vehicles not only drove past them, but returned in the opposite direction after just enough time had elapsed for a journey to milepost 122 and back. This nocturnal round trip into "desolate desert terrain" would in any event have been puzzling. Coming when and as it did, surely the most likely explanation for it was that Chevron was again shepherding aliens.

In sum, the Border Patrol Officers had discovered an abundance of "specific articulable facts" which, "together with rational inferences from them," entirely warranted a "suspicion

UNITED STATES *v.* CORTEZ

that the vehicle[] contain[ed] aliens who [might] be illegal in the country." *United States v. Brignoni-Ponce*, 422 U.S. 873, 884. Because the information possessed by the officer thus met the requirements established by the *Brignoni-Ponce* case for the kind of stop made here, I concur in the reversal of the judgment of the Court of Appeals.

Demostration / Press Conference

Tomorrow 1-29-81 10:00 A.M.

Federal Court Bldg.
To protest the

Front E Broadway

Issue: Recent ^{U.S.} Supreme Court Ruling which allows

Border Patrol the ^{right} ability to stop any

vehicle that could be carrying "illegal aliens"

relying on their own "sixth sense" without

any regards to probably cause, due process

or search warrants. People from L.A. +
Redlands will be coming down!

For Further Info: Call 474-8195

AFFIDAVIT OF
AUGUSTINE RICARDO BRICENO LEDESMA

I, Ausgustine Ricardo Briceno Ledesma, a United States Citizen by birth, born on January 7, 1948 at Mercy Hospital, San Diego, California declare the following:

On January 24, 1981 at approximately 10:A.M., I visited my brother and father who reside in Tijuana B.C. Mexico. My brother and I visited my father at his place of business.

At approximately 8:P.M. my brother and I visited the Jai Alai games and had a few social drinks. At approxiamtely midnight, we retired to our mother's house.

On January 25, 1981, at approximately 7:30 A.M. I was returning to my residency in the United States. When I arrived at the primary inspection area, the officer asked me if I was a United States Citizen. I replied, "Yes, I am a Citizen". He then asked me if I had proof of my citizenship. I told him that I had lost my wallet. The officer then referred me to the secondary inspection.

At the secondary inspection area, an officer asked me if I had proof of U.S. Citizenship. Since I did not have my wallet with me, I reached over and opened the glovecompartment where I had several papers which I presented to the officer. I presented my San Diego Teachers Credit Union papers and several of my check stubs from work. The officer said, "that doesn't mean anything to me". "Go back to Mexico".

I returned back to my mothers house and started looking for my wallet. When I did find the wallet, I asked my brother Jose Felix Briceno Ledesma, who is an attorney in Tijuana, to accompany me to my residency. I told him that we would be picking up some equipment for the soccor game and that we would return shortly.

At the primary inspection area, the officer asked us, "what are you bringing from Mexico," I replied, "nothing". He then asked, "what was your purpose for the trip". I said, "visiting my relatives". Then without any reason, the officer told us to go to secondary inspection.

When I reached the secondary inspection area, I got out of the car and stood by the drivers door, putting my hands and arms on top of the roof of the car. Officer G.E. DAHL from Customs picked up the yellow referral slip and began to inspect the car. She asked us

what we had from Mexico and I answered, nothing.

As she was signing off the yellow referral slip, the first officer who had returned me back to Mexico began walking towards the car and yelling in a loud voice at me, said, "what the hell are you doing here, I told you to go back to Mexico". I answered, " I am going into the States". As he was approaching the car, He said, "I am going to kick your ass". At this time, I yelled back, "take off your uniform and step into the street," the officer said, "I don't have to do that," and grabbed me by the hair and began to hit me in the ribs and then slapped me on the head several times. All I could do was to clinch my arms next to my ribs and hold my head down to protect myself. I never hit or attempted to hit the officer at anytime.

My brother Jose saw the officer hit me and he got out of the car, but the officer let me go and ran to where my brother was and said, "do you want the same too!" My brother said, "no, I am going to call the Police."---(voy hablar la policia). Immediately, the officer said, "your free to go, get the hell out of here."

I then replied, "no, I want to file a complaint". He said, "NO! NO!, just leave, your not going to file a complaint."

I repeated, "yes I am", then the officer approached me and said in a threatening manner, "you file a complaint against me and I will kill you." I said, "I don't care", and I started for the office.

I approached the front counter and I informed the officer behind the counter that I wanted to file a complaint against the officer, who had beaten me. I was asked to sit down in the next room and the officer asked me what had happened. When I was finished telling him about the incident, he asked me to leave the room and he began to question my brother Jose. My brother then completed his statement and the officer asked us to leave. We then stepped outside, got into the car and left to my house.

On Monday, Janaury 26, 1981, I returned to U.S. Customs and asked if I could obtain a copy of my complaint and the names of the officer involved. They told me that they could not give me any names, but I was given the badge number of the officer. It is Badge Number #9092.

I DECLARE UNDER PENALTY OF PERJURY, THAT THE STATEMENT I HAVE GIVEN IS TRUE TO THE BEST OF MY ABILITY.

Dated: _____

Augustine Ricardo Briceno Ledesma

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Q No. I'm talking about right--right
out there in the highway, after they
had gotten you out of the truck
or--the aliens out of--not the truck,
but the van--and the aliens out of
the van--

A They didn't take the aliens out of
the van on the highway.

Q They got you out, right?

A Yes.

Q Did you tell them at that point that
"Hey, somebody in there may have a
weapon; they threatened me"?

A No. While I was talking to the
patrolman, who was--telling me about
a citation for speeding, one of the
marshals--not marshal, the--well,
anyway, he came back with his badge,
and told me I was under arrest.

Q So you never did tell anybody about
that?

A No.

2. [reference on page 7]

E.g., being given Miranda warnings.

CRIMINAL PROCEDURE

Well-Founded Suspicion for Border Investigation Existed

Cite as 81 Daily Journal D.A.R. 72

(U.S.C.A. 9th, December 22, 1980) FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 22 1980

RICHARD M. DEANE
CLERK U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

NO. 80-1169

v.

CR. NO. 80-016-TUC

C. E. HARRINGTON,

OPINION

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Mary Anne Richey, District Judge, Presiding
Argued and submitted August 13, 1980

Before: CHOY and FLETCHER, Circuit Judges, and EAST,*
District Judge.

CHOY, Circuit Judge:

Harrington appeals his conviction on five counts of transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(2). We affirm.

I. Facts

The area around Douglas, Arizona, is notorious as a smuggling region. On October 25, 1979 Border Patrol Agent Foley observed Harrington (a California resident) driving aimlessly around Douglas in a blue van that had been rented in Los Angeles. On December 1, 1979 Harrington, once again in Douglas, this time driving a white van with commercial license plates, was stopped by Customs Officer Jennings. The white van also had been rented from a Los Angeles agency. Jennings asked Harrington for his driver's license and to open the back of the van. A check of the license disclosed Harrington's prior drug record. The back of the van contained only a gas can. The tread on the white van's tires matched subsequently discovered tracks left by a vehicle at a smuggling site. On December 2, 1979 a group of 14 illegal aliens were arrested at that same site. Three of the aliens told the arresting agent that they were supposed to be picked up by a van.

At the request of border patrol agents in Douglas, agents in Los Angeles periodically checked to determine whether Harrington had rented another van. On December 18, 1979, Los Angeles Agent Keating learned that Harrington had rented a white Dodge van that was to be returned on December 21, 1979.

On December 19, 1979 Harrington was seen driving the van in Douglas. When he rented a room at a motel, a border patrol agent rented the one next door. A Mexican male visited Harrington at 7:00 p.m. and 9:00 p.m. that night, and again at 4:15 a.m. the following morning. After the last visit Harrington quickly left the motel, left Douglas by a circuitous route, traveled to a known smuggling spot, and parked with his lights out. The agent watching Harrington saw no one else in the area. Harrington then drove to another alien pick-up site and parked with his parking lights on. Again no one was visible in that area.

Harrington then proceeded to Douglas and was met en route by a second vehicle which appeared to be the same vehicle driven earlier by the male visitor to Harrington's motel room. The two vehicles appeared to be traveling in tandem. Harrington returned to the motel and the other vehicle continued on toward the port of entry at Douglas.

When Harrington left the motel, he drove northwest on Highway 80. An officer observed that the van appeared to ride lower, to sway on turns, to bounce more on dips, and to struggle climbing a hill. At the request of the border patrol a Tombstone police officer stopped Harrington. Harrington got out of his van and met the officer at the rear of the vehicle. While the officer was talking with

Harrington about exceeding the speed limit, Border Patrol Agent Escobedo told Harrington that he was an immigration officer and that he was going to check the van. Looking in the side window between the curtain and the door, Agent Escobedo saw a large number of people of Latin extraction inside. Seventeen illegal aliens were found in the van.

Harrington moved to suppress the evidence (i.e., the aliens) seized as a result of an allegedly unlawful stop. At the suppression hearing Harrington testified that no immigration officer spoke to him until after the van had been opened and he had been arrested. Harrington also testified that at the time of the seizure the van was not carrying a maximum load and, therefore, would not have swayed, bounced, or ridden significantly lower. The district court nonetheless denied the motion.

At trial the evidence of the events occurring December 18-20 was presented. Also, five of the aliens testified that they had paid a guide to lead them through the desert and to arrange a trip to Los Angeles. Some testified that a white van or truck was to pick them up and that when Harrington arrived at the pick-up spot, the guide briefly talked with him.

Harrington testified that he was en route to see a

female friend in Texas, but stopped in Douglas to try to get some marijuana. He further testified that shortly after leaving Douglas, he stopped to pick up a couple who was hitchhiking. According to Harrington, the male hitchhiker threatened him with a knife and forced him to transport the aliens, telling him that the alien immediately behind him in the van also had a weapon.

On cross-examination the prosecutor asked Harrington whether he told the police officer who stopped his van about the man with the knife. Harrington responded that he had not.^{1/} Defense counsel moved for a mistrial, but the district court found the questioning to be proper because of Harrington's testimony and, thus, denied the motion.

Harrington contends that the border patrol did not have founded suspicion to stop his van, that the border patrol did not have probable cause to arrest him, and that the cross-examination regarding Harrington's failure to tell the police officer about the alien with the weapon violated his constitutional rights.

II. Motion to Suppress

Where no findings of fact were made or requested, we will uphold a trial court's denial of a motion to suppress if there is a reasonable view of the evidence that will sustain it. *United States v. Williams*, No. 79-1454, slip op. 2625, 2630 (9th Cir. April 7, 1980). We must view the evidence in the light most favorable to the Government. *United States v. Henry*, 615 F.2d 1223, 1230 (9th Cir. 1980).

A. Founded Suspicion

In border cases, a brief, investigatory stop of a vehicle is constitutionally permissible if the officer has founded suspicion, i.e., "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the [vehicle] contain[s] aliens who may be illegally in the country." *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Some fact or facts must focus suspicion on the particular vehicle as being involved in criminal activity. See *United States v. Carrizosa-Gaxiola*, 523 F.2d 239 (9th Cir. 1975).

In determining whether an officer has founded suspicion, we must balance the factors of the particular case, considering such factors as proximity to the border, previous illegal alien traffic, the type of vehicle, the driver's behavior, and the characteristic appearance of aliens. *United States v. Brignoni-Ponce*, 422 U.S. at 884-85. Harrington contends that the information obtained as a result of the allegedly unlawful stop on December 1, 1979, should have been suppressed and that with or without that information the officers did not have founded suspicion to

*The Honorable William G. East, Senior District Judge for the District of Oregon, sitting by designation.

stop him on December 20.

1. The December 1 Stop

Harrington asserts that the evidence of the allegedly unlawful December 1 stop and the evidence obtained thereby should not have been used to support the finding of founded suspicion as to the December 20 stop. Harrington did not make this specific argument to the lower court. Thus, we do not reach this issue. See United States v. Fong, 529 F.2d 55, 58 (9th Cir. 1975).

2. The December 20 Stop

Even without considering the evidence obtained from the December 1 stop, we find that there was founded suspicion supporting the stop. Douglas, a town near the Mexican border, is a known smuggling area. Border patrol officers there observed Harrington driving a van, a vehicle commonly used for transporting aliens. Harrington had registered at a motel under an assumed name. During the surveillance of Harrington, border patrol agents observed a Mexican male visiting Harrington's motel room at three different times, for periods of about 15 minutes, the last of which was just before dawn. Almost immediately after this visit, Harrington left his motel room and, after taking a circuitous route, proceeded to two known alien pick-up spots where he parked for a short time. Thereafter the van appeared to be riding

lower, swaying on curves, bouncing at dips, and struggling to climb hills. These facts are sufficient to reasonably warrant suspicion that the van contained illegal aliens, and the stop was justified.

B. Probable Cause

Probable cause exists where facts within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a reasonably prudent person to believe that an offense has been or is being committed by the person to be arrested. Dunaway v. New York, 442 U.S. 200, 208 n.9 (1979); United States v. Chamberlin, 609 F.2d 1318, 1323 (9th Cir. 1979). Whether an investigative stop becomes an arrest, thereby requiring probable cause, depends on all of the surrounding circumstances including the extent that freedom of movement is curtailed and the degree and type of force or authority used to effectuate the stop. United States v. Beck, 598 F.2d 497, 500-02 (9th Cir. 1979).

Harrington argues that the stop was not a mere investigatory stop, but that in fact he was under arrest as soon as he was told he was going to be questioned about an immigration violation. Because the aliens had not then been

without probable cause.

Harrington was stopped by a police officer, ostensibly for a traffic violation. While they were talking, a border patrol agent identified himself and said to Harrington, "Depending on what I find [when checking the van] I need to come back and talk to you about an immigration violation." There is nothing in these circumstances from which a reasonable person would conclude he was under arrest.

Furthermore, once the border patrol agent saw the aliens through the window of the van, he clearly had probable cause to arrest Harrington and to search the van.

The motion to suppress was properly denied.

III. Cross-Examination

In Jenkins v. Anderson, ___ U.S. ___, 100 S.Ct. 2124 (1980), the defendant testified on his own behalf that he had stabbed and killed the victim in self-defense. During cross-examination the prosecutor attempted to impeach the defendant's credibility by asking whether before his arrest he had reported the stabbing to anyone and by suggesting that he would have done so if he had killed in self-defense. The Supreme Court held that the defendant's constitutional rights were not violated where the defendant's own decision to take the stand placed him in a position to be impeached by his prior words or silence and no governmental action^{2/} induced the defendant to remain silent before his arrest. Id. at 2127-30.

We are presented with similar circumstances in this case. At trial Harrington voluntarily testified on his own behalf that a man with a knife had coerced him into transporting the aliens and had told him that the man sitting behind him in the van also had a weapon. On cross-examination the prosecutor questioned Harrington as to whether, after Harrington was out of the van or after "all these people with those weapons" were out of the van, he told any of the officers "Hey, somebody in there may have a weapon; they threatened me." Harrington admitted that he had not done so.

It would seem natural that if Harrington had been threatened with a weapon, he would have blurted that out to the police officer as soon as he was a safe distance away from the van. The prosecutor's questions clearly were probative of Harrington's credibility and, as such, would seem appropriate for use for impeachment purposes.

The problem here is that the prosecutor's questions referred both to when Harrington got out of the van (before the arrest), and to when the aliens were removed from the van (after the arrest). Thus, under Doyle v. Ohio, 426 U.S. 610

(1976), in which the Court held that cross-examination regarding the defendant's post-arrest silence violated his constitutional rights, there may have been some infringement in this case.

Even if there was error in allowing the questions regarding Harrington's actions after the aliens were removed from the van, however, it was harmless beyond a reasonable doubt. When Harrington began discussing what happened after he was arrested, the prosecutor focused his discussion on what happened "right out there in the highway, after they had gotten you out of the truck [sic]." The truth of Harrington's testimony was otherwise challenged when, after questioning he admitted that the hitchhiker who allegedly coerced him into transporting the aliens did not get into the van. Additionally, the aliens testified that they did not see or know of anyone having a knife. Also, the officers testified that Harrington had gotten out of the van voluntarily at least twice -- once at the motel just after picking up the aliens and once when stopped just prior to his arrest -- suggesting that he was voluntarily driving the van and not being forced by threat of violence.

These facts, combined with the other evidence here make the Government's case so strong as to preclude doubt about the verdict. See Bradford v. Stone, 594 F.2d 1294, 1296-97 (9th Cir. 1979); United States v. Wycoff, 545 F.2d 679, 682 (9th Cir.), cert. denied, 409 U.S. 1105 (1977). Judgment, therefore, is AFFIRMED.

FOOTNOTES

1. [reference on page 4]
The colloquy between Harrington and the prosecutor was as follows:

Q After the border patrol stopped your van, and it had gotten all these people with those weapons out, did you report that to a law enforcement agency?

A All what people with what weapons?
COUNSEL FOR DEFENSE: Your Honor, I object.

THE COURT: Overruled.

Q (By the Prosecutor) Well, the knife, and--somebody was sitting in back of you.

A The guy that had the knife, that I saw, did not get in the van. And--and I assumed the man behind me had a weapon, because that's what he had told me. I have no idea what he did with it.

They took me out of the van, and took me to the Tombstone jail. The next time I saw any of the individuals was when they brought them into the same jail.

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Q No, I'm talking about right--right
out there in the highway, after they
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or--the aliens out of--not the truck,
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A They didn't take the aliens out of
the van on the highway.

Q They got you out, right?

A Yes.

Q Did you tell them at that point that
"hey, somebody in there may have a
weapon; they threatened me"?

A No, while I was talking to the
patrolman, who was--telling me about
a citation for speeding, one of the
marshals--not marshal, the--well,
anyway, he came back with his badge
and told me I was under arrest.

Q So you never did tell anybody about
that?

A No.

2. [reference on page 7]

E.g., being given Miranda warnings.

Point
case was to question
their citizenship and
the round trip in a
area. No search of
ed until after re-
back door of the
is at issue here.
with this stop was
hope to the justifica-
pra, at 29.

Border Patrol may
those constituting
United States v. Bria-

rt listed several factors
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in cases treating official
r country. Though the
orthy that several of the
-Ponce as significant in
nt border crossings and

s to prevent the entry
alogued by this Court.
9-914 (1974) (BURGER,
Brignoni-Ponce, supra,

noni-Ponce, supra, at 880.⁴ Thus, the test is not whether officers Gray and Evans had probable cause to conclude that the vehicle they stopped would contain "Chevron" and a group of illegal aliens. Rather the question is whether, based upon the whole picture, they, as experienced Border Patrol agents, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity. On this record, they could so conclude.

Reversed.

JUSTICE MARSHALL concurs in the judgment.

No. 79-404

United States, Petitioner,
v.
Jesus E. Cortez and Pedro
Hernandez-Loera.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

[January 21, 1981]

JUSTICE STEWART, concurring in the result.

The Border Patrol officers in this case knew, or had rationally deduced, that "Chevron" had repeatedly shepherded illegal aliens up from the border; that his treks had commonly ended early in the morning around milepost 122 on Highway

86; that he usually worked on weekends; that he probably had made no trips for two weeks; and that trips were most likely when the weather was good. Knowing of this pattern, the agents could reasonably anticipate, even if they could not guarantee, the arrival of another group of aliens, led by Chevron, at milepost 122 on the first clear weekend night in late January 1977. Route 86 leads through almost uninhabited country, so little travelled in the hours of darkness that only 15 to 20 westbound vehicles passed the police during the five hours they watched that Sunday night. Only two vehicles capacious enough to carry a sizeable group of illegal aliens went by. One of those two vehicles not only drove past them, but returned in the opposite direction after just enough time had elapsed for a journey to milepost 122 and back. This nocturnal round trip into "desolate desert terrain" would in any event have been puzzling. Coming when and as it did, surely the most likely explanation for it was that Chevron was again shepherding aliens.

In sum, the Border Patrol Officers had discovered an abundance of "specific articulable facts" which, "together with rational inferences from them," entirely warranted a "suspicion that the vehicle[] contain[ed] aliens who [might] be illegally in the country." *United States v. Brignoni-Ponce*, 422 U. S. 873, 884. Because the information possessed by the officers thus met the requirements established by the *Brignoni-Ponce* case for the kind of stop made here, I concur in the reversal of the judgment of the Court of Appeals.

Minnesota is without constitutional sanction or precedentia support, it is clear to me that the findings of the Minnesota Supreme Court must be respected by this Court. Accordingly, the essential predicate for the majority's conclusion that the "local benefits [are] ample to support Minnesota's decision under the Commerce Clause," *ante*, at 16, is absent.

III

The majority properly observes that a state court, when

Works, 274 U. S. 325, 328 (1927); *Cusack Co. v. City of Chicago*, 24 U. S. 526, 531 (1917); *Hadacheck v. Los Angeles*, 239 U. S. 394, 413-41 (1915); *Price v. Illinois*, 238 U. S. 446, 452-453 (1915); *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, 365 (1910).

* This Court will defer to the interpretation of state law announced by the highest court of a State even where a more reasonable interpretation is apparent, see, e. g., *O'Brien v. Skinner*, 414 U. S. 524, 531 (1974), contrary construction might save a state statute from constitutional invalidity, see, e. g., *Landmark Communications, Inc. v. Virginia*, 43 U. S. 829, 837, n. 9 (1978), or it appears that the state court has attributed an unusually inflexible command to its legislature, see, e. g., *Kingsley Pictures Corp. v. San Francisco*, 360 U. S. 684, 688-689 (1959).

¹⁰ As the majority notes, the evidence considered by the Minnesota courts was conflicting, *ante*, at 3, 7, 12, and the respondents "produced impressive supporting evidence at trial" indicating that the decision of the Minnesota Legislature was factually unsound. *Ante*, at 6. In light of this record, this Court clearly cannot reverse the concurrent factual findings of two state courts.

Moreover, since there is no significant difference between plastic containers and paper containers in terms of environmental impact, and since no one contends that the Minnesota statute will reduce the consumption of dairy products, it is not difficult to understand the state judges' skeptical scrutiny of a legislative ban on the use of one kind of container without imposing any present or future restriction whatsoever on the use of the other.

¹¹ It is true that the Court carefully avoids an express acknowledgment that the Minnesota Supreme Court applied the correct legal standard. Not one word in the Court's opinion, however, suggests that the Court has any disagreement with the state court's understanding of the proper federal rule.

¹² The trial court made the following findings of fact:

"12. Despite the purported policy statement published by the Legislature as its basis for enacting Chapter 268, the actual basis was to promote the economic interests of certain segments of the local dairy and pulpwood industries at the expense of the economic interests of other segments of the dairy industry and the plastics industry.

"23. Despite the purported policy reasons published by the Legislature for enacting Chapter 268, actual bases were to isolate from inter-competition the interests of certain segments of the local dairy and pulpwood industries. The economic welfare of such local interests can be promoted only by the remedies prescribed in Chapter 268." Joint Ap-

plying the provisions of the Federal Constitution, may not apply a constitutional standard more stringent than that announced in the relevant decisions of this Court. See *ante*, at 4-5, n. 6. It follows from this observation that a state court's decision invalidating state legislation on federal constitutional grounds may be reversed by this Court if the state court misinterpreted the relevant federal constitutional standard. In

¹⁴ As noted in Part I, *supra*, the Court rejects the Minnesota Supreme Court's findings, not because they are without support in the record—they clearly are adequately supported, see n. 10, *supra*—but because it feels that the Minnesota Supreme Court was without authority to do anything other than endorse the factual conclusions of the Minnesota Legislature.

in this case, however, the Minnesota Supreme Court applied the correct federal equal protection standard and properly declined to consider the Commerce Clause. The majority reverses this decision because it disagrees with the Minnesota courts' perception of their role in the State's lawmaking process, not because of any error in the application of federal law. In my opinion, this action is beyond the Court's authority. I therefore respectfully dissent.

economic groups (plastic and certain dairies) by prohibiting the plastic milk bottle." *Id.*, at A-24.

¹³ According to the majority, its decision to address the Commerce Clause question is justified "because of the obvious factual connection between the rationality analysis under the Equal Protection Clause and the balancing of interests under the Commerce Clause" *Ante*, at 13-14, n. 14. The majority cites *New York City Transit Authority v. Beazer*, 440 U. S. 568 (1979), in support of this rationale. This justification is inadequate, in my opinion, for two reasons.

First, in light of the trial court's factual finding that the Minnesota Legislature enacted the statute for protectionist, rather than environmental, reasons, see n. 12, *supra*, the Equal Protection Clause and Commerce Clause inquiries are not necessarily as similar as the Court suggests. As the majority acknowledges, if a state law which purports to promote environmental goals is actually protectionist in design, a virtually automatic rule of invalidity, not a balancing of interests test, is applied. See *ante*, at 14. See also *New Orleans v. Dukes*, 427 U. S. 297, 304, n. 5 (1976) (*per curiam*).

Second, in *Beazer* the Court reviewed the decision of a lower federal court, not a state supreme court. While this Court, in its discretion, may elect to deprive lower federal courts of the opportunity to decide particular statutory questions, it seems to me that respect for the Minnesota Supreme Court as the highest court of a sovereign State dictates that we not casually divest it of authority to decide a constitutional question on which it properly declined to comment when this case was first before it. Such deference is especially appropriate here because the Court's analysis of the Commerce Clause issue requires rejection of the state trial court's findings of fact.

CRIMINAL PROCEDURES

Police Stop OK Under Totality of Circumstances

Cite as 80 Daily Journal D.A.R. 246

(U.S. Sup. Ct., January 21, 1981)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CORTEZ ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 79-404. Argued December 1, 1980—Decided January 21, 1981

Based on their discovery of sets of distinctive human footprints in the desert, Border Patrol officers deduced that on a number of occasions groups of from 8 to 20 persons had been guided by a person, whom they designated "Chevron," from Mexico across an area of desert in Arizona, known to be heavily trafficked by aliens illegally entering the country. These groups of aliens proceeded to an isolated point on a road to be picked up by a vehicle; the officers deduced the vehicle probably approached from the east and returned to the east after the pickup. They also surmised, based on the times when the distinctive tracks were discovered, that "Chevron" generally traveled on clear nights during or near weekends, and arrived at the pickup point between 2 a. m. and 6 a. m. On the basis of this information, the officers stationed themselves at a point east of the probable pickup point on a night when they believed there was a strong possibility that "Chevron" would be smuggling aliens. The officers observed a pickup truck with a camper shell suitable for carrying sizeable groups pass them heading west and then observed the same vehicle return within the estimated time for making a round trip to the pickup point. The officers stopped the vehicle, which was being driven by respondent Cortez and in which respondent Hernandez-Lorea, who was wearing shoes with soles matching the distinctive "chevron" shoeprint, was a passenger. Cortez voluntarily opened the door of the camper and the officers then discovered illegal aliens. Prior to trial on charges of transporting illegal aliens, respondents sought to suppress the evidence of the presence of the aliens discovered as a result of the stopping of their vehicle, contending that the officers did not have adequate cause to make the investigative stop. The District Court denied the motion, and respondents were convicted. The Court of Appeals reversed, holding that the officers lacked a sufficient basis to justify stopping the vehicle and thus respondents' Fourth Amendment rights were violated.

Held: The objective facts and circumstantial evidence justified the investigative stop of respondents' vehicle. Pp. 5-10.

(a) In determining what cause is sufficient to authorize police to stop a person, the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. The process of assessing all of the circumstances does not deal with hard certainties, but

only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." 595 F. 2d, at 507 (quoting *United States v. Brignoni-Ponce*, supra, at 884) (citations omitted).

The court also recognized that "the ultimate question on appeal is whether the trial judge's finding that founded suspicion was present here was clearly erroneous." *Ibid.* Here, because, in the view of the facts of the two judges constituting the majority, "[t]he officers did not have a valid basis for singling out the Cortez vehicle," *id.*, at 508, and because the circumstances admitted "far too many innocent inferences to make the officers' suspicions reasonably warranted," *ibid.*, the panel concluded that the stop of Cortez' vehicle was a violation of the respondents' rights under the Fourth Amendment. In dissent, Judge Chambers was persuaded that *Brignoni-Ponce* recognized the validity of permitting an officer to assess the facts in light of his past experience.

II

A

The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of the vehicle here. *Reid v. Georgia*, — U. S. —, — (1980); *United States v. Brignoni-Ponce*, 422 U. S., supra, at 878; *Davis v. Mississippi*, 394 U. S. 721 (1969); *Terry v. Ohio*, 392 U. S. 1, 16-19 (1968). An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.² *Brown v. Texas*, 443 U. S. 47, 51 (1979); *Delaware v. Prouse*, 440 U. S. 648, 661 (1979); *United States v. Brignoni-Ponce*, supra, at 884; *Adams v. Williams*, 407 U. S. 143, 146-149 (1972); *Terry v. Ohio*, supra, at 16-19.

Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. See, e. g., *Brown v. Texas*, supra, at 51; *United States v. Brignoni-Ponce*, supra, at 884.

The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances

² Of course, an officer may stop and question a person if there is reasonable grounds to believe that person is wanted for past criminal conduct.

information from police reports, if such are available, and likelihood that "Chevron" would attempt to lead a group of aliens on the night of January 30-31. Someone with several groups of aliens in the previous two months. It had been two weeks since the latest crossing. "Chevron" they deduced, was therefore due reasonably soon. "Chevron" intended to travel on clear week-end nights. Because "Chevron" was detained on the Friday and Saturday nights of the week-end involved here, Sunday was the only clear night of the weekend; the officers surmised it was therefore a likely night for a trip.

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Chief Justice Warren, speaking for the Court in *Terry v. Ohio*, supra, said, "[t]his demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.*, at 21, n. 18 (emphasis added). See also, *Brown v. Texas*, supra, at 51; *Delaware v. Prouse*, supra, at 661-663; *United States v. Brignoni-Ponce*, supra, at 884.

B

This case portrays at once both the enormous difficulties of patrolling a 2,000-mile open border and the patient skill needed by those charged with halting illegal entry into this country. It implicates all of the principles just discussed—especially the imperative of recognizing that, when used by trained law enforcement officers, objective facts, meaningless to the untrained, can be combined with permissible deductions from such facts to form a legitimate basis for suspicion of a particular person—and for action on that suspicion. We see here the kind of police work often suggested by judges and scholars as examples of appropriate and reasonable means of law enforcement. Here, fact on fact and clue on clue afforded a basis for the deductions and inferences that brought the officers to focus on "Chevron."

Of critical importance, the agents knew that the area was a crossing point for illegal aliens. They knew that it was a common practice for persons to lead aliens through the desert from the border to Highway 86, where they could—by pre-arrangement—be picked up by a vehicle. Moreover, based upon clues they had discovered in the two-month period prior to the events at issue here, they believed that one such guide, whom they designated "Chevron," had a particular pattern of operations.

By piecing together the information at their disposal, the

that there was a reasonable likelihood that "Chevron" would attempt to lead a group of aliens on the night of January 30-31. Someone with several groups of aliens in the previous two months. It had been two weeks since the latest crossing. "Chevron" they deduced, was therefore due reasonably soon. "Chevron" intended to travel on clear week-end nights. Because "Chevron" was detained on the Friday and Saturday nights of the week-end involved here, Sunday was the only clear night of the weekend; the officers surmised it was therefore a likely night for a trip. Once they had focused on that night, the officers drew upon other objective facts known to them to deduce a time frame within which "Chevron" and the aliens were likely to arrive. From what they knew of the practice of those who smuggle aliens, including what they knew of "Chevron's" previous activities, they deduced that the border crossing and journey through the desert would probably be at night. They knew the time when sunset would occur at the point of the border crossing; they knew about how long the trip would take. They were thus able to deduce that "Chevron" would likely arrive at the pickup point on Highway 86 in the time frame between 2 a. m. and 6 a. m.

From objective facts, the officers also deduced the probable point on the highway—milepost 122—at which "Chevron" would likely rendezvous with a pickup vehicle. They deduced from the direction taken by the sets of "Chevron" footprints they had earlier discovered that the pickup vehicle would approach the aliens from, and return with them to, a point east of milepost 122. They therefore staked out a position east of milepost 122 (at milepost 149) and watched for vehicles that passed them going west and then, approximately one and a half hours later, passed them again, this time going east.

From what they had observed about the previous groups guided by the person with chevron shoes, they deduced that "Chevron" would lead a group of 8 to 20 aliens. They therefore focused their attention on enclosed vehicles of that passenger capacity.

The analysis produced by officers Gray and Evans can be summarized as follows: if, on the night upon which they believed "Chevron" was likely to travel, sometime between 2 a. m. and 6 a. m., a large enclosed vehicle was seen to make an east-west-east round trip to and from a deserted point (milepost 122) on a deserted road (Highway 86), the officers would stop the vehicle on the return trip. In four-hour period the agents observed only one vehicle meeting that description. And is it not surprising that when they stopped the vehicle on its return trip it contained "Chevron" and several illegal aliens.³

with probabilities, and the evidence collected must be weighed as understood by those versed in the field of law enforcement. Also, the process must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Pp. 5-7.

(b) This case implicates all of these principles—especially the imperative of recognizing that, when used by trained law enforcement officers, objective facts, meaningless to the untrained, allow for permissible deductions from such facts to afford a legitimate basis for suspicion of a particular person and action on that suspicion. Pp. 7-9.

(c) The intrusion upon privacy associated with this stop was limited and “reasonably related in scope to the justification for [its] initiation.” *Terry v. Ohio*, 392 U. S. 1, 29. Based upon the whole picture, the officers, as experienced Border Patrol agents, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity. Pp. 9-10.

595 F. 2d 505, reversed.

BURGER, C. J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, POWELL, REHNQUIST, and STEVENS, JJ., joined. STEWART, J., filed an opinion concurring in the result. MARSHALL, J., concurred in the judgment.

No. 79-404

United States, Petitioner,
v.
Jesus E. Cortez and Pedro
Hernandez-Loera.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

[January 21, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether objective facts and circumstantial evidence suggesting that a particular vehicle is involved in criminal activity may provide a sufficient basis to justify an investigative stop of that vehicle.

I

Late in 1976, Border Patrol officers patrolling a sparsely populated section of southern central Arizona found human footprints in the desert. In time, other sets of similar footprints were discovered in the same area. From these sets of footprints, it was deduced that, on a number of occasions, groups of from 8 to 20 persons had walked north from the Mexican border, across 30 miles of desert and mountains, over a fairly well-defined path, to an isolated point on Highway 86, an east-west road running roughly parallel to the Mexican border.

Officers observed that one recurring shoeprint bore a distinctive and repetitive Y-shaped or chevron design. Because the officers knew from recorded experience that the area through which the groups passed was heavily trafficked by aliens illegally entering the country from Mexico, they surmised that a person, to whom they gave the case-name “Chevron,” was guiding aliens illegally into the United States over the path

marked by the tracks to a point where they could be picked up by a vehicle.

The tracks led into or over obstacles that would have been avoided in daylight. From this, the officers deduced that “Chevron” probably led his groups across the border and to the pickup point at night. Moreover, based upon the times when they had discovered the distinctive sets of tracks, they concluded that “Chevron” generally travelled during or near weekends and on nights when the weather was clear.

Their tracking disclosed that when “Chevron’s” groups came within 50 to 75 yards of Highway 86, they turned right and walked eastward, parallel to the road. Then, approximately at highway milepost 122, the tracks would turn north and disappear at the road. From this pattern, the officers concluded that the aliens very likely were picked up by a vehicle—probably one approaching from the east, for after a long overland march the group was most likely to walk parallel to the highway toward the approaching vehicle. The officers also concluded that, after the pickup, the vehicle probably returned to the east, because it was unlikely that the group would be walking away from its ultimate destination.

On the Sunday night of January 30-31, 1977, officers Gray and Evans, two Border Patrolmen who had been pursuing the investigation of “Chevron,” were on duty in the Casa Grande area. The latest set of observed “Chevron” tracks had been made on Saturday, January 15-16. January 30-31 was the first clear night after three days of rain. For these reasons, Gray and Evans decided there was a strong possibility that “Chevron” would lead aliens from the border to the highway that night.

The officers assumed that, if “Chevron” did conduct a group that night, he would not leave Mexico until after dark, that is, about 6 p.m. They knew from their experience that groups of this sort, travelling on foot, cover about two and a half to three miles an hour. Thus, the 30-mile journey would take from 8 to 12 hours. From this, the officers calculated that “Chevron” and his group would arrive at Highway 86 somewhere between 2 a.m. and 6 a.m. on January 31.

About 1 a.m., Gray and Evans parked their patrol car on an elevated location about one hundred feet off Highway 86 at milepost 149, a point some 27 miles east of milepost 122. From their vantage point, the officers could observe the Altar Valley, an adjoining territory they had been assigned to watch that night, and they also could see vehicles passing on Highway 86. They estimated that it would take approximately one hour and a half for a vehicle to make a round trip from their vantage point to milepost 122. Working on the hypothesis that the pickup vehicle approached milepost 122 from the east and thereafter returned to its starting point, they focused upon vehicles that passed them from the east and, after about one hour and a half, passed them returning to the east.

¹The second camper passed them 15 or 20 minutes later. As far as the record shows, it did not return.

Because “Chevron” appeared to lead groups of between 8 and 20 aliens at a time, the officers deduced that the pickup vehicle would be one that was capable of carrying that large a group without arousing suspicion. For this reason, and because they knew that certain types of vehicles were commonly used for smuggling sizable groups of aliens, they decided to limit their attention to vans, pickup trucks, other small trucks, campers, motor homes, and similar vehicles.

Traffic on Highway 86 at milepost 149 was normal on the night of the officers’ surveillance. In the five-hour period between 1 a.m. and 6 a.m., 15 to 20 vehicles passed the officers heading west, toward milepost 122. Only two of them—both pickup trucks with camper shells—were of the kind that the officers had concluded “Chevron” would likely use if he was to carry aliens that night. One, a distinctively colored pickup truck with a camper shell, passed for the first time at 4:30 a.m. Agent Gray was able to see and record only a partial license number, “GN 88—.” At 6:12 a.m., almost exactly the estimated one hour and a half later, a vehicle looking like this same pickup passed them again, this time heading east.

The officers followed the pickup and were satisfied from its license plate, “GN 8804,” that it was the same vehicle that had passed at 4:30 a.m. At that point, they flashed their police lights and intercepted the vehicle. Respondent Jesus Cortez was the driver and owner of the pickup; respondent Pedro Hernandez-Loera was sitting in the passenger’s seat. Hernandez-Loera was wearing shoes with soles matching the distinctive “chevron” shoeprint.

The officers identified themselves and told Cortez they were conducting an immigration check. They asked if he was carrying any passengers in the camper. Cortez told them he had picked up some hitchhikers, and he proceeded to open the back of the camper. In the camper, there were six illegal aliens. The officers then arrested the respondents.

Cortez and Hernandez-Loera were charged with six counts of transporting illegal aliens in violation of 8 U. S. C. § 1324 (a). By pretrial motion, they sought to suppress the evidence obtained by Officers Gray and Evans as a result of stopping their vehicle. They argued that the officers did not have adequate cause to make the investigative stop. The District Court denied the motion. A jury found the respondents guilty as charged. They were sentenced to concurrent prison terms of five years on each of six counts. In addition, Hernandez-Loera was fined \$12,000.

A divided panel of the Court of Appeals for the Ninth Circuit reversed, holding that the officers lacked a sufficient basis to justify the stop of the pickup. 595 F. 2d 505 (1979). That court recognized that *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975), provides a standard governing investigative stops of the kind involved in this case, stating:

“The quantum of cause necessary in . . . cases [like this one] was established in *United States v. Brignoni-Ponce*. [O]fficers on roving patrol may stop vehicles

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.

CASO: Editorial, KGTV 10 San Diego

FECHA: 9 de Marzo, 1981

DESCRIPCION DEL CASO:

Una editroial de KGTV 10 San Diego transmitida por el vice presidente de McGraw-Hill Broadcasting Company, Clayton Brace a las 5 de la tarde y a las 10 del noche en las noticias del 9 de marzo de 1981 y convocando la asistencia "de los altos oficiales" de la Digilancia o Policia del Frontera (Border Patrol), e insistiendo en que sus miembros trabajen juntamente en la frontera y traten a las personas sensata y respetuosamente. Si no lo hacen, la Vigilancia de la Frontera se rera privada de apoyo general de la comunidad que necesita para reforzar la ley.

CASO: Camara Internacional de Comercio de San Ysidro

FECHA: 23 de Febrero, 1981

DESCRIPCION DEL CASO:

Protesta en forma de una carta al Presidente Reagan, fechada el 23 de Febrero, 1981, escrita por la Camara Internacional de Comercio de San Ysidro y referente a la interferencia del gobierno que dificulta seria mente la libertad del sistema de libre demanda, a causa de la falta de respeto a la propiedad privada, y la excesiva y arbitraria reglamentacion y los re presivos y abundantes sistemas que dificultan cada vez mas el dirigir o tener su propio negocio. La Camara Internacional de Comercio condena las acciones deliberadas de la Policia de San Diego, de la Patrulla Fronteriza y de las Autoridades de Inmigracion que hacen dificil el desenvolvimiento de sus negocios.