



Committee on Chicano Rights, Inc

July 22, 1979

Honorable Griffin Bell,
United States Attorney General
United States Justice Department
Constitution Avenue, 9th and 10th St.
Washington, D.C. 20510

Dear Attorney General Bell:

The Committee On Chicano Rights, Inc., The United California Mexican American Association and the Legal Aid Society of San Diego, Inc, formally request that your office initiate congressional hearings in San Diego, California.

We base our request on the violations of human, civil and constitutional rights perpetrated by the Immigration and Naturalization Service, U.S. Border Patrol and U.S. Customs Service against persons of Mexican and Latin ancestry. We are particularly upset by these law enforcement agencies' use of violence along the International Border.

Attached is our Petition for Congressional Investigations, with supporting evidence, documenting the seriousness of the situation. We hope that incidents such as the:

- (1) death of two children at the International Border at San Ysidro;
- (2) killing and wounding of two individuals while handcuffed;
- (3) shooting of an individual by a Border Patrolman from a helicopter;
- (4) shooting of individuals while detained;
- (5) deportation of a United States Citizen;
- (6) beatings and assaults of individuals by Border Patrol, Immigration and U.S. Customs;
- (7) cavity checks by Border Patrolmen at the San Onofre Inland check point;

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- (8) illegal detentions of U.S. Citizens and Legal Resident Aliens;
- (9) unlawful breaking and entering into homes, churches, schools, and
- (10) harassment at public gathering places by Border Patrol, Immigration Service and Customs Service.

will bring a prompt response to our request.

Thank you for your attention and cooperation on this very important matter.

COMMITTEE ON CHICANO RIGHTS, INC.

By: Herman Baca
Herman Baca, Chairman

UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION

By: Alberto R. Garcia
Alberto R. Garcia, President

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P E T I T I O N

F O R

C O N G R E S S I O N A L I N V E S T I G A T I O N

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PRESENTED TO:

THE UNITED STATES SENATE
THE UNITED STATES HOUSE OF REPRESENTATIVES
THE UNITED STATES DEPARTMENT OF JUSTICE

SUBMITTED BY:

LEGAL AID SOCIETY OF SAN DIEGO COUNTY, INC.
COMMITTEE ON CHICANO RIGHTS, INC.
UNITED CALIFORNIA MEXICAN-AMERICAN ASSOC.

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INTRODUCTION

This paper and supporting documents call for congressional investigations and the development of a new policy for the humane treatment of persons affected by U.S. immigration policy and the agencies that enforce it, including the Customs Service, Immigration and Naturalization Service (INS), Border Patrol, and the Federal Protective Agency.

The central concept is:

NATIONAL IMMIGRATION POLICY SHOULD FOCUS ON THE GRAVE PROBLEMS OF BORDER VIOLENCE AND THE SYSTEMATIC ABRIDGEMENT OF THE RIGHTS OF AMERICAN CITIZENS AND IMMIGRANTS OF MEXICAN/LATIN DESCENT, INSTEAD OF THE CURRENT EXCESSIVE EMPHASIS ON UNDOCUMENTED ALIENS. THE FIRST PRIORITY OF NATIONAL IMMIGRATION POLICY SHOULD BE HONORING THE RIGHTS AND HUMAN DIGNITY OF CHICANO, MEXICAN AND LATIN-AMERICAN CITIZENS AND IMMIGRANTS.

Other applicable concepts are:

1. All known studies and available data indicate that undocumented aliens have no material negative effect on the economy or social fabric of the United States.
2. All available data indicates that the current repressive measures have little effect on the flow of undocumented workers into the U.S.
3. Nevertheless, the goal of preventing the entry of undocumented

persons is being used to justify arbitrary and brutal treatment of persons, including U.S. citizens and legal residents, when attempting to cross at ports of entry, and ruthless, unnecessary violence along the border by agents of the federal government (INS, Border Patrol, and Customs Service).

4. Attempts at detection and deportation of undocumented workers are carried out by the systematic and large-scale abridgement of the human, civil and constitutional rights of Americans of Mexican and Latin descent, combined with violence, intimidation and humiliation by agents of INS, Border Patrol and Customs.

Congress should therefore adopt this moral policy:

1. Give first priority to the humane treatment of persons who present themselves at U.S. borders and the honoring of the rights and dignity of citizens and immigrants of Mexican and Latin descent.
2. De-emphasize the goal of preventing the entry of undocumented persons and the goal of detecting and deporting undocumented workers.
3. Require U.S. government agencies, particularly the INS, the Border Patrol and Customs, to implement and live by the law and spirit of these priorities.

A series of affidavits and other materials are appended hereto, showing a cross-section of the kinds of incidents reported to our agencies and evidencing the problems suffered by the Chicano, Mexican- and Latin-American community.

Section I of this Petition is a discussion of some of these incidents and the law enforcement practices and attitudes they illustrate. Section II briefly discusses the undocumented worker problem, suggesting a perspective. Section III lists the recommendations of our agencies for a more humane and objective policy.

I.

FACT SITUATIONS ILLUSTRATING PROBLEMS INFLICTED
ON THE LATIN-AMERICAN COMMUNITY BY THE
ARBITRARY ADMINISTRATION OF IMMIGRATION POLICY

A.

Arbitrary Refusal to Allow a U.S. Citizen
to Pass Where Urgent Need of Medical Treatment;
Failure to Process or Permit
Humanitarian Paroles Under 8 USC 1182 (d) (5)

1. INS practice is at odds with INS policy and regulations.

Title 8 USC 1182 (d) (5) authorizes the Attorney General to prescribe conditions under which alien applicants may be given entry to the U.S. in a parole status "for emergent reasons.". INS regulations contained in 8 CFR 212.5 (a) and the corresponding Operations Instructions of INS, OI 212.5 (a), further confirm the policy of allowing parole "for emergent or humanitarian considerations."

There is strong evidence that, while the regulations and avowed policy of INS encourage the granting of paroles for medical

and humanitarian reasons, the actual practice of INS personnel who deal with applicants at the border is to arbitrarily refuse or discourage them, leaving applicants with the feeling that there is no recourse.

The actual practice of the agency is exemplified in two situations where young children died this year as the result of the effective denials of parole in emergencies.

2. The case of Manolo ALBERTO (Appendix A).

On June 13, 1979, two U.S. citizens, both women, approached the U.S. border at San Ysidro, California with a U.S. citizen baby named Manolo ALBERTO. The child was dehydrated, malnourished and comatose.

The two women were passed through customs and then interrogated by an agent of the INS named Mrs. BURNS. They explained that the child was a U.S. citizen, and presented a certified copy of his birth certificate and social security card. They further explained that the child's mother, Mrs. ALBERTO, was unable to cross with the baby because she had no legal status in the U.S.; that the mother was desperate to get the child to a U.S. hospital because recent treatment in El Salvador had failed to help; that the family had contacted these two citizens to take the child Manolo to a hospital in the U.S.

The conduct of INS agent Mrs. BURNS was as follows:

(a) She said that the child was not critically ill or an emergency, just sick.

(b) She said that, in her opinion, the child was four years of age, not the age represented by the two women.

(c) She said she would not allow the baby to pass because "the birth certificate could have been bought in Tijuana."

(d) With respect to the baby's condition, she said that "we cannot let sympathy enter into our job."

(e) She failed to summon an ambulance or any medical help, failed to initiate any medical parole for the child (under 8 CFR 212.5 (a)), failed to advise the women that such a parole is possible, and did not advise them that they could appeal her decision to deny entry to the child.

(f) When the two women cried and said the child was dying and persisted in showing the birth certificate and asking for help, INS agent BURNS said that if they did not leave, their car would be confiscated for "attempting to smuggle the baby." (See Appendix A, affidavit of Lupe ALONZO.)

The two U.S. citizen women returned to Tijuana and the baby was checked into the General Hospital there. Doctors in Tijuana attempted to effect a transfer of the child to a hospital in San Diego, where better facilities for the specialized care required were available. Red tape prevented this transfer. The child, Manolo ALBERTO, died three days later. He was denied the medical care in a U.S. hospital that might have saved his life.

Based on the experience of our agencies' clients, it appears that individual agents in the INS are encouraged to "play God" at the border and render arbitrary decisions regarding the validity of a human being's citizenship or the state of his health. (Please see affidavits, articles and medical reports collected in Appendix A.)

3. The Case of Mario CAÑEDO (Appendix B).

In March of 1979 a four-year-old child, Mario CAÑEDO, was taken from Tijuana to the U.S. border by his aunt. The child had had open-heart surgery at a hospital in San Diego and the aunt had a letter from the attending physician. Although the child was obviously ill, the aunt was forced to leave her car to go to a waiting room where she was told to "take a number." The child died during the wait in the waiting room while INS personnel ignored the aunt's pleas for help. (See Appendix B.)

Our investigation reveals that repeated efforts were made by the aunt and by the hospital to process a medical parole and provide a multiple entry visa to the child to facilitate crossing of the border in case of need. Each time that the aunt went to the INS office at the border and asked to apply for a medical visa or parole, she was told by office personnel that it couldn't be done. Therefore, she was reduced to presenting letters from doctors each time she tried to cross the border to take the child to the hospital, with the time-consuming, and in this case fatal, red tape, frustrations and delays.

4. Prevalent INS Practices Exemplified by These Cases

(a) Border agents are insensitive to medical emergencies or human needs.

Regulations under 8 USC 1182 (d)(5) provide for agents to take action in medical emergency or humanitarian need, and there is a system for paroling medically needy persons to hospitals in the U.S. pending verification of their documents or status. However, in practice the agents take the exact attitudes shown by the

agents in the cases of these two children. They do not initiate a parole, they do not tell the applicants that such a parole is available, and they tell people in severe emergencies to either "go back to Tijuana" or to "take a number and wait."

(b) Each individual INS agent makes his own arbitrary decisions regarding the validity of a citizen's or immigrant's status.

There is no standard for what documents or how many documents are required to prove one's status as a citizen or resident immigrant at the border. One agent may permit entry to a citizen presenting a certified copy of his birth certificate. Another agent may refuse entry to the same citizen because he doesn't like the citizen's attitude or because that agent personally likes to see a driver's license.

The prevalent attitude in the INS appears to be that anyone of Mexican or Latin descent is "guilty until proven innocent." Agents feel free to deny entry to both U.S. citizens and to immigrants, even when they can reasonably prove their legal status with documents that are valid on their face.

When agents also make ill-advised medical judgements, the situation becomes lethal as well as arbitrary.

(c) Persons who are denied entry or denied medical parole are not advised of their right to appeal or to make formal application.

Applicants are always made to believe that the decision of the agent on the line is final. If first line supervisors are called, they habitually rubber-stamp the agents' decisions without question (see affidavit of ALONZO, Appendix A), which further emphasizes the message: the agent on the line or at the counter is

"God." No printed statements regarding procedures for appeal to higher authority are available. Applicants are made to feel that if they question the agent's decision, their cars may be confiscated, they will be arrested, or things "may go bad" for them.

(d) Although emergency medical help and facilities are available to border agents, they fail to call for help when needed for persons at the port of entry.

This is evident from these two cases, which our agencies reasonably believe to be the "tip of the iceberg."

B.

Use of Deadly Force - Killings

Several incidents of the use of deadly force against unarmed and passive suspects by border agents are reported.

REYES and RINCON case (Appendix C): Two Mexican nationals, Efren REYES and Benito RINCON, were apprehended slightly inside the U.S. border by a Border Patrol agent. The two were handcuffed together but one resisted getting into the patrol agent's jeep. One began to pull the other, still handcuffed to him, toward the Mexican side of the border, and they started to run. According to eyewitnesses, the agent drew his pistol and shot each of them in the back, killing REYES and wounding RINCON. The Border Patrol has characterized the incident as "self defense."

BALDERAS Case (Appendix D): In February 1979, another agent opened fire on an unarmed man, BALDERAS, who had stopped running and raised his arms. He shot BALDERAS in both arms, and when the victim fell to the ground bleeding, the agent slashed him

deeply with a knife while cutting a backpack strap with the knife.

ZARATE Case (Appendix E): In another incident, a 16-year-old Mexican youth crossed the border with some friends on a dare. A Border Patrol helicopter approached the boys while they were walking back toward the Mexican side of the border, opened fire and felled the youth with shotgun wounds in both legs.

Implications: It is apparent from such incidents that Border Patrol personnel either have no policy regarding the use of deadly force or, if there is one, feel free to ignore it. Agents feel free to wound and kill suspects for the mere crime of crossing the border, or as a means of preventing escape back to Mexico. This means in effect that the crime of trying to escape is punishable by the death penalty inflicted by the arresting agent in the field at his discretion.

In recent highly-publicized meetings of U.S. Attorney M.H. Walsh (Southern District, California) with Border Patrolmen, the U.S. Attorney has begun to informally and orally advise patrol agents to use guns only in self-defense, emphasizing their need to avoid civil liability. (See Appendix F, p. 1, last line, to top of p. 2.) However, if such action by the U.S. Attorney is currently required, this shows that no uniform policy regarding the use of deadly force has been in effect within the Border Patrol or among agents, and lends credence to the eyewitness accounts we have received of irresponsible gun play.

Inflicting Unnecessary Physical Violence on Suspects

Suspects or prisoners of Mexican or Latin descent are regularly punched, kicked, beaten with batons and otherwise physically abused in the process of arrest, interrogation or processing (Appendices G through K). A survey of those incidents indicates that there would be no basis for a detention or arrest by the standard of probable cause, but that the sole basis for detaining, abusing and trying for force a confession out of the victim is that he is of Latin descent and/or cannot speak English well. It is done when no resistance is being offered by the detained person and where he presents no threat to the officer.

ORTIZ case (Appendix J): Mr. Ortiz, a native-born American citizen of Puerto Rican descent, was seized on the beach while fishing, taken to a Border Patrol station despite his requests that agents look at his identification papers in his nearby car, and beaten into unconsciousness because he refused to sign confessions. He was released without being charged (Appendix J).

DAVALOS case (Appendix Q): Mexican citizens who visit the United States as tourists are also subjected to indignities. Two Mexican tourists, Mr. and Mrs. DAVALOS, came into California to visit Disneyland. They had secured the proper visa at the border and presented it to Border Patrol personnel. Border Patrol officers asserted that there was an irregularity in the visa.

Mrs. DAVALOS was forcibly separated from her husband, taken to a room, made to strip naked and put through the humiliation of a search of her vaginal cavity. She was then kept without food or

water for several hours and finally transported to Mexico as a prisoner.

When Mrs. DAVALOS was removed from her car and Mr. DAVALOS protested, he was grabbed by the front of his jacket and told he would be beaten up, his I-186 card taken away. He was ordered to leave the area immediately, which he did since he had no recourse. He didn't see his wife until she was turned over to Mexican authorities.

At no time were there any facts indicating probable cause to detain or physically humiliate Mrs. DAVALOS in this manner.

Implications: American citizens, resident aliens and suspected illegal aliens alike are seized without probable cause, and subjected to physical injury and racist verbal abuse. The only things required to qualify for such detentions are that one be of Latin descent and/or that one speak English with an accent.

D.

Systematic Civil Rights Violations of Citizens
and of Immigrants of Latin Descent

Affidavits L through T present a sampling of the kinds of situations with which American citizens and immigrants of Latin descent are confronted on a daily basis in the Southwest.

BUSTAMENTE case (Appendix L): Two teenaged brothers of Mexican descent, both U.S. citizens, were running from the playground along the sidewalk toward their home. A Border Patrol agent followed them, broke down the door of their home and kept them and their mother terrorized while calling them racist names and accusing

them of being illegal aliens, having forged documents and so forth.

VASQUEZ case (Appendix M): A native-born U.S. citizen, carrying his driver's license and business card, highly articulate in English, was stopped by an INS agent at the San Diego airport. He was humiliated, insulted and detained for hours, missing his plane flight, on the agent's assertion that he was not "proving his citizenship" to the agent's satisfaction. The only possible basis for detention appears to have been the citizen's apparent Latin descent.

PLANCARTE case (Appendix N): At the same airport, a documented immigrant, carrying his alien registration card, was stopped, detained and deported, forcing him to re-enter the U.S. at San Ysidro. He was given no deportation hearing. He lost his employment in Los Angeles as a result of his absence from his job.

Other instances include:

1. Stopping and questioning people of Latin descent, at random and without probable cause. See declarations of PAZ (Appendix R), ZAPATA (Appendix P).
2. Breaking and entering homes of citizens without warrants or probable cause. (See Appendix L: BUSTAMANTE.)
3. Detaining U.S. citizens without probable cause and without allowing them to call attorneys. (See Appendix O: VENEGAS.)
4. Detaining and deporting legal immigrants without allowing them a hearing or an opportunity to present their documents, and refusing them the opportunity to contact their attorneys. See GONZALES-Velasquez (Appendix H) and LOPEZ-Coronado (Appendix S).

5. Beating and detaining legal residents when they cross the border (ALVAREZ-Carrion case, Appendix T).

An analysis of the foregoing cases leads to these conclusions:

(1) The lack of a clear requirement of Probable Cause, in border areas, and of clear standards of Probable Cause, has resulted in a situation where INS and Border Patrol agents feel free to stop, detain, question, and intimidate all people of Latin descent, regardless of whether there are any reasonable grounds for suspicion that the subjects have committed any crime or are illegally present in the U.S.

(2) Agents feel free to detain and even deport U.S. citizens, and immigrants with legal status, without due process, without any hearing, and on the arbitrary say-so of the individual agent.

Evidently, such acts are often done out of spite, hatred, racist feelings or the power drive of the agent involved.

(3) Agents feel free to break and enter the homes of people of Latin descent and violate their Fourth Amendment guarantees, without warrants and without reasonable cause, solely on the basis of the tenants' Latin descent.

(4) Border Patrol and INS agents regularly deny detained persons the opportunity to produce their documents or to contact their attorneys before summarily deporting them.

II.

THE RELATIVE SOCIAL VALUE OF CURRENT METHODS FOR THE
DETECTION AND DEPORTATION OF UNDOCUMENTED WORKERS IS IN
DOUBT. ITS VALUE IS GROSSLY OUTWEIGHED BY THE
SOCIAL, ECONOMIC, POLITICAL, AND LEGAL HARM
DONE TO AMERICANS OF LATIN DESCENT
BY CURRENT ENFORCEMENT ATTEMPTS.

Every serious study done on the effects of undocumented workers on the economy or job market leaves serious doubts as to whether there is any material negative effect.

No definitive empirical study has been made to date, and experts disagree among themselves. However, there is strong evidence that current efforts to root out undocumented workers are:

1. disproportionate to the objective problem,
2. grounded in hysteria, propaganda and subjectivity, and
3. of little marginal utility, since the current repressive measures do little to stem the flow of undocumented workers, according to estimated statistics.

A.

Examples of Studies

William S. Bernard has concluded that an influx of immigrants, whether legal or illegal, results in an increase of GNP with corresponding expansion of the economy, and more jobs.²

Manuel Villalpando studied situations in both Los Angeles

²William S. Bernard, American Immigration Policy, New York: Harper and Brothers, 1950, pp. ss ff.

and San Diego counties, where large numbers of undocumented workers were removed from jobs in specific light industries. In both cases, no U.S. citizens were willing to take the jobs.³ This tended to disprove the notion that U.S. citizen workers are being displaced from jobs by undocumented workers.

Other studies have disproven the popular cliché that illegal aliens are living on welfare and putting a burden on U.S. taxpayers. In the North Houston study in 1976, it was found that 73% of a sample group of undocumented workers paid income tax and only 0.5% received any welfare.⁴

B.

Alternatives to Current Methods Exist

To the extent that it is desirable to restrict entry of undocumented workers into jobs in the U.S., there are more humane and effective methods than the current reign of terror in which the Chicano/Mexican-American/Latin-American community finds itself, with random detentions of citizens and immigrants of Latin descent.

For example, North and Houston have recommended that government strike forces be organized to crack down on exploitive employers who violate laws regarding minimum wages, working conditions, withholding taxes and reporting wages. If employers could

³Manuel Villalpando, Illegal Aliens: Impact of Illegal Aliens on the County of San Diego. San Diego: County Human Resources Agency, 1977.

⁴North and Houston, The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Explanatory Study. Washington: U.S. Department of Labor, March 1976.

no longer violate these laws with impunity, the motivation to hire undocumented workers would quickly evaporate.

C.

Implications

1. Although further study is needed, there is enough information to conclude that the problem of undocumented workers has been exaggerated out of proportion.

2. We suggest that the social value of stopping the flow of undocumented workers is a relative value and must be balanced against the greater values of respecting human life, and of respecting the dignity and rights of the Mexican-American and Latin-American citizens and immigrants within the U.S.

3. Specifically, the social/economic value of stopping the flow of undocumented workers:

(a) Does not justify the killing and maiming of unarmed human beings at the border for the crime of crossing the border or running away,

(b) Does not justify the arbitrary denial of entry, at ports of entry, to citizens and immigrants who present documentation, and

(c) Does not justify stopping, detaining, insulting, searching and the wholesale invasion of the constitutional rights of citizens and immigrants without probable cause, on the sole basis of their Mexican or Latin descent.

III.

RECOMMENDATIONS

A.

Congressional Hearings and Investigation

1. Congress and its concerned committees should hold hearings to investigate thoroughly the practices and attitudes of the agencies which deal with American citizens and immigrants of Mexican/Latin descent in enforcing national immigration policy.

2. Information should be sought and received from the Chicano/Mexican-American/Latin-American communities and from individuals who are affected by congressional policy and by the practices of the law enforcement agencies involved.

(a) Congress should stop acting on the sole basis of information received from within government agencies concerned and should instead receive information from the communities affected.

B.

Handling of Citizens, Immigrants and Applicants
at Ports of Entry

3. Give top priority to medical emergencies and emergent needs.

(a) In passing persons at the border, special priority and attention should be given to those with medical or emergent problems.

(b) Ambulances or medical personnel should be called

if need is indicated.

(c) Processing of requests for medical visas or parole under 8 USC 1182 (d) (5) and 9 CFR 212.5 (s) (d) should be given first priority. All requests for parole should go to the district director and not be "sat upon" by lower echelon personnel.

4. Adopt the policy of allowing all persons to enter who establish a colorable status as citizens or immigrants by documentation valid on its face.

(a) Stop the practice of allowing individual border agents to decide the validity of a person's status or documentation on arbitrary grounds.

(b) Presume the validity of a citizen's or immigrant's documents unless there are articulable facts raising a reasonable and substantial doubt as to their validity.

5. Establish a reasonable and uniform standard regarding the number and kinds of documents required of U.S. citizens and immigrants when crossing the border.

C.

Treatment of Mexican/Latin-Americans
in Border Areas and the Interior

6. Shift national immigration priority from detection of undocumented workers to honoring the civil rights and human dignity of Mexican/Latin-American citizens and immigrants.

(a) Adopt methods of controlling undocumented worker flow without the random and arbitrary "rounding up" of Mexican/Latin-Americans.

7. Enact standards of Probable Cause to be applied in border areas, as well as the interior.

(a) Require that Border Patrol and INS agents cease their practice of stopping, questioning or detaining persons except where articulable facts exist which give reasonable cause to believe that the person is:

- (1) an alien, and
- (2) present in the U.S. illegally.

(b) Congress should take the moral stand that the mere fact of being of Mexican/Latin descent and not speaking standard English are not to be construed as a basis for suspecting any person of a crime, including the crime of being in the U.S. illegally.

8. Require that the Fourth Amendments rights of the Latin community against unreasonable search and seizure and against breaking and entering without warrants or probable cause be respected by U.S. agents.

9. Establish an independent investigative/monitoring agency, and independent ombudsman, with power, funds and facilities for genuinely investigating complaints and incidents of violations of civil rights, arbitrary abuse of power, unlawful use of deadly force, physical abuse and unnecessary violence.

(a) The agency and its personnel should be outside the structure of INS, the Border Patrol and Customs Service to avoid conflicts of interest or the motive to "cover up."

(b) Congress should enact legislation making all records regarding such incidents and complaints public record.

10. Maintain careful monitoring of agents and records of

complaints with regard to specific agents, to detect and remove agents who are subjectively predisposed to violence, racism and attitudes of contempt toward people of Mexican/Latin descent.

11. Institute hiring practices, including psychological testing and profiles, to prevent the continued hiring of personnel who are predisposed to attitudes based on power drive or contempt for people of Mexican or Latin descent.

D.

Patrolling of the U.S. Border

12. Establish a policy of using no deadly force (weapons) on suspects whose only crime is crossing the border or attempting to escape.

(a) No use of deadly force by agents except where suspects are armed and/or present a genuine immediate physical threat to the officer.

(b) Standardize weapons and weapons policy within the Border Patrol and INS.

(c) Removal of agents who misuse deadly force, rather than excusing and "white-washing" to defend the agency's public image.

13. Congress should enact specific legislation to the effect that the illegal crossing of the border and/or non-violent attempts to escape from border agents are not, of themselves, felonies, and are not worthy of the use of deadly force.

CONCLUSION

We respectfully request that Congress adopt these recommendations and expedite Congressional hearings.

Respectfully submitted,

LEGAL AID SOCIETY OF SAN DIEGO, INC.

BY:

Victor P. Shupp

VICTOR P. SHUPP, Attorney at Law

Rafael A. Arreola

RAFAEL A. ARREOLA, Supervising Attorney

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RESEARCH AND INVESTIGATION BY:

Carlos VASQUEZ, Paralegal

Susan ALVA, Paralegal

1 AFFIDAVIT OF
2 GUADALUPE ALONZO
3

4 On June 14, 1979, I received a call from Carolina Corona,
5 regarding her nephew, Manolo Agustin Alberto who was very sick
6 in Tijuana, Mexico. She told me that she needed for me to bring
7 Manolo to a hospital in the United States, that the baby's mother,
8 Irma Alberto was crying and afraid that Manolo would die if he
9 didn't get medical help from a United States hospital. I agreed
10 to help and drove to Tijuana. I arrived in Tijuana at approximately
11 12:30 a.m. together with my friend Lolita Galvin. After we arrived
12 we hired a taxi to help us locate Irma. When we found Irma, she
13 gave me the baby and told me to take it to a hospital. She had
14 the baby dressed, ready and everything for us so she gave me the
15 baby's birth certificate and social security number. To me that's
16 all we needed so we got back on the taxi, came back down and when
17 we came back down we had the baby with us.

18 From there we went to the border and they asked us were
19 we United States Citizens? We said, "yeah"! And from there they
20 asked what you'd bring from Mexico? We said, "nothing". The
21 officer looked at us weird as we passed and told us to follow him
22 so we followed him and he took us to secondary inspection and I
23 talked to a customs officer (I believe Mr. Reiner) and he told us
24 to take our personal belongings out so we took them out and they
25 took us in the office. I guess he probably thought we were smug-
26 gling drugs or narcotics or something like that because they had
27 searched us to see if we had anything. Then a second customs
28 officer (I believe Mrs. Capolungo) came out and said that the baby

1 was dehydrated and starving! The baby was starving and all we
2 wanted to do is get the baby to a hospital in Van Nuys or to the
3 nearest hospital across the border. They searched and they told
4 us to sit down. They checked the car registration and our identity.
5 They checked them and they were all ok. So then an immigration
6 officer, Mrs. Burns, came in the office. She asked me if I was
7 the baby's mother. I said no! She said, "Where is she?" I said,
8 "In Tijuana, Colonia Guadalajara." She said, "Why can't the mother
9 come?" I said, "Because she is illegal and you won't let her
10 any place near here." She said, "What are you to the mother?"
11 I said, "We're friends of the mother's sister." She said, "How
12 do you know the baby is legal?" I said, "The baby is a United
13 States Citizen, he has his birth certificate and social security
14 card and they are outside in the car, do you want to see them?"
15 She said, "There was no need in seeing it because you know that
16 you can buy birth certificates and social security cards in
17 Tijuana." She said, "You know that, don't you?" I said, "Well
18 no I don't know!" Lolita started to cry, she cried out, she said,
19 "How could you guys be so cruel! Don't you see this baby is dying."
20 Mrs. Burns said, "We can't let sympathy get to our jobs." She
21 said, "I'm sorry but we cannot let the baby go through." I
22 didn't care what they want us to do with the certificate, I took
23 it out anyways and I showed it to them. She goes, this birth
24 certificate could be a fake one she says, I don't know if it's
25 the real one or not. She said, "How old is the baby?" I said,
26 The baby will be two years old in December 1, of 79'. She said,
27 "No, this baby has got to be about four years and a half." She
28 says, "Yeah!" I says, "That baby is only going to be two years

1 old." And she says, implying like if we didn't go, our car was
2 going to stay. "You know that we can take your car away from you".
3 The way she said it. "You know we can take the car away from you
4 for smuggling." That's when I said "smuggling"? What were we
5 smuggling? And we started saying, me and lolita saying, "This
6 baby is legal." Lolita kept crying, "What more do you guys want.
7 You guys have the baby's birth certificate." They said, "Bring
8 the mother here." Why can't the mother come? I said, again
9 "For the same reason the mother is illegal in the United States!"
10 I said, "You guys won't even let her near this border line." I
11 said, "We're from here so the baby is from here so you know, we
12 figure we can take the baby across because the baby is a legal
13 citizen.

14 So she ,Mrs. Burns, called her supervisor out and he without
15 asking any questions or anything he just came out and said, "NO!"
16 That we couldn't take the baby. Lolita was gonna get the baby's
17 birth certificate and the baby's social security card and go
18 take it to the Customs Officer named Mrs. Capulongo but when
19 Lolita got in the car to get it, Mrs. Burns told us to leave. She
20 said we had to go or "you know we can get you for smuggling."
21 I said, "smuggling what?" She said, "trying to smuggle an
22 immigrant." I said, "It's not an immigrant! This baby is legally
23 born in the United States, this baby has a right to go to the
24 United States. Don't you see the birth certificate." She said,
25 "We have to have proof." I said, "What more proof do you want?"
26 I showed you the birth certificate and the social security.

27 After they saw us crying, Mrs. Burns gave us \$2.00 and told
28 us to buy some milk for the baby, and find a hospital. I took the

1 \$2.00, said thank you! and gave them to Lolita. I took off and
2 told Lolita that "\$2.00 wasn't going to save the baby's life.
3 "This baby needs a doctor." I went back to Tijuana, the wrong
4 way in a one way street to get a policeman's attention. He did
5 stop me and I told him that we needed to get to a hospital quick.
6 He took us to a doctors general building. He took us to this one
7 doctor first and he wouldn't accept the baby because the
8 mother wasn't with him so the policeman took us to General Hospital.
9 They took the baby and they probably thought that I didn't
10 understand Spanish or anything but I did and they said that the
11 mother had abandoned the baby. I said, "No she didn't, she
12 didn't abandon her baby." If the mother didn't care about this
13 baby, she wouldn't have nobody come and pick up that baby and
14 take him across the border to have medical attention down
15 there. She was going to meet the baby up there in the hospital,
16 near where the mother was going to stay if possible.

17 I told the doctors that I would get the baby's aunt, Carolina
18 to let the mother know that Manolo was in the T.J. hospital. I
19 also gave Carolina's telephone number to the hospital. We then
20 went back to Van Nuys, California at approximately 5:00 a.m.

21 I declare under penalty of perjury that the foregoing
22 statements are true and correct to the best of my knowledge.

23 Executed on June 22, 1979 at Chula Vista, California.

24 Guadalupe Alonzo
25 GUADALUPE ALONZO

1 State of California)
County of San Diego) ss.

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Guadalupe Alonzo, being duly sworn, deposes and says:
That she is over the age of 18 years and has resided in the
State of California for more than five years.

Guadalupe Alonzo
GUADALUPE ALONZA

Subscribed and sworn to before me on June 22, 1979.

Hilda J. Vasquez
HILDA J. VASQUEZ

NOTARY SEAL



This is a true certified copy of the record if it bears the seal, imprinted in purple ink, of the Registrar-Recorder.

MAR 6 1978

Samuel Pineda REGISTRAR-RECORDER
LOS ANGELES COUNTY, CALIFORNIA



019-111840

CERTIFICATE OF LIVE BIRTH

STATE BIRTH CERTIFICATE NUMBER

STATE OF CALIFORNIA-DEPARTMENT OF HEALTH

LOCAL REGISTRATION NUMBER

CERTIFICATE NUMBER

THIS CHILD	1a NAME OF CHILD - FIRST NAME MARC O		1b MIDDLE NAME AGUSTIN		1c LAST NAME ALBERTO	
	2 SEX MALE	3a THIS BIRTH SINGLE OR TRIPLE? SINGLE	3b IF TRIPLE OR QUADRUPLE BIRTH LIST 2ND - 3RD - 4TH	4a DATE OF BIRTH - MONTH DAY YEAR DECEMBER 1, 1977		4b HOUR 9:07 P.
PLACE OF BIRTH	5a PLACE OF BIRTH - NAME OF HOSPITAL Los Angeles County - USC Medical Center			5b STREET ADDRESS - STREET AND NUMBER OR LOCATION 1200 North State Street		5c INSIDE CITY, LOS ANGELES LIMITS, SPECIFY REGION Yes
	5d CITY OR TOWN Los Angeles			5e COUNTY Los Angeles County		
MOTHER OF CHILD	6a MAIDEN NAME OF MOTHER - FIRST NAME ELSA		6b MIDDLE NAME GLAUCIA		6c LAST NAME (MAIDEN SURNAME) ALBERTO	
	8 AGE OF MOTHER AT TIME OF BIRTH 19 YEARS	8a SOCIAL SECURITY NUMBER OF MOTHER NONE	9 COLOR OR RACE OF MOTHER CAUCASIAN	10a RESIDENCE OF MOTHER - STREET ADDRESS 12111 HAVA STREET		10b INSIDE CITY, LOS ANGELES LIMITS, SPECIFY REGION YES
	10c RESIDENCE OF MOTHER - CITY OR TOWN LOS ANGELES			10d RESIDENCE OF MOTHER - COUNTY LOS ANGELES		10e RESIDENCE OF MOTHER - STATE CALIFORNIA
	11a NAME OF FATHER - FIRST NAME SAI ROS		11b MIDDLE NAME		11c LAST NAME ANTZALDO	
FATHER OF CHILD	13 AGE OF FATHER AT TIME OF HIS BIRTH 33 YEARS	13a SOCIAL SECURITY NUMBER OF FATHER UNEMPLOYED	14 COLOR OR RACE OF FATHER CAUCASIAN	15		
	15a PARENT OR OTHER INFORMANT - SIGNATURE (IF OTHER THAN FATHER, SPECIFY) <i>Samuel Pineda</i>		15b DATE RECEIVED AND TIME OF BIRTH EVENT DECEMBER 2, 1977		15c	
INFORMANT'S CERTIFICATION	16a I HEREBY CERTIFY THAT I HAVE REVIEWED THE ABOVE STATEMENT OF INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		17a PHYSICIAN OR OTHER PERSON WHO ATTENDED THIS BIRTH - SIGNATURE - DEGREE OR TITLE <i>David A. Gattin</i>		17b ADDRESS 1200 NORTH STATE STREET	
	16b I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE PLACE, DATE AND PLACE STATED ABOVE.		17c ADDRESS 1200 NORTH STATE STREET		17d PHYSICIAN - SIGNATURE AND LICENSE NUMBER MEDICAL STUDENT	
LOCAL REGISTRAR	18 REQUEST OMISSION FROM SOLICITATION LISTS		19 LOCAL REGISTRAR - SIGNATURE <i>Monroe E. Chamberlain</i>		20 LOCAL REGISTRAR - DATE DEC 15 1977	



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SERVICIOS COORDINADOS DE
SALUD PUBLICA EN EL
ESTADO DE BAJA
CALIFORNIA
HOSPITAL GENERAL
TIJUANA, B. C.

DEPENDENCIA HOSPITAL GENERAL, S. S. A. TIJUANA.
SECCIÓN DIRECCION.
MESA
NUMERO DE OFICIO 492.
EXPEDIENTE

ASUNTO: Se envía Resumen Clínico solicitado
Tijuana, B.C. a 19 de Junio de 1979.

DEPARTAMENTO DE INMIGRACION.
LINEA INTERNACIONAL. (TIJUANA).
CIUDAD.

A petición de ustedes nos permitimos enviar resumen
clínico del C. Manolo Agustin Alberto:

"NOMBRE: Manolo Agustin Alberto, EDAD: 18 meses, SEXO: Masculino, FECHA DE INGRESO: Junio 15 de 1979, DIAGNOSTICOS DE INGRESO: Desnutrición Grado III, Deshidratación Grado II. Se recibió al paciente a las 03.45 Hrs. del día 15 de Junio, traído por Agente de la Policia Municipal, sin familiares que lo acompañaran, encontrándose a su admisión en muy mal estado general, con palidez notoria de tegumentos, caquexia marcada, adinamico, piel seca, con globos oculares hundidos, mucosas orales secas, extremidades hipotróficas y con escaso pániculo adiposo.-Su peso era de 6,800 gramos. Durante su estancia hospitalaria recibió tratamiento a base de soluciones y electrolitos intravenosos, inicio de tolerancia a la vía oral con solución glucosada y posteriormente leche fresca y complementos protéicos; cuidados especiales y vigilancia estrecha. Se mantuvo afebril en los tres días de hospitalización, cursando en varias ocasiones con temperaturas de 35.2 y 35.5. grados Centígrados. Su evolución fué estacionaria, presentando ocasionalmente evacuaciones semilíquidas; se mantuvo buena diuresis. A las 08.15 horas del 18 de Junio, presentó súbitamente paro cardiopulmonar que fué irreversible a las medidas de resucitación, declarándose clínicamente muerto. Diagnósticos Finales: 1.-Desnutrición Grado III, 2.-Deshidratación, Desequilibrio Hidroelectrolítico, 3.-Anemia Severa."

Atentamente.
SUFRAGIO EFECTIVO NO REELECCION.
EL DIRECTOR DEL HOSPITAL.

DR. FRANCISCO SANCHEZ MARTINEZ.



S. S. A.
SERVICIOS COORDINADOS DE
SALUD PUBLICA EN EL
ESTADO DE B. C.
HOSPITAL GENERAL
TIJUANA

FSK/hrr.

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SERVICIOS OCUPACIONALES DE SALUD PUBLICA EN EL ESTADO DE BAJA CALIFORNIA
 HOSPITAL GENERAL S.S.A. TIJUANA

HOJA DE MEDICO

NOMBRE DEL PACIENTE AGUSTIN ALBERTO MANOLO

NOMBRE DEL MEDICO RESPONSABLE LOS DEL SERVICIO.

No. de Expediente

CAMA NUM. 11 SALA PEDIATRIA

FECHA	HORA	EVOLUCION Y PRESCRIPCION	NOMBRE Y FIRMA DEL MEDICO
18-VI-79 8:15		<p>PEDIATRIA.</p> <p>Paciente masculino de 1.5 años de edad, admitido con los diagnosticos de Desnutricion grado II*III (llegando al marasmo) avitaminosis y deshidratacion Grado II, Estado de alta voluntaria bajo responsiva familiar y</p> <p>Paciente en malas condiciones y que su evolucion durante su estancia fue grave, el día de hoy a las 8:15 horas presenta paro cardiopulmonar de presentacion subita al tratar de tomar muestra de sangre para laboratorio, practicandosele inmediatamente maniobras de resucitacion, adrenalina, y bicarbol, respiracion directa boca a boca. No fue posible intubarlo.</p> <p>El paciente fallece irremediamente.</p> <p>Diagnostico de fallecimiento: paro cardiopulmonar que se presento subitamente.</p>	<p>J.R. CAMACHO. MARTINEZ</p>

FOJA DE MEDICO

NOMBRE DEL PACIENTE MANOLO AGUSTIN ALBERTO

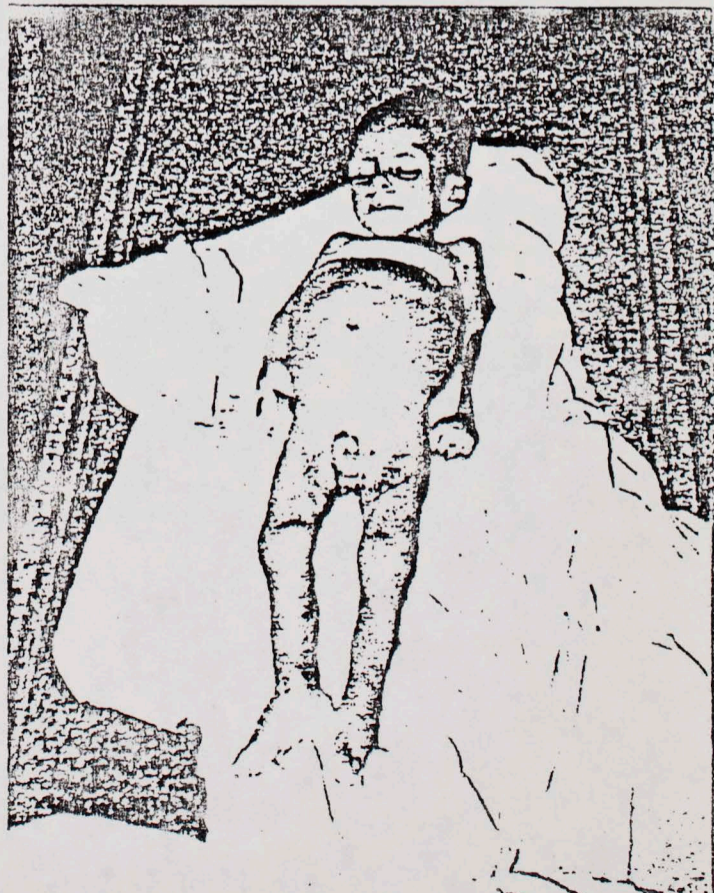
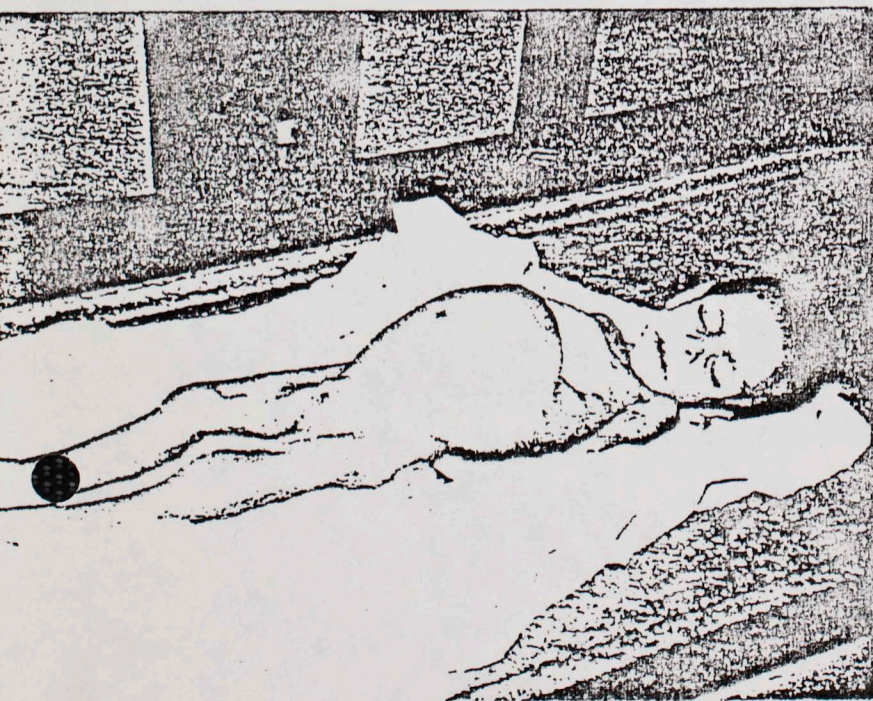
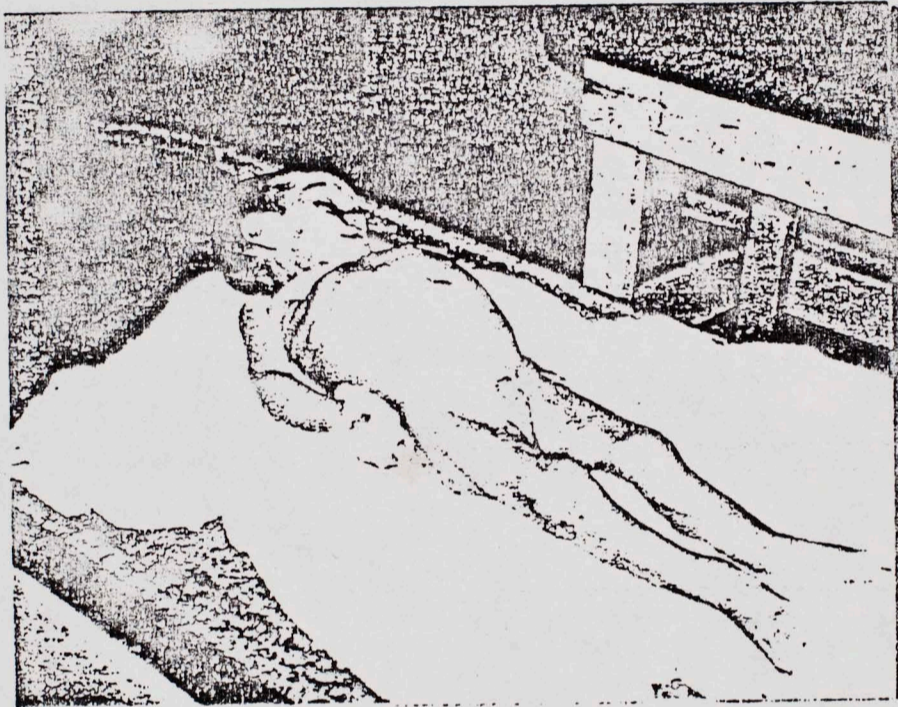
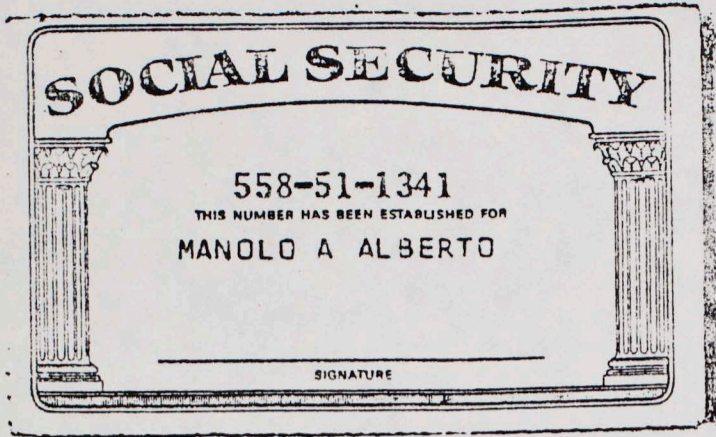
NOMBRE DEL MEDICO RESPONSABLE LOS DEL SERVICIO

No. de Expediente

EN LA FOL. 11 PAGA 15

FECHA	HORA	EVALUACION Y PRESCRIPCION	NOMBRE Y FIRMA DEL MEDICO
17-VI-79		<p>NOTA DE EGRESO Y RESUMEN CLINICO:</p> <p>FECHA DE INGRESO : 15-VI-79 FECHA DE EGRESO: 17-VI-79.</p> <p>DIAGNOSTICO DE INGRESO: DESNUTRICION GRADOS II-III. DESHIDRATACION GRADO II.</p> <p>DIAS DE ESTANCIA : 3 dias.</p> <p>RESUMEN CLINICO: Paciente masculino , de 1.5 años de edad, nacido en EEUU., admitido con los diagnosticos anotados arriba, traído por patrulla y dos mujeres estadounidenses que trataban de pasarlo a los EE UU. El paciente ingresa en malas condiciones generales, con facies palida , caquexia , signos francos de desnutricion casi en grado III, avitaminosis marcada , y deshidratacion severa grado II. Se le instituye tratamiento a base de soluciones IV, Electrolitos , inicio de dieta via oral a tolerancia, primero con solucion glucosado y despues con leche fresca, cuidados especiales y vigilancia estrecha. La evolucion no ha sido satisfactoria debido a que estos padecimientos necesitan tratamientos muy largos y costosos.</p> <p>Actualmente se da de alta bajo responsiva de familiar , quitando toda responsabilidad al el cuerpo medico y al departamento administrativo de esta institucion.</p> <p><i>Se da de Alta voluntaria.</i></p> <p><i>Personas que se lleven el paciente</i> <i>Guadalupe Alonzo</i> <i>José Alonzo</i> 14077 GAIN STREET DETER. CALIF.</p> <p>TESTIGO: <i>[Signature]</i></p>	<p>II-III. II.</p> <p>de guardia. DR. GRIJALBA.</p>

MIDP.
 J. ECAMACHO,
[Signature]



LEGAL AID SOCIETY OF SAN DIEGO, INC.

MEMORANDUM

FROM OFFICE SOUTH BAY

TO: THE FILE OF MANOLO AGUSTIN
ALBERTO

DATE JUNE 25, 1979

FROM: RAFAEL ARREOLA *RA*

E:

Saturday afternoon, June 23, 1979, my wife Betty Arreola and I drove Lupe Alonzo to Van Nuys, California. We took Lupe Alonzo to her mother's house and subsequently we went to the house of Carolina Corona and Irma Alberto. I spoke to both women independently and they gave me the following account: first Irma Alberto;

Irma left Los Angeles on September 30, 1978, to rejoin her family in San Salvador. Approximately a month later Manolo became ill and she took him to a doctor in San Salvador. The doctor said he had some stomach problems and gave him some pills and medicine for the baby. Since Manolo did not get well, Irma went back to the doctor and took him to the hospital. They again gave some medicine for Manolo, kept him for two or three days and let him go. Irma kept going back and forth to the doctors and to the hospital a number of times and finally during the first week of June, the baby was kept for approximately a week and the doctors recommended that Irma get away from the climate in San Salvador and bring the baby back to the United States where he could get better treatment and the climate and the food would not affect him as much. Irma was able to get a passport on June 9th and on June 10th she began her trip back to the United States. She traveled by bus for three days and three nights and finally arrived in Tijuana on June 13, 1979. On that same day she tried to get help and get someone to try to cross the baby to a hospital in the United States. A Mrs. Transito del Carmen Trujillo Martinez, at 11:00 p.m. was refused admittance and the baby was turned back to Tijuana. After the baby was returned, Irma called her sister Carolina in Los Angeles and asked her to please help and send somebody or come by and bring the baby or take the baby across the United States. She told her that the baby was very sick but that the doctors had not told her how sick the baby was; she just knew that the baby was in trouble and needed to go to the hospital and get some help. Carolina was able to find her friend Lupe Alonzo and asked Lupe to please go down to pick up the baby and bring him across the United States. The reason Carolina didn't go herself is because she does not have documentation and would probably not be able to bring the baby to Los Angeles.

Irma waited for Lupe to arrive and finally at approximately 1:00 a.m., Lupe arrived and Irma gave her the baby.

Irma then tried to make arrangements to get herself across the border to be with her baby. She was hoping that the baby would be allowed to go to Los Angeles and to a hospital in Los Angeles and she

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TO THE FILE OF MANOLO AGUSTIN ALBERTO
Page Two
June 25, 1979

wanted to meet him at the hospital. Irma found some papers that would help her but on Friday the police went to the house looking for Irma. The people at the house would not allow Irma to speak with the police and instead took her to a motel in Tijuana. Irma overheard that her baby was in a hospital and she wanted to go to the hospital or find out what was going on. She was not allowed to do so but they did allow Irma to call her sister, Carolina, and Carolina told her that the baby was in fact in a Tijuana hospital but that arrangements were being made to transfer the baby to a hospital in San Diego or Los Angeles and that Irma should bring herself across the border otherwise the baby would be in the United States and Irma would stay in Tijuana. Irma then secured the person who was going to guide her to Los Angeles; that person apparently became aware of some of the problems and refused to bring her across on Friday. They finally found someone else who agreed to bring her across and they crossed the border at approximately 9:00 a.m. The group got to San Diego in the evening and they continued walking all day and all night as well as the following morning. They finally got to the San Clemente check point at approximately 1:00 p.m. They rested and waited for a vehicle to pick them up on Sunday, and at approximately 3:00 p.m. the car arrived. She got to Van Nuys at approximately 6:00 p.m. on Sunday and inquired about the baby. She was told that there was some problems in bringing the baby across the border but that on Sunday Lupe had already gone to Tijuana and they already agreed to bring the baby to hospital in the United States that Sunday evening. She was also told that Lupe Alonzo would be returning Los Angeles that same evening and that they should wait until Lupe returned to find out what happened. When Lupe returned, she told Irma that the baby was much better, that she had seen the baby, that the baby had moved an arm, and that the baby said, "Mama". She was also told that a University Hospital in San Diego had been in contact with them and that if someone agreed to pay the bill that they would send an ambulance to pick the baby up right away. Irma didn't know what to do but her sister, Carolina, told her that Mrs. Maria Leon with the Department of Public Social Services in Los Angeles was helping them and that a Mr. Ben Cadwill from the Mexican Consulate was also helping them and they had called University Hospital to bring the baby across. Both Irma and Carolina then concluded that the baby would be in the United States hospital on Monday. They waited until Monday afternoon and when they were not notified what had finally happened; they called the hospital in Tijuana at approximately 3:00 p.m. At that point, Irma was told that the baby died at approximately 8:30 a.m.

Apparently, no one tried to notify Carolina or Irma even though Irma's telephone number was listed in the hospital records in Tijuana as a person to contact in case of an emergency.

TO THE FILE OF MANOLO AGUSTIN ALBERTO
Page Three
June 25, 1979

Carolina Corona's statement:

Carolina agreed with Irma's statements with respect to all of parts related to Carolina's involvement. She also added that she had spoken to the hospital in Tijuana and that she had told them all of the bills would be paid by her, to go ahead and transfer the baby to the University Hospital or whatever hospital was convenient in the United States. They agreed to do so and told her that everything would be taken care of. The other thing that Carolina mentioned was that she asked Carmen Albaron to go to the hospital and sign all the necessary documents to have the baby immediately transferred to a hospital in the United States. Carmen Albaron did so and was told that the baby would be transferred on Saturday. Since the baby was not transferred, Carolina asked Lupe, again, to go to the hospital in Tijuana to ask what the problem was and to see if Lupe could get the baby transferred on Sunday. She said that Lupe informed her that the baby would be transferred by 8:00 p.m. on Sunday to University Hospital. Throughout this whole process, Carolina had also been contact with the social worker, Maria Leon who agreed to help her in any way she could.

RA:hjv



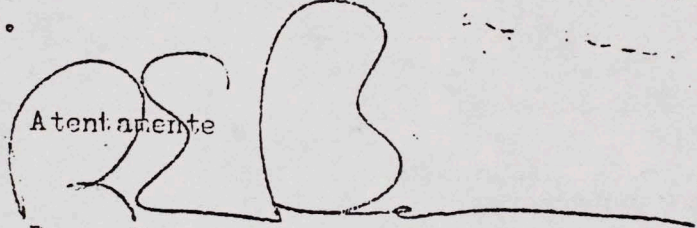
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

Tijuana, B. Cfa. 20 de Junio de 1979.

C. DIRECTOR DEL HOSPITAL GENERAL
Dr. Francisco Sanchez Martinez
Tijuana, B. Cfa.

Por medio de la presente, deseo manifestarle que este Consulado, no tiene inconveniente alguno en que se haga entrega de los documentos (acta de nacimiento y tarjeta del Seguro Social), relativos al finado infante Manolo Agustin Alberto, a la Srita. Guadalupe Alonso, ya que estos documentos se necesitan para tramitar el traslado y sepultura del cuerpo.

Atentamente


Ross Benson
Consul Americano.

A-14

Barred Re-Entry S, Dies In Tijuana

6/19

TOPHER COOK
REG GROSS
The San Diego Union

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Irma Alberto, then

took the child to Tijuana General Hospital for treatment.

Immigration officials on duty last night said they were not familiar with the case. Questions about why the child was not allowed to pass into the United States went unanswered last night.

Dr. Robert Kahn of University Hospital said that the hospital was contacted on Friday morning, and immediately made arrangements to transfer the child, Augustin Alberto Manolo.

"Somehow there was a breakdown in communications," Kahn said. "The arrangements had been made. We were ready to pick the child up at the border. We tried contacting the hospital several times . . . Then, this morning, we finally got through. . . They told us the child had died."

Assemblyman Art Torres, D-Los Angeles, said late last night that he intends to investigate the incident.

Ailing boy dies as red tape stops mother in Mexico

By JAMES REDFERN
TRIBUNE Staff Writer

TIJUANA — It was a long and frightening journey toward hope that ended in death.

And it is a tragic example of the desperate flight of thousands of illegal aliens flooding the United States border with Mexico in search of what they believe to be the promised land.

For Manolo Augustin Alberto Anzaldo, just under 18 months old and an American citizen by virtue of his birth in Los Angeles to his illegal alien mother, that dream ended this week.

Manolo died in Tijuana General Hospital early Monday while several government agencies and private individuals desperately tried to get him across the border for better medical treatment.

"He was near the third (and last) stage of malnutrition," said Dr. Jose Rafael Camacho, who was treating him. "He was suffering from a tremendous vitamin deficiency and all the infirmities associated with such a condition."

Manolo's mother, Irma Alberto, contacted in Los Angeles, spoke in a tearful and frightened voice. She knows she is subject to deportation if she is discovered by U.S. authorities.

"I tried and tried to get the people at the line to let us pass, but I have no papers and they wouldn't allow it," she said. "Then my sister, who lives here, tried to bring him across, but they turned her back twice."

"And then we found out he was dead."

"He was so sick, so sick, but they wouldn't let him in. Why?"

Manolo, officials now agree, was a victim of bureaucracy from both sides of the border.

And everyone involved, including Robert Milton, deputy district director for INS in San Diego, agrees it should never have happened.

"It hit us very much like a bomb, Milton said. "We've been scrambling ever since yesterday (Monday) — the first time we heard of it."

"Neither Alan Clayton, our chief at the San Ysidro border crossing, nor I was contacted at all. If we had been, this never would have happened. We would have gotten the child into the United States."

"We do have procedures to take care of these matters, but if someone shows up at the border with a child who is obviously dying we waive even those procedures."

"If that was the case, he should have been let in. A dying child — that's a hell of a lot more important than our immigration laws."

The INS apparently was not contacted because other agencies involved in the attempted transfer thought someone else had made that call.

But no one had.

Manolo's story began in Los Angeles. His mother, 21, has two other children in San Salvador, the capital of El Salvador. Pregnant, she had left Los Angeles with Manolo late last year to bring his brother, then 3, to live with her in the United States.

Manolo's sister was born in El Salvador, causing a delay in the plan to return.

"Manolo got very sick in El Salvador," his mother said. "I had to put him in the hospital. He got better then and the doctor gave me medicine to give him during the trip back."

She obtained tourist visas for Guatemala and Mexico. But because Mexico will not grant visas to the U.S. border area, because of growing pressure from INS authorities unless the person seeking the visa has relatives there, she had to reach the border from Mexico City illegally.

She paid \$550 to do it.

Then she could not cross into the U.S. from Tijuana. After leaving Manolo in Tijuana with her sister, who had come from Los Angeles to try to get him across, Manolo's mother paid \$250 to an alien smuggler who brought through the canyons and brush east of the border crossing and in the trunk of a car to Los Angeles.

When her sister was unable to bring the boy into the United States because she did not have guardianship documents, she put Manolo in the Tijuana hospital.

Arrangements were made through the American Consulate in Tijuana, the San Diego County Welfare Department and University Hospital to have him admitted there Friday night.

But because of his serious malnutrition and vitamin deficiency, Mexican authorities suspected he had been mistreated.

A state district attorney in Tijuana ordered the child held at the hospital pending an investigation.

That hold was not released until Sunday, and by then new arrangements had to be made to bring him across the border.

University Hospital officials contacted Hartson's Ambulance Service in San Diego, but it encountered problems and told the hospital it could not bring the boy across.

Dr. Robert Kahn of University Hospital tried to call the welfare department case worker in the dependent's section but could not reach her at home.

He planned to contact the case worker Monday morning. But before he could, he learned that Manolo had died.

WEDNESDAY, JUNE 20, 1979

COMPLICATIONS

Baby Dies After Being Turned Back at Border

BY PHIL GARLINGTON
Times Staff Writer

The baby was sick but not dying when the two young women in a late-model car drove up to the border crossing at San Ysidro at 3 a.m. last Friday.

"He was not in a terminal state at that time," said Robert Mitton, deputy district director of the Immigration and Naturalization Service. "If we thought the baby was dying we would have got him to a hospital regardless of whether he was a citizen or an alien."

Three days later, however, 18-month-old Manolo Augustin Alberto Anzalo, a U.S. citizen by virtue of being born to an illegal alien in Los Angeles, was dead of anemia and dehydration in a Tijuana hospital.

And the INS, the American Consulate in Tijuana, University Hospital, and the bereaved relatives all were trying to figure out what had gone wrong.

Manolo's 21-year-old mother, Irma Alberto, a citizen of El Salvador, was in Los Angeles when the boy died. She had left her ailing son with Lupe Alzano and another woman while she reentered the United States illegally with an alien smuggler.

The two women, both American citizens, were to bring Manolo to rejoin his mother in Los Angeles.

But according to INS reports, the two were told at the border check-

Continued from First Page

point that they could not bring the infant into the United States because no legal guardian accompanied the child.

The report said the women told inspectors that they did not know the child's mother, apparently to avoid revealing her alien status.

Mitton said the child was sick "but not in a terminal state" and that the women were advised to take him to Tijuana General Hospital. The child reportedly had contracted an infection while he and his mother were in Salvador.

On Friday afternoon, the Tijuana hospital called the American Consulate in Tijuana to report that two women had left a baby. With the baby is a birth certificate issued by USC Medical Center in Los Angeles, a copy which was obtained by The Times. "An officer went to see the child," said Ross Benson, head of the consulate's citizen service department, and determined he was in serious condition.

"After failing to find a relative to take care of him, we called the San Diego Welfare Department and made arrangements to transfer the child by ambulance to University Hospital," Benson said.

Officials Called Cruel in Barring Ill Child at Border

Woman Who Sought Help Says Inspectors Were Callous Toward Infant Who Died 3 Days Later

BY PHIL GARLINGTON
Times Staff Writer

6/21/79

The woman who brought an ailing 18-month-old American baby to the San Ysidro border checkpoint last Friday has charged that immigration inspectors were "cruel and callous" in refusing to let the baby be taken to a U.S. hospital.

The baby, Manolo Augustin Alberto Anzalo, a U.S. citizen by virtue of being born to an illegal alien in Los Angeles, died three days later in a Tijuana hospital, after numerous efforts to arrange his transfer to a San Diego hospital had failed.

Lupe Anzalo of Los Angeles said she and a friend had been asked in behalf of the baby's mother, Irma Alberto, 21, to pick up the baby in Tijuana and take him to a hospital in the Los Angeles area.

Ms. Anzalo said she arrived in Tijuana about 1 a.m. Friday in a borrowed car and received Manolo from his mother at a home where she was staying. Later that night, the mother slipped across the border and traveled to Los Angeles, Ms. Anzalo said.

She said that when they arrived at the border the inspector on duty challenged the baby's birth certificate and later threatened to impound the women's car.

"She then gave us a couple of dol-

lars to buy food for the baby and told us to find a policeman to take us to the Tijuana hospital," Ms. Anzalo said.

INS supervisor Hank Owens also refused to let the baby across, she said.

"It was cruel, very cruel," Ms. Anzalo said. "They told us they couldn't let sympathy get in the way of their jobs."

Robert Mitton, deputy district director of the INS, repeated Wednesday that although the child was very sick, he was not in imminent danger of dying at the time he reached the border.

"The inspectors on duty do not recall seeing a birth certificate," Mitton said, "and four witnesses have testified that the young women claimed not to know the whereabouts of the mother."

"They were advised that the Tijuana hospital was much closer and that it was set up to administer glucose and to take care of the baby's problems."

"I believe the inspectors acted in good faith and it is not fair to blame them for something that happened almost four days later."

(The baby was admitted to Tijuana General at 3:45 a.m. Friday and died at 8:20 a.m. Monday.)

Mitton added that an average of 200 aliens are allowed into the United States each month through San Ysidro on medical parole to receive hospital treatment in San Diego.

"But these two women were practicing deception and it was thought they might be smuggling or kidnaping the baby," Mitton said. "Neither of them was the legal guardian."

Ms. Anzalo said that after putting Manolo in the Tijuana hospital she visited the baby on Sunday and "he looked fine, much better."

"He was wide awake and crying for his mama, reaching his little arm out," she said. "The nurse said he was a lot better but still sick."

"When I went back to Los Angeles I told his mother he was getting better and we were all happy."

Mitton said that Manolo was a victim of the economic disparity between countries that forces poverty-stricken people to make a bid for a better life.

"It is part of the syndrome of the very poor, who often have to live like animals, that there were serious errors in raising the child that led to its malnourished condition," Mitton said.

\$10 Million Stated for Burying Lines

ABY

But on Friday night the Baja state district attorney put a hold order on Manolo because of suspicions he might have been a victim of child abuse.

An officer from the Baja district attorney's office visited the hospital Friday night, but an order to release the child was not issued until Saturday.

Meanwhile, an aunt, Carolina Corona, telephoned the Tijuana hospital to say she would be arriving to get Manolo.

The aunt never arrived, but on Saturday night Lupe Anzalo and the other young woman came to pay the hospital bill and to request that the child be airlifted to Los Angeles. They left after being told this was beyond the hospital's capacity.

Once again, on Sunday, efforts were made by the consulate to transfer the boy by ambulance to University Hospital.

Before the transfer took place, however, Dr. Roger Kahn at University Hospital called Tijuana General to inquire about Manolo's condition.

Although Kahn speaks no Spanish and the person he reached spoke no English, he was able to determine that the boy was in stable condition, according to Pa. Jacoby, a spokeswoman for University Hospital.

At the same time, a clergyman with Project Hope who looked in on the

Thursday, June 21 1979

B-2 THE SAN DIEGO UNION
Agents Often Face Medical Choices

By LEW SCARR
Medical Writer, The San Diego Union

Life and death emergencies, regardless of immigration status, are permitted through the international border, federal officials maintain.

This is the rule at the San Ysidro border crossing, one forcing immigration officers to make medical judgments regularly just as they did recently when a sick 18-month-old boy accompanied by two young women was turned back.

The boy, eventually diagnosed as suffering malnutrition, died three days later in a Tijuana hospital.

The case has stirred charges of callousness against immigration inspectors who turned away the boy, an American citizen. And it has brought a strong defense of the inspectors by a superior who said they made the right decision.

The sides have been drawn, each with supporting witnesses, forcing the public to make an impossible judgment of the truth.

Two facts remain constant: Manolo Augustin Alberto was turned back from the country of his birth, and he died.

In a telephone interview with The San Diego Union, Lupe Alonzo, an American citizen who attempted to bring Manolo across the border as a favor to the boy's mother, Irma Alberto, an illegal alien, told a story of frustration and despair.

Her account is corroborated by Barbara Capolungo, a Customs Service inspector who was on duty at the time of the attempted crossing and witnessed the incident.

Essentially, Alonzo claims she told immigration inspectors neither she nor her friend was the baby's mother, but that she identified her and told them where the mother lived. Alonzo told the officers the mother is an illegal alien and that they were taking her critically ill son to her in Los Angeles.

She claims an inspector told her she could not take the baby into the United States because he was not a citizen. She said she tried to show the baby's birth certificate to

the inspector but that the inspector, a woman that Capolungo identified as Mary Louise Burns, told her she thought the birth certificate was a fake.

Capolungo said Burns' supervisor agreed with Burns that the baby should not be permitted into the United States.

The customs inspector also said she has a master's degree in social welfare, specializing in child abuse and malnutrition, and that, in her opinion, the case of Manolo Alberto was a life and death matter.

Robert Mitton, deputy district director of immigration here, does not agree.

"The child died and now some people want to dump on us," Mitton said.

He said the inspectors were not told who the mother of the child was, a claim he said is verified by a supervisor and two customs inspectors.

"Our inspector made a simple determination," Mitton said. "The child obviously was ill, but not critical. They wanted to take the child to a hospital in Van Nuys, about three hours away."

Mitton said the child and the women were turned away because the child was not sick enough to meet the life-and-death criterion and because there was no legal guardian with him.

Congressman entered fight for remains

Dead baby's body results in bureaucratic snafu

By JOAN BROYLES

Star-News Staff Writer

ly turned into nightmare this a citizens group raced against ind bureaucracy — to bring the an American-born baby to the burial. ight-day ordeal ended Friday group led by Chula Vista legal rney Rafael Arreola secured of the body of 18-month-old Augustine Alberto.

BABY, born in Los Angeles to al alien mother, died Monday in General Hospital after U.S. ation officials three days refused to admit him to the U.S. rgency medical treatment. ragedy was compounded in the ollowing the baby's death as and friends of the mother were ed in a snarl of red tape nding release of the body. ola said officials were "very in providing assistance and d things "poorly." said officials moved on the apparently only after high-level re was brought to bear. rding to Arreola, American ate officials in Tijuana Friday ed receiving a call from the of U.S. Rep. Edward Roybal of geles regarding the matter. IER SOURCES reported that Vista's Ernesto Azhocar, at their

request, had contacted the offices of several U.S. congressmen and state officials for assistance.

Azhocar is field representative to the Mexican-American community for Assemblyman Waddie Deddeh (D-Chula Vista).

Arreola says he plans to call for a congressional investigation of "problems regarding entrance at the border and health care."

He said he plans to use the Alberto baby incident as "the catalyst in requesting the investigation."

THE BABY finally will be buried in American soil tomorrow in San Fernando Mission Cemetery, San Fernando, Calif. Funeral services were conducted yesterday at Greenwood Mortuary in San Diego.

An eyewitness to events since the early morning hours of June 15 gave the following account:

— The baby's mother, Irma Alberto, contacted her friend Lupe Alonzo, a U.S. citizen residing in Los Angeles, and asked her to come to Tijuana and take her ailing baby across the border to a U.S. hospital.

— Alonzo, with the baby's U.S. birth certificate and another friend, tried to bring the baby into this country at the San Ysidro checkpoint while the mother slipped across the border and traveled to Los Angeles.

THE EYEWITNESS, who saw the

baby, said it was apparent the baby had been sick for some time. It showed signs of advanced starvation — distended stomach, pipe stem arms — and needed immediate treatment.

According to the eyewitness, Immigration officials refused to accept the birth certificate as proof of citizenship and sent the baby back to Mexico as an illegal alien.

Repeated efforts to have the baby transferred to University Hospital during the next three days also met with failure.

THE SAME eyewitness also gave the following accounts of efforts to secure release of the body following the baby's death:

— The body was taken from the hospital to Funeraria San Juan, owned by Magdalena Bogorquez.

— Alberto again dispatched Alonzo to claim the body since, as an illegal alien, she could not cross the border to identify her child and bring it back to the U.S. for burial.

— Since Mexican law allows burial of an unidentified body within 24 hours, a race with the clock began.

— At first, the funeral home agreed to accept Alonzo as the person legally responsible for identifying the baby and had her fill out forms for identification by a non-relative.

— The funeral home, however, refused to release the body until it was paid \$175 for services in the case.

— The money was raised through private donations and Bogorquez was advised Tuesday that the money was in hand.

— She agreed to start release proceedings, which were to take 24 hours, and then to drive the baby across the border at 2 p.m. Wednesday.

— Alonzo and Arreola also Tuesday went to Tijuana General Hospital to pick up the baby's birth certificate and personal effects. The hospital at first refused then agreed to release them Wednesday morning.

— Wednesday morning the hospital again refused to release the property until it received a letter of authorization from the American Consulate. Arreola obtained a letter and the hospital turned over the property to Alonzo.

— Alonzo, the mother of six children of her own, returned to Los Angeles and worked through the night and part of Thursday to get the letter notarized and everything finalized.

— Bogorquez had told the group to meet her with all the papers at 3 p.m. Thursday and she would deliver the baby. When the first member arrived, Bogorquez refused to take the money raised to pay her and conveyed a message that anyone coming to pick up the body should call David Rogus, a U.S. vice-consul in Tijuana.

— When told the notarized statement was on the way, Bogorquez said she

would also need a driver's license and some other document to verify the signature. Alonzo arrived at the funeral home at 9:30 p.m., a er wasted trip.

— Arreola went to the American Consulate Friday morning, all the red tape suddenly vanished and the baby's body was transported by Bogorquez to the U.S.

ARREOLA SAID Rogus claimed his initial telephone call to him Friday morning was the first time anyone from the U.S. side of the border had contacted him about the matter.

"I know that isn't true," Arreola contended. "A member of our group had an encounter with him at the hospital (in Tijuana) last Monday. I know for a fact they were aware of what was happening by Wednesday when we got the letter for the hospital."

Rogus could not be reached for comment.

Arreola, who is supervising attorney for the Chula Vista office of the Legal Aid Society of San Diego County, said investigation of the entire incident will continue.

Besides asking for a Congressional investigation, he said, "We are considering some action against persons responsible for the delay and the suffering of the family.

"It was a nightmare, but the nightmare's over — at least in part."

COMPILED BY THE COMMITTEE ON CHICANO RIGHTS, 1837 HIGHLAND AVE., NATIONAL CITY, 92050 # (714) 474-8195

DECLARATION

I, GUADALUPE CAÑEDO ASTORGA, declare:

I had been the babysitter for MARIO ALBERTO CAÑEDO for three (3) years. He would now be five (5) years old.

MARIO had been sick and treated at University Hospital in San Diego, Calif. since November, 1978 for a heart condition. I took him to University Hospital monthly until his open-heart surgery in February, 1979. He was in the hospital about three weeks until around March 13 or 14 when he was released to me with an appointment to return the next week for follow-up.

Each time I or my husband came across the border for MARIO's doctor appointments we had with us a letter signed by the doctor at University Hospital. Each time we would have to go upstairs at the port of entry and have the hospital letter verified. I asked if there was some way to get a regular permit so we wouldn't have to go through this each time. The official said the letter from the hospital was enough for each entry and they could only give permits for from one to several days at a time.

On March 20th, several days before his next doctor's appointment, I saw that Mario was very sick. I asked Blanca, a neighbor, for a ride to the hospital. B-1

It was around 4:00 P.M.

The line at the border was so long we drove around to the front. An Asian female official, dressed in a blue uniform, saw how sick the baby looked and opened the gate, sending us to the secondary inspection. We parked there and waited over ten minutes and finally got out of the car. It was then that a tall officer who had been standing there the whole time, came up and asked if I had any papers. I showed him the hospital letter indicating MARIO's last appointment. The officer sent us inside to the office.

Inside at the counter, I showed the officer the hospital letter and asked for a permit to take MARIO to the hospital since it was an emergency. I unwrapped MARIO's blanket so the officer could see how sick the baby was. He looked at the baby then told me to take a number and sit down.

As I sat down, even the other people waiting noticed that I was getting very upset and that MARIO was very sick. People began pointing out to the officials behind the counter that MARIO was in a grave condition. I got up and went towards the door and a tall officer from the front counter grabbed the baby before I could exit the building, another officer grabbed me. By now I was hysterical and uncontrollable. I saw the officer

lay the baby on the counter, place his hand on the baby's neck and then say a few words in english to the other officer. He motioned that the baby was dead.

They took me to a small room to the side where a female officer tried to calm me. The ambulance attendants examined the baby and the officials came to tell me that the baby had been pronounced dead. I had to wait three more hours for the coroner before I was allowed to leave. I was finally given permission to leave at 8:00 P.M.

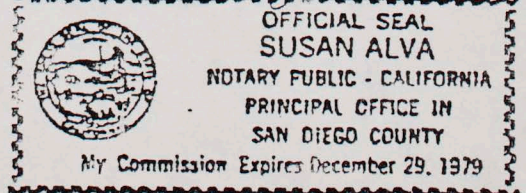
I declare under penalty of perjury that the above is true and correct to the best of my knowledge. Executed this 2nd day of July, 1979 in Tijuana, Baja California, Mexico.

Jose Camilo Artaza



I, CARLOS VASQUEZ, declare under penalty of perjury that I am fluent in english and spanish, have translated the above to the declarant and she understood and affirmed its contents before signing. Executed this 2nd day of July, 1979 in Tijuana, Baja Calif. Mexico.

Carlos Vasquez



*Susan Alva and Susan Alva
me this 2nd day of July, 1979.
Susan Alva, Notary Public*



Fundación Project Concern de Mexico

HOSPITAL MATERNO INFANTIL

Una institución de Beneficiencia Privada No-Lucrativa

Paseo del Pacifico No. 43 Fracc. El Mirador

P.O. Box 125 San Ysidro, CALIF. 92073

Teléfono 5-04-04

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"Para Servir a la Humanidad"

Dec. 1, 1978

Mr. Alan Clayton, of the Chief Inspector
U.S. Immigration Service
San Ysidro, Ca.

Dear Sir:

Mario Alberto Canedo was seen today in Cardiology Clinic. He has been diagnosed as having Tetralogy of Fallot, and is in need of prompt attention. Thanks to a cancellation, he can be admitted Monday to University Hospital on Clinical Teaching Funds. May I ask you to please give him and La Sra. Cañedo Ortega, his aunt and responsible for the little boy, a waiver for three days beginning Monday, Dec. 4.

Birth: April 6, 1974 in Tijuana

Mother: Clara Canedo

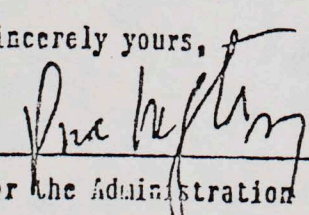
Father: Ramon Galindo (not with family)

Address: Abraham Gonzalez 35 A, Col. Fraco. Villa, Tijuana

University Hospital has notified you by telephone.

Thank you for your kind attention.

Sincerely yours,


For the Administration

Dirección General Internacional

3802 HOUSTON STREET, P.O. BOX 81123, SAN DIEGO, CALIFORNIA 92138 USA • Teléfono (714) 299-1353 • Cable: PROJCONUS

B-4



DEPARTMENT OF PEDIATRICS

UNIVERSITY HOSPITAL
225 DICKINSON STREET
SAN DIEGO, CALIFORNIA 92103

February 21, 1979

PEDIATRIC CARDIOLOGY ADMISSION NOTE

RE: CANEDO, MARIO
#733059-K
DOB: 4/6/74

This is a four year old Mexican child with either tetralogy of Fallot or double outlet left ventricle. He is admitted for total correction.

He was brought to our Project Concern Clinic in Mexico in early January and was found to be cyanotic. Subsequent cardiac catheterization revealed either severe tetralogy of Fallot or double outlet left ventricle with severe pulmonic stenosis. Because of the history of hypercyanotic spells, it is felt that urgent correction is warranted. He was admitted for surgery on February 6, 1979, however, it was cancelled because of inadequate blood for open heart surgery. EMI scan was performed during that admission to rule out any kind of intracranial abnormality because of enlarged carotid arteries seen on angiogram. The EMI scan was normal and the neurological examination was normal.

Physical examination reveals a grossly cyanotic child in no obvious distress. He also has clubbing of the digits. Peripheral pulses are normal. There is increased right precordial activity. S1 is normal and S2 is widely split with diminished P2. There is a grade II/VI systolic ejection murmur heard in the pulmonic area which peaks in early systole. There is no diastolic murmur.

EKG shows right axis deviation with right ventricular hypertrophy. Chest x-ray shows a boot-shaped heart with flat main pulmonary artery segment. Pulmonary vascularity is at the lower limits of normal.

IMPRESSION: Tetralogy of Fallot vs. double outlet left ventricle with severe pulmonic stenosis.

- SUGGESTIONS:
1. Open heart surgery for total correction on 2/22/79.
 2. Routine preoperative workup.
 3. The child has been maintained on Digoxin since last admission in anticipation of positive inotropic support postoperatively. Digoxin should be discontinued on the day of admission.
 4. The child has been on a low dose of Ampicillin since last admission and this should be discontinued also.
 5. Attached please find cardiac catheterization report and angiogram report.

William F. Friedman
William F. Friedman, M.D.
Professor of Pediatrics
Chief of Pediatric Cardiology

Thomas G. DiSessa
Thomas G. DiSessa, M.D.
Assistant Clinical Professor
Division of Pediatric Cardiology

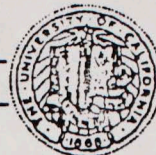
Ching C. Ti
Ching C. Ti, M.D.
Clinical Instructor of Pediatrics
Division of Pediatric Cardiology

CT:jo

cc: Project Concern

UNIVERSITY OF CALIFORNIA, SAN DIEGO

BERKELEY · DAVIS · IRVINE · LOS ANGELES · RIVERSIDE · SAN DIEGO · SAN FRANCISCO



SANTA BARBARA · SANTA CRUZ

DEPARTMENT OF PEDIATRICS

March 9, 1979

UNIVERSITY HOSPITAL
225 DICKINSON STREET
SAN DIEGO, CALIFORNIA 92103

Officer in Charge
U. S. Immigration and Naturalization Service
San Ysidro Port of Entry
P. O. Box 1C
San Ysidro, California 92173

RE: CANEDO, Mario Alberto
Birthdate: 4/6/74
UH #733059-K

Dear Sir:

This letter is to request border crossing privilege for Mario A. Canedo and his aunt and uncle, Sr. Canedo Ortega and Sr. Alfonso Avila Guzman. Mario is being followed in our Outpatient Center for double outlet left ventricle under the care of Dr. William F. Friedman. He is scheduled for an appointment in Dr. Friedman's office on Wednesday, March 14, 1979, at 11:00 a.m.

Mario's aunt and uncle are his legal guardians and have reared the child since shortly after birth. The family's home address is as follows: Abraham Gonzalez #35-A, Tijuana, Mexico.

Funding for this patient's care will be provided, at no cost to the County or State, by Clinical Teaching Funds.

Should you require further information, please contact Ms. Jay Haas, Patient Services Representative, at 294-6570.

Sincerely,

David E. Wood
Assistant Director of Finance
Patient Services

DEW:pdh

cc: Patient Services
Project Concern

TO CROSS BORDER

HEART PATIENT

Boy, 4, Dies at Border Gates

BY ROBERT MONTEMAYOR
Times Staff Writer

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

For other people waiting in the Customs lobby, the woman's frantic pleas of "Emergencia! Emergencia! Boy sick!" indicated only that something was wrong. How serious it was, no one knew.

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

Please Turn to Page 5, Col. 1

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

"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.

Los Angeles Times * 5
Fri., Mar. 23, 1979 - Part II

speculation 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

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 Custom 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

B
1

83312



DAVID J. STARK
CORONER

Office of The Coroner

COUNTY OF SAN DIEGO

5555 Overland Avenue
Building 14
San Diego, California 92123
(714) 565-5645



CORONER'S REPORT

File # 83312

CC # 666-79

Name of Deceased	EFREN REYES	Age	24
Residence	Calle 9B 337, San Luis, Potosi, Mexico		
Place of Death	Open area, 1 mile W. of the port of entry and 40 ft. N. of border fence, San Ysidro, California		
Place of Homicide	Open area, 1 mile W. of the port of entry and 40 ft. N. of border fence, San Ysidro, California		
Date of Death	March 17, 1979, APPROX., 10:17 p.m.		
Date of Homicide	March 17, 1979, APPROX., 10:17 p.m.		
Date of Call	March 18, 1979, 12:35 a.m.		
Informant	San Diego Police Department		
Deputy Coroner	R. V. Pettit		
Property	None taken		
Person Notified	San Diego County Public Administrator		
Address			
Relationship			

INVESTIGATIVE SUMMARY

At 3:05 a.m., 3-18-79, the undersigned viewed the decedent, fully clad except for the left shoe, supine at the foot of a 28-foot embankment at the place of demise. The decedent's left shoe was lying on the ground one-fourth of the way down the embankment. Lying on the ground one-half way down the embankment was a law officer's black baton. The body was cold to the touch and flaccid. The decedent was rolled onto his left side by the undersigned. The decedent's clothing was raised, exposing the back and chest areas. An apparent through-and-through gunshot wound was noted in the right upper chest and the left lower back. The clothing adjacent to the wounds was bloodstained. Around the decedent's right wrist was a Smith and Wesson handcuff in the locked position. The other handcuff was hanging free. The decedent's head and hands were bagged, and he was

Form 8 Cor.

C-1

removed to the Coroner's office as John Doe. A subsequent search of the decedent's clothing at the Coroner's office revealed no evidence of his identification.

Officer Dan Cole, identification #5532, a supervisor, Border Patrol Agent, was present and related the following information. He was patrolling the south levee at approximately 10:17 p.m., 3-17-79, when he encountered three apparent unregistered aliens. They appeared to have been drinking. He apprehended the subjects, handcuffing two of them together by the wrists. He had the other subject by the back of his belt and was attempting to place the subjects into his patrol unit. They attempted to flee; and in the following encounter, Officer Cole fired three rounds from his service revolver. One round struck the decedent, and the subject handcuffed to the decedent was apparently struck in the shoulder. The subject with the shoulder wound was transported to Bay General Community Hospital, Chula Vista, California, and was subsequently transferred to the University of California Medical Center, San Diego, California.

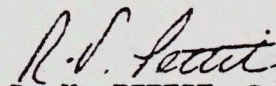
On 3-21-79, Socorro Kovacs, 1761 East Orange Grove, Pasadena, California, visually identified the decedent as her brother, Efren Reyes.

San Diego Police Department homicide team #3 responded to the scene and is conducting an investigation. The decedent's property was receipted for and impounded by the team. For further information regarding this homicide, please refer to San Diego Police Department homicide file #79-23081.

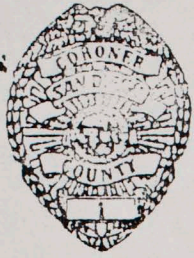
HOMICIDE: Shot in chest by on duty border patrol officer.

LOCATION: Open area, 1 mi. W. of port of entry and 40 ft. N. of border fence, San Ysidro, California

DATE: March 17, 1979, APPROX., 10:17 p.m.


R. V. PETTIT, Deputy Coroner

RVP:lad
4-6-79



DAVID J. STARK
CORONER

Office of The Coroner

COUNTY OF SAN DIEGO

5555 Overland Avenue
Building 14
San Diego, California 92123
(714) 565-5645



AUTOPSY REPORT

Name of Deceased	EFREN REYES	File #	83312
Place of Death	Open area, 1 mi. W. of port of entry and 40 ft. N. of border fence, San Ysidro	CC #	666-79
Date of Death	March 17, 1979	Age	24
Place of Autopsy	San Diego County Examining Room		
Date of Autopsy	March 18, 1979 2:30 P.M.		

EXTERNAL EXAMINATION

The body is that of an unembalmed, well-developed, well-nourished, Caucasian male whose general physical condition is consistent with a chronologic age of 24 years. The body weighs 132 pounds. The body length is 65 inches. The irides are brown. The hair is brown.

The eyes, ears, nose and mouth are unremarkable. The neck and right arm are grossly normal. Small abrasions and purplish discolorations are present around the right wrist in portions. The chest shows a gunshot entrance wound, located in the right upper portion, 14-1/2 inches from the top of the head, 2-1/2 inches to the right of the midline. The central defect is about 3/8 inch in diameter with a narrow abrasion rim. The abdomen is grossly normal. The external genitalia are male. The left leg shows small abrasions on the medial ankle. The back shows a stellate gunshot exit wound, 3/8 inch in maximum dimension, 22 inches from the top of the head, about 1-1/2 inch to the left of the midline.

INTERNAL EXAMINATION

The abdominal and thoracic organs occupy their normal positions. Large amounts of bloody fluid are present in the right chest and in the pericardial sac. A moderate amount of bloody material is present in the abdomen.

CARDIOVASCULAR SYSTEM

The heart weighs 290 grams. Multiple sections reveal no significant sclerosis of the coronary vessels. There is extensive gunshot disruption of the right ventricular wall, near the apex, with an opening about 1/2 inch in diameter on the anterior aspect and more extensive disruption on the posterior aspect, about 2 inches in dimension. Some disruption of the septum is also present. The left lateral wall shows no significant abnormality. Valve appearances and sizes are normal. The aorta shows no significant atherosclerosis.

RESPIRATORY SYSTEM

The larynx, tracheobronchial tree and pulmonary artery are unremarkable. The right and left lungs weigh 340 grams and 560 grams, respectively. The anterior-inferior aspect of the right lower lobe shows gunshot disruption. Multiple sections through the left lung show no significant abnormality.

GASTROINTESTINAL SYSTEM

No abnormalities of the esophagus are noted. Examination of the stomach, duodenum, jejunum, ileum and colon reveals no abnormality.

LIVER AND BILIARY SYSTEM

The liver weighs 1440 grams. Multiple sections reveal extensive disruption of the left lobe. The gallbladder and extrahepatic biliary tract are unremarkable.

PANCREAS

The pancreas is disrupted in the midportion with extensive diffuse hemorrhage into the connective tissue.

ENDOCRINE SYSTEM

The thyroid gland is not palpably enlarged.

The adrenal glands are of usual size, shape and consistency.

HEMATOPOIETIC SYSTEM

The spleen weighs 90 grams and multiple sections reveal an intact gross architecture.

The lymph nodes of the mesentery and mediastinum are not enlarged. Inspection of the bone marrow reveals no grossly remarkable findings.

GENITOURINARY SYSTEM

The right kidney weighs 130 grams; the left kidney, 160 grams. There is hemorrhage in the hilar portion of the left kidney, but no significant abnormality of either kidney is identified on sections.

The urinary bladder is unremarkable.

The prostate is normal in size.

MUSCULOSKELETAL SYSTEM

The musculature is well-developed and consistent with that of an adult male.

The skeleton is consistent with that of an adult male.

The left psoas muscle is disrupted in portions by the gunshot. There is disruption of the right fourth rib anteriorly.

CENTRAL NERVOUS SYSTEM

The scalp is reflected, and there is no evidence of subcutaneous or muscular hemorrhage. The calvaria is intact and without evidence of fracture.

There is no evidence of epidural, subdural or subarachnoid hemorrhage. The cerebral vessels have a normal anatomical distribution.

Examination of the skull and cervical vertebrae reveals no abnormality.

The brain weighs 1400 grams and is symmetrical.

Multiple coronal sections of the cerebrum, mesencephalon, pons, medulla and cerebellum reveal an intact gross architecture. The pituitary gland is unremarkable. The upper cervical spinal cord and cerebral sinuses are unremarkable.

MICROSCOPIC EXAMINATION

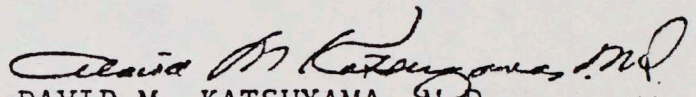
Sections of lung show areas of disruption and hemorrhage.

Sections of heart, liver, spleen, kidney and cerebrum show no significant lesion.

Sections of pancreas show areas of disruption.

CAUSE OF DEATH:

Hemorrhage, massive due to lacerations, heart, lung, right and liver due to gunshot wound, chest, right.


DAVID M. KATSUYAMA, M.D.
Pathologist for the Coroner

DMK:MT:br
3-30-79

Agent's killing of alien justified, probe indicates 3/20/79 SD TRIBUNE

By ROBERT DIETRICH

San Diego police homicide detectives investigating the Saturday shooting death of an illegal alien and the wounding of his companion by a Border Patrol agent said today the probe so far indicates the agent shot in self-defense.

Baja California state judicial police, however, said two Mexican men who claimed to be witnesses stated the two illegal aliens were shot while running back to the Mexican border.

But, one of the San Diego police investigators said, there are indications that there were no spectators on the Mexican side of the fence — about 40 feet from the shooting — at the time the incident occurred.

New details of the 10 p.m. Saturday shooting were revealed by San Diego police today.

One is that the wounded man, Benito Hernandez Rincon, 24, gave statements that essentially agree with the account given by the Border Patrol agent who did the shooting,

Dan Cole, 49.

Hernandez is in University Hospital's jail ward recovering from a bullet wound in the left shoulder.

Hernandez and the dead illegal alien — who has not yet been identified by the coroner's office — had been handcuffed together, according to Cole's statement, after they had been arrested after illegally crossing the border. Cole said he shot them in self-defense when they attacked him. A third illegal alien escaped to Mexico.

Manuel Agullera, Baja state judicial police chief in Tijuana, said his office had made an internal investigation but would not divulge results because "the incident happened in the United States, and is a matter in the hands of American authorities."

Homicide Lt. John Gregory shed some light on the bullet wounds inflicted on the two men.

The bullet that struck the unidentified illegal alien entered his chest

from the front. Hernandez's shoulder wound was from a bullet that hit the back of his shoulder.

"The shots were fired at close range," Gregory said.

He said a Mexican man who claimed to be the third man arrested ran back to Mexico and has not been positively confirmed as the third man by the police investigating team.

The site of the incident was atop the south levee of the U.S. section of the Tijuana Flood Control Channel.

Will Not File Charges Manacled-Alien Slaying 5/12/79

MICHAEL D. LOPEZ
Writer, The San Diego Union

Attorney Edwin Miller said today that he will not issue a complaint against a Border Patrol agent who shot a Mexican alien and another on March 17 when they attempted to escape and were handcuffed together.

Miller expected to trigger a protest from local Chicano and Mexican officials, Miller said. Supervising Border Patrol Agent Dan Cole, 49, probably would be charged if he had been an enforcement officer.

Miller prohibits the use of deadly force against fleeing suspects, but, because Cole is a Border Patrol agent, Miller said his actions are within the jurisdiction of federal law, which holds that resisting arrest is a felony that probably would be charged if the agent'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

(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, Rogello 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

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.

COMPILED BY THE COMMITTEE ON CHICANO RIGHTS, 1837 HIGHLAND AVE., NATIONAL CITY, 92050 # (714) 474-8195

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.

C-8

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



DISCHARGE SUMMARY

- 2 -

Neurologic: Examination was grossly within normal limits, with the exception of the right upper extremity, as described above.

LABORATORY STUDIES: On admission included normal chest x-ray. Left shoulder x-ray was not obtained, since films from Bay General were felt to be adequate and excluded bony injury. BUN, creatinine, electrolytes were within normal limits, hematocrit was 35.

HOSPITAL COURSE: The patient was admitted to the Trauma Service and observed for evidence of vascular compromise. It was felt that this isolated injury in the proximity of a major vessel without other evidence of vascular injury did not warrant angiogram at the time of admission. The patient was placed on Ancef and his wounds were debrided, on admission and he was then started on q.i.d. Betadine dressing changes. For the first day in the Hospital, he ran a low grade fever with high ~~fever~~ temperature of 100.3 F., and his wounds appeared clean during that period of time. Over a 48 hour period, he developed no evidence of neurovascular compromise and became completely afebrile. He was discharged home on hospital day number two, 3/20/79.

DISCHARGE DIAGNOSES: 1. Gunshot wound to the left shoulder without evidence of neurovascular compromise.

CONDITION ON DISCHARGE: Stable.

DISCHARGE MEDICATIONS: Tylenol #3 for pain, 500 mg p.o. q 6 hours times five additional days. The patient was also instructed to continue Betadine soaked dressing changes which can be continued in the jail facility to which he is being taken. In addition, he was instructed to begin active range of motion exercises, to the extent that this is possible.

OPERATIONS: None.

DISPOSITION: The patient will be seen in Trauma Clinic in one week and also will return to Orthopedic Clinic for follow up.

PHYSICIAN'S INSTRUCTIONS RE PATIENT ACTIVITY: As above..

John Kroener, M.D.
Surgery Resident II

JK:bb
T: 3/24/79

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.

C-12

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 balas 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 Fronteriza estaba en peligro or amezado en ningun manera por parte de Benito Rincon or Efren Reyes.
7. El balacera parecia que era un intentar del hombre de Patrulla Fronteriza 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 declaro bajo pena de perjurio que el antes mencionado es la verdad y corecto.

Date:

Fecha: 7/14/74

Rogelio A. Mendez Diaz
Rogelio Adolfo Mendez-Diaz

Dos Sobrevivientes, Señalan con Índice de Fuego al Inmigrante que Mató a un Ilegal

Por Rogelio LAVENANTSIFUENTES

SAN YSIDRO.- El mexicano Benito Rincón Hernández y el guatemalteco Rogelio Méndez Díaz de 22 y 16 años de edad respectivamente, a testificarán en contra del supervisor Dan Cole, de la Patrulla Fronteriza, por la muerte del infortunado Efrén Reyes, a quien según aseguran aniquiló a balazos después de haberlo esposado, a corta distancia de la cerca fronteriza.

Ambos concedieron ayer una entrevista exclusiva a EL MEXICANO, para narrar con detalles la forma en que el oficial de la Patrulla Fronteriza los agredió a tiros, hiriendo en el hombro izquierdo a Benito Rincón, y causando la muerte instantánea de Efrén Reyes, estando esposados uno a otro.

Mañana lunes se presentarán ante el fiscal federal en San Diego, Ed Miller, para declarar sobre el caso, ocurrido la noche del sábado 17 de marzo del presente año, en el bordo del canal del Río Tijuana en territorio estadounidense, donde se hallaban los tres jóvenes junto con otras muchas personas que acostumbra transitar por este lugar desde que fue hecha la canalización.

La intervención de la Asociación Mexicana-Americana, que preside Alberto R. García, evitó que Benito Rincón fuera procesado bajo varios cargos que le fueron imputados y por los que se hallaba en el Metropolitan Correccional Center de San Diego, desde el 22 hasta el 30 de abril pasado.

Asimismo, el guatemalteco Rogelio Méndez Díaz, de 16 años, estuvo en peligro de ser deportado a su país sin tener oportunidad de declarar en este espinoso asunto, en el que esperan que se les haga justicia. Benito Rincón demandará a la Patrulla Fronteriza por la agresión de que fue objeto y en la que resultó herido, independientemente de que atestiguará en contra del supervisor Dan Cole, quien se halla libre.

Ahora los dos jovencitos están alojados en la casa de una familia residente en esta área del Condado de San Diego, bajo la tutela de Alberto R. García, y la Asociación que preside, merced a que logró conseguir un permiso de las autoridades de Inmigración para que permenezcan indefinidamente Benito Rincón y temporalmente Rogelio Méndez, a quien pagarán pasaje de avión para que regrese a su país una vez concluido el asunto.

Sobre el particular, Alberto R. García, declaró a

este diario que "las autoridades mexicanas, tanto de Migración en Tijuana, como del Consulado mexicano en San Diego, mostraron desinterés e ineptitud para esclarecer este caso, a pesar de que al gobierno de México debe interesarle mucho aclarar la muerte de Efrén Reyes. Esperamos la visita del secretario de Relaciones Exteriores, Lic. Santiago Roel, para plantearle esta situación".

NARRAN LOS HECHOS A EL MEXICANO

Entrevistados en la oficina de Alberto R. García, el mexicano Benito Rincón y el guatemalteco Rogelio Méndez Díaz, dijeron haber sido amigos ocasionales del hoy occiso, Efrén Reyes.

Hace unos dos meses y medio, Efrén Reyes y Rogelio Méndez se conocieron en la "Casa de los Pobres" en la colonia Altamira de Tijuana. Después conocieron a Benito Rincón en el bordo del canal, la noche trágica del sábado 17 de marzo de 1979.

Los tres se hallaban sentados sobre el bordo de tierra del canal. Eran poco después de las 9:00 de la noche, y otras muchas personas también estaban en ese lugar. Algunos esperaban la oportunidad de internarse a los Estados Unidos. Benito y Rogelio confiesan que así lo pensaban también, junto con Efrén, "pero era muy temprano para intentarlo".

A esa hora mas o menos pasó una unidad de la Patrulla Fronteriza, pero su tripulante, el supervisor Dan Cole, no les dijo nada.

"Yo creo que no nos vió", comenta Rincón secundado luego por Méndez Díaz.

Unos diez minutos más tarde volvió la patrulla. El vehículo se detuvo a unos diez o doce metros de distancia de donde se hallaban sentados ellos.

De pronto vieron llegar al oficial de la Patrulla Fronteriza, que tomando de las ropas a Efrén y a Benito, les ordenó caminar hacia la unidad. El primero en subirse al vehículo, fue Rogelio Méndez, asustado por lo que ocurrió.

Sin embargo, el supervisor Dan Cole no tuvo el mismo resultado con Efrén y Benito a quienes momentos antes había esposado uno a otro de sus brazos derechos para evitar que huyeran.

"Efrén no aceptó meterse a la "perrera" porque, como le decía al oficial de la Patrulla Fronteriza, no estábamos haciendo nada malo, ni habla razón para que nos detuviera", dijo Rincón.

Interviene Rogelio Méndez para comentar que él aprovechó este momento de confusión del supervisor Cole, para bajarse de la unidad de transporte y correr hacia la cerca metálica que limita San Ysidro con Tijuana.

Casi al mismo tiempo, el oficial Dan Cole sacó su pistola para amedrentar a Efrén, en vista de que se resistía a subir a la panel con rejas.

"Efrén le dijo: dispáreme, al cabo no he hecho nada malo", expuso Benito Rincón, quien señala que ambos comenzaron a caminar hacia la alambrada, seguidos por Dan Cole, quien trataba de detenerlos sujetándolos de las esposas que les había puesto.

No logró su propósito y entonces disparó su arma.

El primer balazo no dañó a ninguno, y fue hasta el segundo disparo cuando Benito Rincón resultó herido. Según dice escuchó una tercera detonación y fue cuando Efrén Reyes quedó inmóvil, a su lado. Ya se hallaban en el suelo, toda vez que habían resbalado en su carrera cuesta abajo en el bordo.

Rogelio Méndez cuenta que él ya había conseguido pasarse a suelo mexicano. Estaba pegado a la cerca, cuando Efrén falleció y Benito quedó herido.

Después llegó una patrulla-ambulancia de la policía de San Diego, según comentan, y recogió a Rincón. Mientras, Rogelio se confundió entre los curiosos que se arremolinaron y a los que la Policía Municipal de Tijuana ordenó retirarse cuando llegó al lugar de los hechos.

Benito Rincón fue llevado primero al Community Hospital, de Chula Vista, y posteriormente, en vista de que no lo atendían, lo trasladaron al University Hospital, donde permaneció dos días internado, sin recibir tampoco la atención que ameritaba, según él mismo lo comenta,

De aquí fue enviado a la carcel, acusado de felonía, asalto a un oficial de la Patrulla Fronteriza y por tener varias entradas ilegales a los Estados Unidos.

Benito Rincón manifestó también que cuando estuvo en el University Hospital, oficiales policíacos le llevaron unos documentos y le pidieron que los firmara, con la promesa de deportarlo sin hacerle mas cargo. Se trataba de una liberación de responsabilidad del oficial Dan Cole.

"Después me visitó un representante del Consulado Mexicano, y cuando le dije eso, me recomendó que firmara cualquier papel que me llevaran porque de otra forma no iba a salir libre", comentó Rincón.

Concluyó diciendo que su respuesta fue: "no tengo prisa en salir libre. Lo que quiero es que el caso se lleve a su fin conforme todos los reglamentos y las leyes".



SAN YSIDRO. — Rogello Méndez García, nacido en Guatemala, listo para atestiguar contra el supervisor de la Patrulla Fronteriza. (RLS)



SAN YSIDRO. — Benito Rincón Hernández muestra la cicatriz de la herida en su hombro izquierdo (RLS)

DECLARATION OF MARGARITO BALDERAS-HERNANDEZ

I, MARGARITO BALDERAS-HERNANDEZ, hereby declare that:

On or about February 11, 1979, around the middle of the day, I was alone crossing the border near the baseball field. As I was crossing I saw a migra car approach, stop on the embankment about ten feet from me and the one official get out with his gun drawn. I turned to go back and he said "stop, put your hands up" and I did. I felt two shots hit me, managed to stay standing a few seconds and then had to lie down.

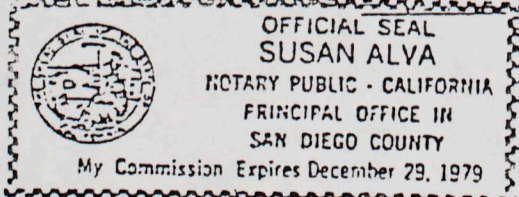
I had been shot in both arms; the bullet to the right arm must have hit the bone or nerve because I was in so much pain. The official came up and started to kick me; I did nothing.

I had a bag with a strap over my left shoulder. The official tried to cut the strap with a knife and in the process slashed my left arm so deep I almost passed out from the pain.

By now other migra cars had pulled up. I know the arresting official to be Hayes, Grathwell and Sharp. They took me to a hospital in Chula Vista then to a hospital (University?) in San Diego. The doctor said there were some bullet fragments in my left arm that were impossible to get out and that I might lose some of my right arm/hand/fingers where the bullet hit the bone/nerve. The migra then started to take me to the Mexican side of the border but I believe they thought I could make more trouble for them there so they instead took me to MCC.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Executed on this 6TH day of April, 1979 in San Diego, CA.



X
MARGARITO BALDERAS-HERNANDEZ

I, SUSAN ALVA, declare under penalty of perjury that I am fluent in English and Spanish, have orally translated the above to the declarant and he understood and affirmed its contents before signing.

Executed on this 6TH day of April, 1979 in San Diego,

Susan Alva



DISCHARGE SUMMARY

ADMISSION DATE: 2-11-79
DISCHARGE DATE: 2-20-79
su

CHIEF COMPLAINT AND PRESENT ILLNESS: This 31-year-old, Mexican male reportedly assaulted a Border Guard on the day of admission, receiving gunshot wounds to both upper extremities. The gun inflicting the damage was reportedly a .357 Magnum. On admission, the patient complained of numbness of the small and ring fingers on the right hand.

PH EN SH ROS: Noncontributory.

PHYSICAL EXAMINATION: The general physical examination was within normal limits with exception of examination of both upper extremities. Examination of the left upper extremity showed an entrance wound on the dorsal and ulnar aspect of the distal third of the right forearm with an exit wound on the volar aspect of the distal third of the right forearm. The patient's deep and superficial flexors to the small finger were nonfunctional and the patient had numbness in the ulnar nerve distribution distal to the gunshot wounds. In addition, the patient's ulnar pulse was nonpalpable and his Allen test was positive for a lacerated ulnar artery. Examination of the left forearm showed an entrance wound proximal to the elbow on the radial aspect of the arm with an exit wound on the mid-volar surface of the proximal third of the left forearm. Motor examination was felt to be intact, as was sensory examination.

LABORATORY STUDIES: X-rays showed a comminuted fracture of the right ulna at this junction of the middle and distal thirds with metallic fragments noted. Examination of the left arm and forearm showed no fractures, but revealed the presence of a bullet, approximately two inches proximal to the left ante cubital fossa.

HOSPITAL COURSE: On the night of admission, the patient was taken to the Operating Room where both wounds were debrided and left open. The lacerated ulnar artery and ulnar nerve were noted on the right. In addition, a laceration of the deep and superficial flexors to the right small finger were also noted. The patient was initially elevated postoperatively, and did well. On 2/16/79, delayed primary closure of the right forearm wound was performed, and the patient was placed in a long arm cast. The wounds were taken care of through a window in this cast. Then on 19 February 1979, the patient's exit wound on his left forearm was also closed in delayed fashion. The entrance wound was noted to already have healed by secondary intention.

Throughout the course of the patient's hospitalization, his neurovascular examination has remained unchanged.

- DISCHARGE DIAGNOSES:
1. Gunshot wound to both right and left forearms.
 2. Open fracture, right ulna.
 3. Laceration of right ulnar nerve and right ulnar artery. and laceration of deep and superficial flexor to right small finger, secondary to diagnosis No. 1.

CONDITION ON DISCHARGE: Satisfactory.



DISCHARGE SUMMARY

DISCHARGE MEDICATIONS: None.

- OPERATIONS:
1. Debridement of right and left forearms. 2-11-79
 2. Delayed primary closure, right forearm. 2-16-79

DISPOSITION: Followup wound care will be in the Orthopedic Clinic in one week.

PHYSICIAN'S INSTRUCTIONS RE PATIENT ACTIVITY: The patient will be allowed to use his left hand and arm ad lib. The right arm is to remain in a long arm cast.

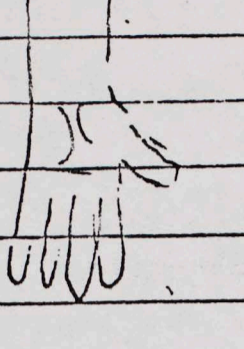
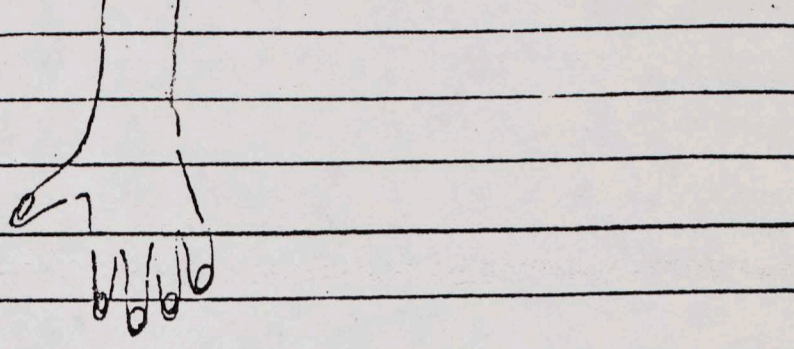
Raymond Sachs, M. D.
Orthopedics Resident II

RS:su
T. 2-20-79
L-1



ENTRANCE

PROGRESS RECORD

DATE		Volar	Dorsal
2/11/79	② arm	exit	
			

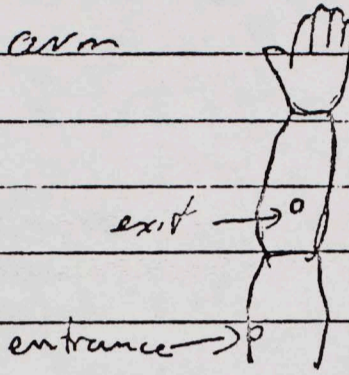
diminished radial & ulnar pulses - no brachial pulse.
 motor exam intact ulnar & median muscle groups
 & intrinsic hand motors intact
 sensory intact to touch
 xray - comminuted Fr of @ ulna middle/distal 1/3 junction
 - @ metallic frag = but no Fr
 imp: - @ ulnar nerve, artery, FCU, FDS & P to little finger
 Fr open & comminuted of ulna.

② Neuro & sensory exam intact, diminished pulses distally - R/o brachial artery injury.

Plan: to angio, then to OR for debridement & irrigation of wounds, possible vasc. repair on @.




PROGRESS RECORD

DATE		
	<p>① arm</p>  <p>exit →</p> <p>entrance →</p>	<p>faint radial pulse. No ulnar pulse. Nerve intact</p>
	<p>neuro - alert & oriented X3 motor, sensory & reflexes intact quest for ulnar @ (R) arm angio @ arm → radial a interrupted just post brachial @ arm → fx ulnar Asses - gunshot wound to both arms Ulnar n & a injury to @ arm, Radial a injury to @ arm</p>	
	<p style="text-align: right;">Humbly</p>	



July 12 11 78

PROGRESS RECORD

DATE	
2/11	<p>Trauma RAN CC. gunshot wounds to both arms HPI - young Mexican ♂ shot in both arms while trying to cross border. Complains of pain in both arms. Reportedly high velocity bullets PH</p>
	<p>no previous medical or surgical problems allergies - none meds - none</p>
	<p>ROS & FH not obtained</p>
	<p>Physical w/o w/u men ♂ in mild distress (arm pain) HEENT - WNL lungs - clear to A&P ca - RR, no (m) or (c) abd. soft, benign, no organomegaly or abn masses BS active genitalia - wnl breast - no engorgement extremities</p>
	<p>Ⓜ arm -  large tissue defect. ulnar great Scarri. Ulnar a. appears transected. Good radial pulse but no ulnar pulse. Ulnar nerve also out.</p>



PROGRESS RECORD

DATE		
	<p>Dorsal Ventral</p>	
	<p>Brachial pulse $\frac{1}{4}$, Radial + Ulna Both $\frac{3}{4}$. Motor N. all groups, Sensory ul both median + ulnar + radial</p>	
	<p>Nerv - CW II-III full, Cerebellum Full, Sensory + Motor as above.</p>	
	<p>X-rays - (L) - Hollar - pt. bullet lodged at lat lum spine - multiple fragments of metal, no fracture.</p>	
	<p>(R) - comminuted fracture of (R) ulna at middle-distal $\frac{1}{3}$ junction.</p>	
	<p>Arteries - Occlusion of (L) radial artery + caused R/O compromise of (L) ulna.</p>	
	<p>Temp: GSW to (R) + (L) areas - 1) (R) ulna N., artery, FCU, FDS + FOP injury, + fx (open) ulna -</p>	
	<p>2) (L) Radial Artery Occlusion + post brachial, ulnar A. injury.</p>	



12 11 78

PROGRESS RECORD

-2-

DATE

Back - No CRT or pen. pm.

Chest - Clear to ACP

CV - RR 5 @, w/ S₁, S₂, w/ S₃ or S₄.

Abd - Soft, w/ tenderness & organomegaly,
no masses, w/ B.S.

GU - NR ♂, tests w/

Neuro - Not performed

Extremities - Lower - FROM. Strength 5/5 all

OTR's	(L)	(R)	Sensory
AT	2+	1+	
KT	2+	1+	

Upper

(R) arm:

Normal

Exam - 5th finger - Flex. Big Prof. + Superfic. Cut out
Interossei Out
Prob Flex. Long. Ulnaris Out

Sensory - Numb (R) 5th + dist 1/2 4th
Ulnar Pulse 1/4+, No Ulnar Blood in Allen's.
Radial 4/4+.



JUN 2 11 78

PROGRESS RECORD

DATE	Ortho Consult
2/11/78	
4:51 pm	<p>Pr in 31 1/2 Alex C^T injured today at 12:00. He was shot - both arms - 357 magnum. He was taken to another ER & then brought to UH by trauma van.</p>
	<p>Pt is Mexican national. He speaks no English & is poor in cooperation even w/ interpreters.</p>
	<p>Pt claims numbness of little & ring digits on (R) hand but denies any numbness on (L). He has BSW to (R) distal 1/3 forearm and to (L) mid-forearm. He has no other complaints.</p>
	<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> </div> <div style="flex: 2; padding-left: 20px;"> <p>FCU out deep & superficial flexor to little out numbness of little & 1/2 of ring absent ulnar pulse & allis's test to ulnar head.</p> <p>(R) Forearm introsseus muscle out</p> </div> </div> <p>poor cooperation on (R). Unable to do 2pt discrimin due to lack of understanding of instructions.</p> <p style="text-align: right;">cent Vandell</p>

EXAM(S) REQUESTED <i>angiograms of @ arm</i>		PROC. CODE	BALDERAS MARGARITO M 07 10 48 U 739582 E P U 0442
Infectious Disease Precautions: <input type="checkbox"/> YES <input type="checkbox"/> NO	Starting Date of L.M.P. <i>50-TRM</i> <i>539</i> Source		
A: DIAGNOSIS/BRIEF CLINICAL HISTORY: <i>gunshot wounds to both arms</i>		<input type="checkbox"/> STAT <input type="checkbox"/> OPR <input type="checkbox"/> RM <input type="checkbox"/> PORT	
B: REASON FOR REQUESTING EXAM:		TECHNOLOGIST/RADIOLOGIST REMARKS	
PHYSICIAN (PRINT OR TYPE) <i>Hamber</i>	PHYSICIAN'S SIGNATURE <i>[Signature]</i>	TELEPHONE	
SEND COPY OF REPORT TO:		MAIL CODE:	

BELOW THIS LINE FOR DEPARTMENT USE ONLY

UNIVERSITY HOSPITAL
University of California Medical Center
San Diego

DIAGNOSTIC X-RAY REPORT

LEFT ARM ARTERIOGRAM - 2/12/79

PROCEDURE: By way of percutaneous puncture of the right femoral artery, left brachial arteriogram was obtained. There was no immediate complication.

FINDINGS: There are multiple metallic foreign bodies in the soft tissue about the elbow and proximal forearm. In addition, there is air in the soft tissue from soft tissue injury.

There is complete occlusion of the radial artery at about 5 mm. from its origin. There is also approximately a 3 cm. long segment of smooth narrowing in the distal brachial artery adjacent to the metallic foreign body. This is probably a spasm related to the radial artery injury, although it could conceivably represent intimal injury of the brachial artery. There is early visualization of the brachial vein, suggesting arteriovenous fistulae about the elbow, although arteries and veins in the upper arm appear grossly normal.

- IMPRESSION:
- 1) Complete occlusion of the radial artery.
 - 2) Possible AV fistula formation about the elbow as discussed above.
 - 3) Multiple metallic foreign bodies about the elbow and forearm.

Date Typed: 2/13/79 - KS:m1b

Radiologist *[Signature]* K. SEO, M.D. / J. BOOKSTEIN, M.D.

YELLOW - Medical Record WHITE - Physician WHITE - Department File
GREEN - Specialty File PINK - Data Processing

151-820 (Rev. 2-78) SIC 700

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 internacional 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

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 sufrió no ponen en peligro su vida y sus brazos quedarán sin defecto alguno.

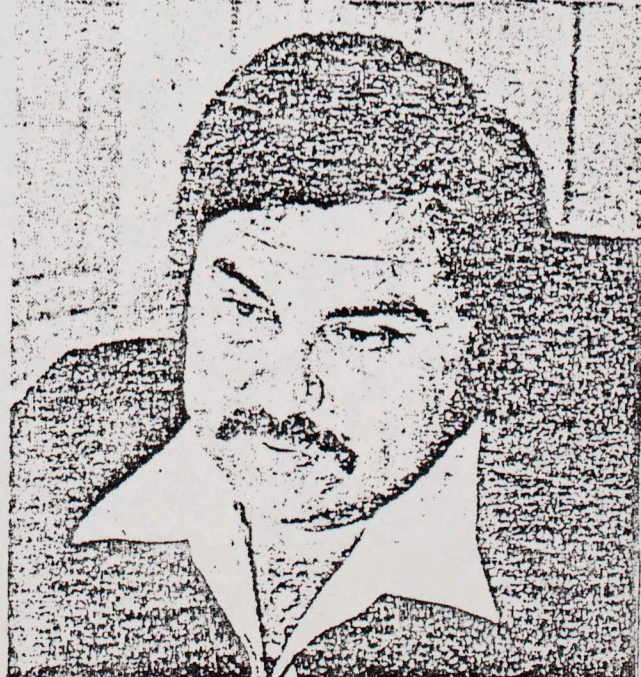
OCULTAN EL NOMBRE DEL PATRULLERO

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.



SAN YSIDRO.— Alberto García, dirigente de los

EL MEXICANO

Miércoles 14 de Febrero de 1979

Identificado el Oficial de E.U. que Hirió al Mexicano Balderas

SAN YSIDRO.- A iniciativa de la Asociación de Mexicanoamericanos del Estado de California el representante del Departamento de Justicia de Estados Unidos en San Diego, encargado de los

asuntos de la comunidad mexicoamericana, Angel Aldrete, inició una investigación sobre el caso del mexicano balaceado el pasado domingo en la Línea In-

(Pasa a la Pág. 4, Col. 4)

Identificado...

(Viene de la 1ª Pág.)
internacional por un agente de la Patrulla Fronteriza.

La investigación arrojó como resultados el nombre del agente de la "Border Patrol"; Robert D. Reidell, de 23 años, que disparó contra el mexicano Margarito Baleras, hiriendolo de ambos brazos.

Asimismo, se llegó a la conclusión, faltando la comprobación correspondiente de acuerdo con la ley, de que la mayoría de los agentes de la Patrulla Fronteriza portan dos clases de armas: la oficial y otra de diferente calibre, la que es usada en los casos como el de Margarito Balderas.

"De esta manera todas las investigaciones que se han hecho, basandose en los antecedentes de casos similares, han resultado negativos, ya que al exigir las pruebas, se presenta la pistola oficial del agente y se comprueba que ésta nunca ha sido disparada. Pero en esta ocasión, hubo testigos de que el agente Reidell hizo los disparos contra el mexicano y como se comprobó que su arma nunca fue disparada, las autoridades del Departamento de Justicia llegaron a la conclusión de que otra arma había sido utilizada en el atentado", explicó ampliamente Alberto García, dirigente de los mexicanoamericanos.

Agregó que la denuncia se hizo también al Departamento de Justicia en Washington directamente con

DECLARATION

I, MARTIN ZARATE OLMOS, DECLARE:

I AM SIXTEEN (16) YEARS OF AGE AND LIVE AT PALOMA #82, COLONIA AEROPUERTO, TIJUANA, BAJA CALIF., MEXICO. I LIVE THERE WITH MY PARENTS JOSE DE JESUS AND JUANA ZARATE. I AM EMPLOYED AT THE AIRPORT RESTAURANT.

ON MAY 28, 1979, OR APPROXIMATELY THEREABOUT, I WORKED FROM 8:00 AM UNTIL ABOUT 4:30 PM. I DECIDED TO MAKE UP SOME HOURS I HAD MISSED AND SO WORKED UNTIL AROUND 7:30 PM.

AT THAT TIME I AND FOUR FRIENDS FROM WORK, WHO ALSO LIVE IN MY NEIGHBORHOOD, WERE WALKING HOME WEST ALONG AEROPUERTO ROAD.

ABOUT HALF WAY DOWN THE ROAD, JUST PAST THE TOMATO PATCHES, ONE OF MY FRIENDS SUGGESTED, OUT OF CURIOSITY, THAT WE CHECK OUT WHAT WAS ON THE OTHER SIDE OF THE RIDGE. WE ALL AGREED, SINCE THIS WAS MY FIRST TIME.

WE WALKED ACROSS TO THE OTHER SIDE, NO MORE THAN $\frac{1}{8}$ OF A MILE AWAY FROM THE FENCE. WE STAYED LESS THAN FIFTEEN MINUTES AND SAW NO ONE.

AS WE WERE WALKING BACK TOWARDS MEXICO WE COULD SEE A HELICOPTER IN THE DISTANCE. WE CONTINUED TO WALK AT OUR SAME PACE; THE

HELICOPTER CONTINUED TOWARDS US. I DON'T KNOW HOW CLOSE IT FINALLY GOT BECAUSE I HAD MY BACK TO IT BUT I COULD FEEL IT VERY CLOSE. WITHOUT WORD OR WARNING A SHOT WAS FIRED ~~TO~~ FROM THE HELICOPTER. I WAS HIT AND FELL TO THE GROUND. MY FRIENDS AHEAD OF ME RAN TOWARDS THE FENCE. A FRIEND FROM BEHIND RAN PAST ME YELLING "I'M HIT, TOO."

WITHIN TEN OR FIFTEEN MINUTES THE BORDER PATROL AND OTHER PERSONS (WHO LATER IDENTIFIED THEMSELVES AS FBI AGENTS) WERE THERE ASKING ME TO IDENTIFY MYSELF. THE AMBULANCE THEN ARRIVED. AS I WAS RECEIVING EMERGENCY TREATMENT I COULD SEE THE HELICOPTER STILL HOVERING ABOVE US.

AS THE OFFICERS CONTINUED TO QUESTION ME I FELT WEAK AND DIZZY BECAUSE I WAS LOSING SO MUCH BLOOD AND COULDN'T ANSWER THE QUESTIONS. I WAS TAKEN TO A HOSPITAL FOR EMERGENCY TREATMENT AND THEN TRANSFERRED TO UNIVERSITY HOSPITAL.

I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. EXECUTED THIS 29TH DAY OF JUNE, 1979
SAN DIEGO, CA. *Martin Zamate*

OFFICIAL SEAL
SUSAN ALVA
NOTARY PUBLIC - CALIFORNIA
FEDERAL COURT OF JUDICIAL
SAN DIEGO COUNTY
My Commission Expires December 29, 1979



I, SUSAN ALVA, DECLARE UNDER PENALTY OF PERJURY THAT I AM FLUENT IN ENGLISH AND SPANISH, HAVE TRANSLATED THE ABOVE TO THE DECLARANT AND HE UNDERSTOOD AND AFFIRMED ITS CONTENTS BEFORE SIGNING. EXECUTED THIS 29TH DAY OF JUNE, 1979
Susan Alva



UNIVERSITY HOSPITAL
University of California
Medical Center, San Diego

ZARATE, Martin

749 764 G

D 6 29 79

DISCHARGE SUMMARY

DATE OF ADMISSION: 5-29-79
DATE OF DISCHARGE: 6-29-79

ATTENDING PHYSICIAN: J. Devin, M. D.
RESIDENT PHYSICIAN: F. Hammill, M. D.

CHIEF COMPLAINT: Gunshot wounds to both legs.

PRESENT ILLNESS: This 16-year-old Mexican male was shot at the border on 5 29-79. He initially was taken to the Emergency Room at Chula Vista Hospital where he was found to have injuries to both popliteal fossae. These appeared to be shotgun injuries to both legs. The patient was bleeding profusely from the left popliteal fossa at the time of admission to the Emergency Room in Chula Vista. His blood pressure was noted to be 60 systolic. The patient was resuscitated with five liters of Ringer's lactate, several units of plasmanate and was transferred to the Trauma Unit at University Hospital. On arrival the patient had a blood pressure of 120; hematocrit 20%, he was still bleeding profusely from both popliteal fossae.

PH FH SH ROS: Allergies: None. Medications: None. SH: Unknown. FH and ROS: Not obtainable at the time of admission.

PHYSICAL EXAMINATION: A well-developed, pale, Mexican boy, bleeding profusely from both lower extremities. Head: Normocephalic; no palpable occipital nodes; no evidence of trauma to the head. Extraocular muscles were intact; the pupils were equal, round, reactive to light; sclerae clear. The disks were sharp. Neck: Soft, supple, full range of motion. Mouth: Clear. Lungs: Clear to auscultation and percussion. Heart: Regular sinus rhythm, no gallops, clicks, rubs or murmurs. The abdomen was flat, soft, normal; no organomegaly; no peritoneal signs; good bowel sounds. External genitalia were within normal limits. Rectal examination was normal. Extremities: Gunshot injuries to both popliteal fossae, with two, large, gaping wounds, approximately four by six centimeters, over the left popliteal fossa, more wounds in the right leg with no major tissue destruction. No pulses distally in the left leg; dorsalis pedis in present in the right leg. Both feet felt cool, but did not appear cyanotic. Neurologic examination: The patient was awake, alert, oriented; cranial nerves II through XII were grossly intact. There was no gross motor or sensory deficit except for the distal left leg.

LABORATORY DATA: On admission, hct. 20%; WBC 19,500; PT 14.4/10.6 control; PTT 38.7/30.2 control. Glucose 190; BUN 16; creatinine 0.7; bicarb. 23; chloride 103; sodium 140; potassium 4.9; amylase 70.

HOSPITAL COURSE: The patient was admitted to the Trauma Unit, and, after a quick evaluation by the House Officers, was taken to the Operating Room where he underwent repair of the left popliteal artery and vein with saphenous vein graft from the right thigh. He had intraoperative angiograms which showed both arterial and venous anastomoses to be intact. He underwent a large, left leg, fasciotomy to relieve pressure. Estimated blood loss at that time was 300 ccs. Postoperatively, the patient was noted to have intact distal pulses in the left leg. He, however, had a large amount of tissue destruction and needed frequent dressing changes with debridement of necrotic tissue. Postoperatively, he was found to have nearly complete motor and sensory deficits below the left knee, due to nerve destruction. The patient was taken to Physical Therapy for exercise and



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749 764 G

DISCHARGE SUMMARY -2

attempts to regain function of the leg. After two to three weeks, the patient was noted to have an increase in sensation in the left leg; however, motor abilities remained minimal. The patient's wound was granulating in slowly and by the time of discharge, the patient's father was taught how to change his dressings at home. At the time of discharge the patient has been taught how to walk with a crutch, and was doing some weight bearing on his left leg.

DISCHARGE DIAGNOSIS: 1. Gunshot wounds to both popliteal fossae.

CONDITION ON DISCHARGE: Improved.

DISCHARGE MEDICATIONS: Tylenol #3 prn pain; Betadine and dressing materials.

OPERATIONS: 1. Exploration of left popliteal fossa, repair of popliteal artery and vein, left leg.

DISPOSITION: The patient is discharged to home with his family.

PHYSICIAN'S INSTRUCTIONS RE PATIENT ACTIVITY: The patient is to have dressing changes daily by his father. He is to return to the Clinic.

Karl Zucker, M. D.
Surgery Resident I

KZ:er
T 7-3-79



UNIVERSITY HOSPITAL
University of California
Medical Center, San Diego

OPERATION REPORT

NAME: ZARATE, Martin

FLOOR

UNIT NO. 749 764 G

DATE OF OPERATION: May 29, 1979

DICTATED BY: F. Hammill
May 29, 1979

PREOPERATIVE DIAGNOSIS:

Gunshot wounds to bilateral popliteal fossae.

POSTOPERATIVE DIAGNOSIS:

Same.

OPERATION:

Repair of left popliteal artery and vein with saphenous interposition graft from the right thigh.

Intraoperative angiograms.

Left lower leg fasciotomies.

SURGEON: J.B. Devin/F. Hammill

ASSISTANT: P. Humber

STAFF: J.B. Devin

INDICATIONS, FINDINGS AND PROCEDURE:

INDICATIONS: This 16-year-old, Mexican-American male was brought to the hospital after sustaining gunshot wounds to the backs of both legs. On admission to Chula Vista Community Hospital initially, the blood pressure was 60/0 and he was bleeding profusely, primarily from his left popliteal fossa. Compressive dressings were applied and fluid resuscitation was begun and he was transferred to University Hospital. On arrival here, his blood pressure was 100/60; he was agitated and confused and continued to lose copious amounts of blood from his left popliteal fossa. Because of his unstable condition and continued bleeding, he was brought straight to the Operating Room. He had two large I.V.s running and blood was being typed and cross matched.

PROCEDURE: Upon arrival in the Operating Room, the compressive dressings were removed while a pneumatic tourniquet cuff was placed about the upper left thigh. When this was inflated, dressings were fully removed and the extent of the wound was inspected. He was found to have a large defect in skin and subcutaneous tissue and muscle along the lateral aspect of the left leg at the level of the knee. Surrounding this were numerous smaller puncture wounds. Along the medial side of the knee was also a smaller defect from which moderate amounts of blood oozed when the pressure on the tourniquet was decreased. The wound was packed with Betadine soaked dressings and the opposite leg was inspected. This was found to have approximately 30 2-3 millimeter puncture wounds along the posterior aspect of the posterior and medial aspect of the right leg just below the area of the popliteal fossa. In the left leg, no pulses were palpable in the lower leg and the foot was quite cool. The patient was unable to move any muscles at the level of the ankle joint or in the foot or toes. He also had a complete lack of sensation below the knee. On the right side, he was able to move his ankle and toes and though no pulses were palpable in the foot, the foot was warm with normal capillary filling.

Once the bleeding had been stopped, using the pneumatic tourniquet, it was decided



OPERATION REPORT

NAME: ZARATE, Martin

UNIT NUMBER: 749 764 G

DATE OF OPERATION: May 29, 1979

to wait until blood was available before proceeding with the operative procedure. This required approximately 45 minutes, at which time six units of blood were available and the patient was put to sleep with a general anesthesia.

Both legs were then prepared in their entirety to the level of the groins and then the lower abdomen was similarly prepared. Exploration was carried out in the left popliteal fossa by making an incision from two to three inches below the tibial tuberosity along the medial aspect of the leg to approximately four or five inches above the patella. Sharp dissection was carried through the subcutaneous tissues and bleeding was controlled with electrocautery. Once the popliteal fossa was opened, it was found that large amounts of tissue were missing. A portion of the hamstring muscles was entirely gone and a good portion of the upper part of the gastrocnemius similarly was absent. The sciatic nerve was found, but had been severely shredded with only a small portion remaining intact. The popliteal artery was found and, though still intact, there was no blood flow and there were numerous gaping holes along approximately a six-inch length. The popliteal vein similarly was located and it too was severely injured and there was no blood flow. These vessels were dissected proximally and distally until normal vessel was encountered. Vascular clamps were then placed across the stumps of those vessels.

Attention was then turned to the right thigh where a 10-inch incision was made over the right saphenous vein. This was easily located in the subcutaneous tissue and sharp dissection was used to free the saphenous vein from its underlying bed. Branches were either clipped, using Weck clips, or ligated with 4-0 ties. When a 10-inch segment of vein had been isolated, it was ligated proximally and distally and removed for use as a vein graft. A five-inch section was then removed and placed in reverse fashion, initially to restore continuity to the vein. One end of the saphenous vein was then spatulated and an end-to-end anastomosis was constructed between the proximal end of the popliteal vein and the saphenous vein graft. The clamp was then removed and the anastomosis was seen to be patent. The anastomosis was constructed of a single running suture of 6-0 Prolene.

The distal venous anastomosis was then constructed in the same way and, when both clamps were removed, there was good flow of venous blood through the vein graft. The arterial graft was then repaired in the same manner using a five-inch piece of saphenous vein in reverse fashion, constructing first the proximal and then the distal anastomosis. Care was taken prior to removal of the vascular clamps to flush the anastomosis so that no thrombus or debris would be carried distally. A palpable pulse was present in the vein graft. The foot was inspected and was seen to be pink. Anterior and lateral fasciotomies were then constructed by making two-inch incisions on either side of the lateral and medial aspects of the leg. When the fascia was encountered, it was opened through the small skin incisions a distance of approximately 12 inches, using



OPERATION REPORT

NAME: ZARATE, Martin

UNIT NUMBER: 749 764 G

DATE OF OPERATION: May 29, 1979

long Metzenbaum scissors underneath the skin.

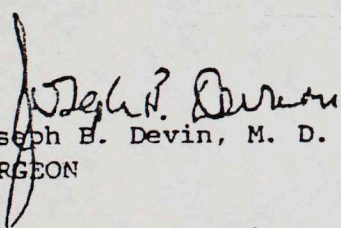
The muscular and fascial layers over the medial aspect of the wound were then closed using continuous 00 chromic catgut. However, because of the skin loss due to the multiple puncture wounds, the skin could not be fully reapproximated and a gap was left. Similarly, over the injury on the lateral side, there was a large skin and soft tissue loss and Betadine soaked packs were placed into a portion of the popliteal fossa and a totally occlusive dressing was applied.

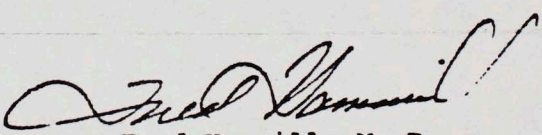
Attention was then turned to the right leg. An angiogram was done by 20 gauge angiogram catheter into the common femoral artery on the right side. Fifty per cent Conray dye was injected and x-rays were taken over the level of the knee and distal lower leg. These showed good flow of dye in normal appearing vessels. It was decided that no vascular injury had been sustained at the level of the knee. The wound in the upper thigh was then closed with continuous suture of 000 chromic catgut in subcutaneous tissue and 4-0 nylon continuous suture in the skin.

Previous to closure, both wounds had been irrigated copiously with antibiotic solution.

Estimated blood loss was approximately 600 ccs.

The patient tolerated the procedure with stable vital signs and was returned to the Recovery Room in good condition.


Joseph H. Devin, M. D.
SURGEON


Fred Hammill, M. D.
Surgery Resident V

FH:er
T 6-5-79



NUM. 842 ★ \$5.00 EN TODO EL PAIS

MAS HECHOS DE SANGRE

Cuatro connacionales fueron víctimas de hechos violentos en parte de la zona fronteriza entre México y Estados Unidos de América...

Dos de las víctimas, heridas con armas de fuego, fueron trasladadas al Hospital General de Tijuana y las otras dos, identificadas como Martín Zárate e Ismael Villa...

Al Wells, asistente del jefe de sector de la Patrulla Fronteriza en la región, informó que "varios de sus elementos se trasladaron a Spring Canyon al tenerse conocimiento de que varios "indocumentados" estaban siendo objeto de un asalto...

"En el mencionado lugar, localizado casi frente al aeropuerto de Tijuana, B. C. N., se encontró a Martín Zárate mal herido y fue trasladado a un hospital para las primeras curaciones. Los asaltantes del

"indocumentado" herido huyeron al avistar a los elementos de la Patrulla Fronteriza, la Policía de San Diego y también agentes del FBI que acudieron al lugar de los hechos para investigar".

Horas después de lo anterior, un agente de la Patrulla Fronteriza hirió de manera "accidental" a un "indocumentado".

Lo anterior se registró cuando el agente de la Border Patrol, cuyo nombre no fue proporcionado, se acercó a un grupo de 18 "indocu-

mentados" que trataban de ingresar de manera ilegal en territorio norteamericano.

Se asegura que el agente se resbaló y de "manera accidental" se disparó su pistola y la bala fue a dar precisamente en el cuello del indocumentado que fue identificado como Ismael Villa.

Agentes del Buró Federal de Investigaciones (FBI) tomaron cartas en los asuntos y llevan a cabo investigaciones para deslindar responsabilidades.

Que se Enfrentaron al "Border Patrol" la Noche de Ayer

Por Rodolfo García TALAVERA

Dos menores heridos a balazos y otro golpeado, fue el resultado de una trifulca registrada entre patrulleros fronterizos estadounidenses y varios presuntos "asaltapollos" e "ilegales", ayer a las 10 de la noche, en suelo norteamericano, frente al viejo aeropuerto de Tijuana.

Los heridos son Martín Zarate, de 16 años y Ricardo Durán del Real, de la misma edad. Al primero se le encamó en un hospital de Chula Vista y al segundo, en el de Tijuana.

El golpeado es Aurelio Román Espinosa, también de 16 años, ignorándose las demas generales de los tres menores.

Segun se dijo en la judicial del Estado esta mañana a la hora mencionada del lado americano y frente al aeropuerto, se escucharon varias detonaciones, cuando los del Border Patrol descubrieron a un grupo de "ilegales", al parecer asaltándose entre sí, por lo que de inmediato intervinieron y como se les echaron encima, dispararon contra ellos, lesionando a Martín Zarate y al otro muchacho Durán del Real. Este y Román Espinosa echaron a correr hacia el lado mexicano, logrando cruzar el alambre para ponerse a salvo y allí los detuvo un oficial de la Policía Federal de Caminos, quien los entregó a socorristas de la Cruz Roja para que los llevara al Hospital General.

Se dice que Durán del Real recibió un balazo en una de sus piernas y pese a ello pudo correr buscando refugio en suelo mexicano y que Roman Espinosa solo salió ligeramente golpeado.

Por lo que respecta a Martín Zarate, por telefono informó un oficial de enlace de la policía americana de apellido Navarro, que había sido llevado a un hospital de Chula Vista, Calif. y que también sufrió lesión por arma de fuego en una pierna; no sabiéndose la identidad de quienes dispararon sobre los dos juvenes.

El oficial Navarro en su comunicación telefonica con la judicial aseguró que Zarate dio como domicilio la calle Paloma numero 82 de la colonia Irapuato, pero se cree que posiblemente tomaron mal los datos o el mismo menor no pudo explicarse bien y que se trate de un domicilio no de Tijuana, sino de Irapuato, Guanajuato.

En el transcurso del día se esperaba conocer mayores datos sobre este nuevo hecho de sangre ocurrido en territorio norteamericano entre policías de allí e "ilegales" mexicanos, como el reciente que se escenificó frente a la Zona Norte, en que otro joven de México fue balaceado y herido desde un helicóptero.

MEXICANO Pág. 4 Sec. 3 Miércoles 30 de Mayo de 1970

Mas Hechos Violentos contra los Indocumentados

Por Rogelio LAVENANT SIFUENTES

RO.— La violencia con- anja de terreno colindan- erco fronterizo, en esta California. mexicanos fueron los dos incidentes violentos, ir separado la noche del o. Resultaron heridos con ego.

Más tarde, un agente de la Pa- trulla Fronteriza, (cuyo nombre no fue revelado) disparó su pistola "ac- cidentalmente", hiriendo en el cuello. a Ismael Villa, Esto ocurrió a las 11:30, p.m. cuando el patrullero vio un grupo de 18 mexicanos internándose a territorio estadounidense, cruzando el canal del Río Tijuana.

El Buró Federal, de Investiga- ciones (FBI) reveló en sus primeras indagaciones que el oficial de la Patrulla Fronteriza (Border Patrol) se hallaba sobre el bordo norte del canal. Vio al grupo de "indocumen- tados" y pretendió interceptarlo cuando resbaló y cayó entre ellos. In-

(Pasa a la Pág. 4, Col. 1)

MAS DE MIL "INDO- CUMENTADOS" ARRES- TADOS

William H. Selzer, Jr., funcio- nario de la Patrulla Fronteriza en es- te sector de California, dijo que la noche en que se registraron los in- cidentes violentos arrestaron alre- dor de 1,300 presuntos "extranjeros ilegales". El número de "indocumentados" ha ido creciendo —aseguró— y es posible que se supere el promedio mensual máximo de 40 mil personas detenidas por estancia ilegal en los Estados Unidos, en esta zona de San-

se, pero los presuntos ilegales lo derribaron" los veces"

del FBI aseguró que el border Patrol dijo que, en ocasión en que lo tiraron un jalón en la funda de r lo que la sacó y al atar de ponerse en pie accidentalmente. os están siendo inves- Federal Bureau of In- (BI), cuyos agentes es- o de reunir los datos de con las declaraciones

lugar, casi frente al ae-

RECEIVED JUN 15 1979

F-6

Michael Walsh

Walsh

PRESS RELEASE

June 12, 1979

For further information, call:
Michael H. Walsh (714) 293-5690
or Peter K. Nunez (714) 293-5366

WALSH MEETS WITH BORDER PATROL: URGES RESTRAINT

U. S. Attorney Michael H. Walsh announced today that he was personally meeting with each day's Border Patrol shifts, just before they commence duty along the troubled U. S. - Mexican border, to urge "utmost restraint" in the use of force to apprehend aliens or to respond to continued violence along the tense international border. "Violence begets violence", Walsh advised the officers. "Avoid resort to force if at all possible."

Cautioning agents that "Federal policy permits agents to use deadly force (guns) only in three circumstances - when an agent is acting in defense of his own life, or in defense of the life of another officer, or in defense of an innocent third party", Walsh warned the officers that "use of force in any other circumstance threatens criminal prosecution, disciplinary action, and possible civil liability on both the Government's and the officer's part".

Assistant U. S. Attorney Peter K. Nunez, now assigned full time to work at the border, and Assistant U. S. Attorney Donald F. Shanahan accompanied Walsh. According to Shanahan: "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. They've got to know just what they can and cannot do. That's all we're trying to accomplish." Nunez and Shanahan indicated they would continue to work with the Patrol to resolve legal questions as they arise regarding local border operations.

Walsh called upon the Border Patrol agents to do "everything in their power" to help quell the rising tide of violence along the international border. "We've got to do whatever we can to stop the violence", Walsh said, consistent with doing the job and maintaining agent safety. "If your life is genuinely in danger, then you have no choice but to use every means at your disposal to protect yourself", said Walsh. "But the use of your weapon should be the absolute last resort", he cautioned. Pointing to beefed-up patrols, two-man assignments recently implemented in the most dangerous areas, walkie-talkies carried by the agents, and available back-up officers and tactical support, Walsh called upon the agents to, if possible, "get help, don't shoot".

Pointing to recent agreements with Governor Roberto de la Madrid of Baja, Walsh expressed the hope that border banditry, rock and bottle throwing, sporadic diversionary shooting by smugglers and staged violence would all diminish in coming weeks. "We've got to give the situation a chance to settle down", Walsh urged. "We've got to give the new efforts, both on our side of the line and in Mexico, a decent chance to work".

FEDERAL DEFENDERS OF SAN DIEGO, INC.

MEMORANDUM

TO: File

DATE: 8 November 1978

FROM: MRR

RE: U.S. v. Mario Torrez-Medina

*AVE Sicilia #300
Col. Roma*

Date of Alleged Beating: 20 October 1978

Name or Description of Officer(s): Mr. Oscar Cardenas (the defendant said that the other officers called him Oscar and that the defendant observed the name O. Cardenas on the officer's shirt pocket).

Place of Alleged Beating(s): Inside the Chula Vista station.

Defendant's Sentence: The defendant received 30 days from Magistrate Harris.

AUSA: David Doyle

Date of Interview by AUSA: 3 November 1978

Date of Examination by Doctor: none

Defendant's Story:

The defendant said he was caught lying on the ground by himself in the hills near the border. When approached by the officer, he stood up and offered no resistance.

At the Chula Vista Anti-Smuggling Unit, the defendant said that Officer Cardenas showed him a picture of himself and asked, "Is this you?". The officer kept asking the defendant if this was not his picture. The officer suggested that it was better if he would admit that he was the one leading the other group of illegal aliens caught nearby.

The officer warned that he would "break his face in if you don't agree to this". The defendant said that he was not leading the other group of people and he never saw them before. The officer once again repeated his threat that he was going to break his face in and then proceeded to knee the defendant in the groin. The defendant allegedly kept his mouth shut, as he did not want to be punished any more. The defendant fell up against the wall after he was first kneed. Four or five minutes later, the officer repeated his threat and kneed the defendant in the groin again.

The defendant was interrogated by Officer Oscar Cardenas for fifteen to twenty minutes. The defendant can identify the officer by name since it was on his nametag and he is positive that he can identify

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Memo re: Torrez-Medina
8 November 1978
Page Two

the officer in a line-up. The defendant also said there were two witnesses about two feet away from this when it all happened. One witness was an Officer Sanchez, who was interviewing another alien, a Mr. Cruz. The defendant stated that Officers Cardenas and Sanchez were the only two Mexican officers in a room full of Anglos, who were nearby. The defendant estimates that there were around 6 officers in the general area of the beatings.

AUSA's Remarks: Mr. Doyle first attempted to interview Mr. Cruz to corroborate the defendant's story, but upon learning that Mr. Cruz was represented by someone other than Federal Defenders, he decided to try and obtain the permission of that lawyer before interviewing Mr. Cruz. Mr. Doyle said that it seemed like the defendant was on drugs or something. He said it was very unlikely that the other officer nearby would "remember" anything. He also added that it would be very hard to prosecute on this information, especially since the defendant had no visible injuries.

1 In the matter of the Claim of :
 2 MERCEDES BUSTAMANTE and MERCEDES :
 3 BUSTAMANTE as parent and guardian :
 4 of ALEJANDRO BUSTAMANTE and :
 BENJAMIN BUSTAMANTE, :
 Claimants, :
 v. :
 6 THE CITY OF SAN DIEGO, CALIFORNIA, :
 7 Defendant. :
 8

9 FREDERICK HETTER, acting as attorney for claimants, hereby makes
 10 claim against THE CITY OF SAN DIEGO and its employees and in support
 11 of said claim declares as follows:

12 1. The claimants' names are MERCEDES BUSTAMANTE and MERCEDES
 13 BUSTAMANTE as parent and guardian of ALEJANDRO BUSTAMANTE and BENJA-
 14 MIN BUSTAMANTE.

15 2. The claimants' post office address and telephone is 143 West
 16 Olive Avenue, San Ysidro, California 92073, ~~428-2469~~.

17 3. Post office address to which notices are to be sent is:
 18 2214 Fifth Avenue, San Diego, California 92101.

19 4. On February 26, 1974, claimants were assaulted, detained, ar-
 20 rested and threatened by officers of the San Diego Police Department
 21 and officers of the United States Border Patrol, and charged with no
 22 offense.

23 5. A Border Patrol officer observed two juveniles (claimants
 24 ALEJANDRO BUSTAMANTE and BENJAMIN BUSTAMANTE) running from a play-
 25 ground on Park Boulevard in San Ysidro toward their home on Olive Ave-
 26 nue in San Ysidro. He pursued them. They entered their home. He
 27 broke down the door and grabbed them, damaging the refrigerator, over-
 28 turning chairs, and pushing and shoving the claimants and their mother
 29 MERCEDES BUSTAMANTE. He yelled, and called them racist names. He ac-
 30 cused them of crimes. Other officers came, and did likewise. San Di-
 31 ego Police Officers arrived. They ignored the pleas for help from
 32 the mother and children. They threatened to arrest the children for

1 resisting arrest. They also shouted racist slurs at the claimants.

2 6. The distance from the playground to the claimants' home is
3 less than one hundred yards. The two "illegal aliens," one of whom
4 is a native-born United States citizen, are aged fourteen and seven-
5 teen years. All claimants have legal status.

6 7. The amount claimed as a result of these actions is \$50,000.0
7 plus medical costs and costs of destroyed property subject to proof,
8 as to each claimant.

9 8. The names of the governmental entities who are responsible
10 for this incident are:

11 THE CITY OF SAN DIEGO POLICE DEPARTMENT
12 c/o City Administration Building
13 202 "C" Street
14 San Diego, California 92101

15 and

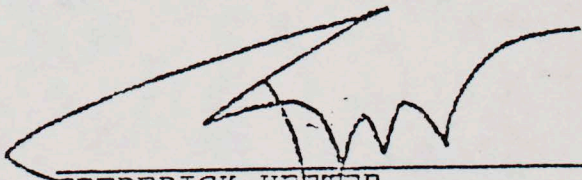
16 THE UNITED STATES BORDER PATROL
17 Section Headquarters
18 Box 42E
19 San Ysidro Boulevard
20 San Ysidro, California 92073

21 8. The names of the individual officers who carried out these
22 illegal acts are unknown to claimants, but are known to defendants.

23 9. Amounts claimed are determined by damages computed for claim-
24 ants in similar cases.

25 WHEREFORE, application is hereby made for leave to present this
26 claim of the hereinbefore identified claimants by and through their
27 attorney, FREDERICK HETTER.

28 DATED: March 12, 1974.

29 
30 FREDERICK HETTER

31 THIS CLAIM IS FILED with
32 the above-named entities
on March 12, 1974.

Un oficial persiguió a dos muchachos

Denuncia contra oficiales de la patrulla fronteriza

Escribe Oscar Villarreal
Editor de español del Reminder

Un nuevo atropello cometido por oficiales del Border Patrol en contra de una familia mexicana residente de San Isidro por muchos años, fue denunciado en "The Reminder". Las víctimas fueron la señora Mercedes ciuda de Bustamante y sus hijos Alejandro de 17 años y Benjamin de 14, residentes en 143 Olive St.

Un oficial, aparentemente de apellido Bradshaw, persiguió a los dos muchachos hasta su casa, y como ellos se atemorizaran ante su actitud agresiva se metieron y cerraron la puerta, pero eso no fue obstáculo para el oficial, quien a golpes destruyó la cerradura de la puerta e irrumpió dentro de la residencia de la familia sosteniendo un aparatoso forcejeo con Alejandro y con la madre de este, quien se interpuso para impedir que el muchacho fuera agredido por el oficial.

Durante el forcejeo, el oficial quebró un refrigerador y monstio otros danos en la morada, según declaración de los ofendidos hecha ante este periodista, así como el representante de una estación televisora de San Diego y el presidente de la United California Mexican American Association, señor Alberto García.

"Al ver al oficial enfurecido que había forzado a golpes la puerta de mi casa y agredía a mi hijo pretendiendo sacarlo, yo me enfrenté a él para proteger a mis hijos y grite desesperada en solicitud de auxilio. Era tal mi angustia que gritaba a mis vecinos que llamaran a la policía y gritaba también pidiendo el auxilio de mi esposo aun sabiendo que el murió recientemente", dijo con lágrimas en los ojos la viuda de Bustamante.

"Mas me hubiera valido no pedir que

ndo - porque cuando llegaron dos gigantes agentes también se metieron a la casa y despues de derribar a mi hijo sobre un sofa lo sujetaron de los brazos por detras y casi arrastrando lo sacaron de mi residencia amenazandolo con mandarlo a la Juvenil, despues uno de los policas volvio a meterse a mi casa para recuperar una corbata que el oficial del Border Patrol habia perdido durante el forcejeo".

Los hechos ocurrieron el lunes 25 de febrero y según expresaron los dos muchachos en una declaración grabada por el representante de la television, el grave incidente se origino cerca del Civic Center cuando ellos despues de practicar unos deportes regresaban por la tarde a su casa llevando aun una pelota.

"El carro de la Inmigracion se detuvo - declaró Alejandro - y al bajarse el oficial vimos que venia muy raro, se veia enfurecido y corrimos. El nos persiguió hasta la casa y cuando nos metimos y cerramos la puerta el la abrió a golpes y ya dentro de la casa trataba de sacarme por la fuerza."

A una nueva pregunta que le hicimos, Alejandro dijo: "No nos hicieron ningún cargo, y cuando terminó la violencia ni siquiera nos pidieron documentos migratorios, simplemente dijo que trataba de arrestarnos porque habíamos corrido".

Con respecto a la identidad de los dos policas, el señor García manifestó que el capitán Wess Allen se había negado a proporcionar sus nombres al United California Mexican American Association que ya contrato los servicios de sus abogados para llevar el asunto a las Cortes para que se sienta un precedente que impida atropellos como el que nos idupa cometidos en contra de familias honorables. Cabe agregar que en cuanto a Benjamin Bustamante nació en los Estados Unidos y actualmente asiste a Union High

Two sons mistaken for aliens

Woman claims Border Patrol raided home

By JACKIE DEWEY
Reminder Staff Writer

Mrs. Mercedes Bustamante of 143 Olive Street has charged that two officers of the Border Patrol pursued her two sons, Benjamin 14, and Alejandro, 17

causing much damage to her home. She said her cries for help caused the neighbors to call the police

and that the police assisted the Border Patrol on arrival.

She claimed her sons were dragged into the front yard in hand cuffs,

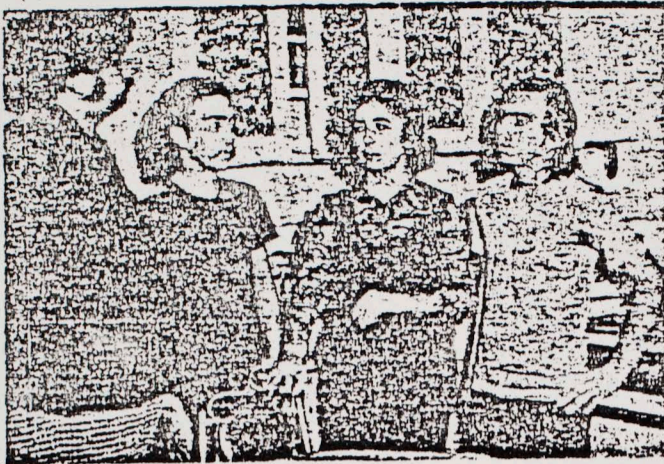
According to Richard Batchelor, deputy chief patrol agent for the Border Patrol, the officers had called to the two boys,

and when they broke and ran, pursued them to their home, where the boys were struggling on the porch with a locked door.

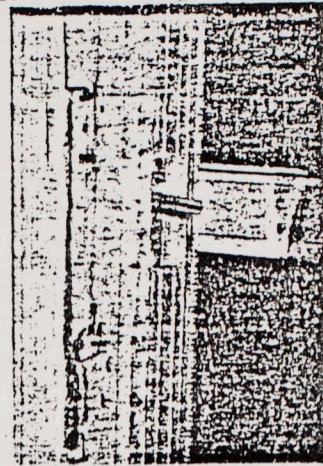
He said no one entered

He said that under the law, the officers of the Border Patrol are authorized to question anyone whom they think might be an illegal alien, and he added, the fact that the boys ran had caused this suspicion.

According to Alberto García, president of the California Mexican American Association



Senora Mercedes, viuda de Bustamante, quien como lo hace toda buena madre, se enfrento a un oficial, dentro de su casa, para proteger a sus hijos Alejandro y Benjamin, relata los hechos a Alberto Garcia, presidente de la United California Mexican American Association, quien demandara penalmente a los responsables del atropello. (Foto de Villarreal).



Elocuente grafica de la puerta forzada a golpes por un oficial del Border Patrol que alleno la residencia de la familia Bustamante persiguiendo a dos menores de edad. (Foto de Villarreal).

B-4 — THE STAR-NEWS — Thursday, March 7, 1974

Charges filed against officers who chased SY youths home

Two San Ysidro youths finished their romp in a community playground and began running towards their home on 143 W. Olive St.

When a Border Patrol agent saw them, however, he reportedly took Alejandro Bustamante, 17, and his brother Benjamin, 14, for illegal aliens, chased them and busted into their home.

Mercedes Bustamante, mother of the boys, is filing charges against Border Patrol agents and San Diego policemen for the Feb. 26 incident.

According to San Diego attorney Fred Hetter, who is representing the San Ysidro family, the boys were playing in the park on Park Blvd., about on block from their house, at approximately 8:30 p.m.

While running home, however, they were reportedly followed by a Border Patrolman. The boys ran home and closed the door, which was soon

allegedly broken by the patrolman.

Hetter charges the patrolman manhandled Mrs. Bustamante and at least one of her three children (her youngest, Humberto, is 9.)

Soon after the initial brawl, said Hetter, from six to 10 Border Patrolmen and San Diego Policemen entered the house and threatened to arrest the boys.

Police then searched the boys' ID and found them to be American citizens.

LEGAL A SOCIETY OF SAN DIEGO, C.

SOUTH BAY OFFICE

305 CENTER STREET
CHULA VISTA, CA 92010

TELEPHONE: 427-0491

November 28, 1978

Michael H. Walsh
United States Attorney
U. S. Courthouse
940 Front St, Room 5-N-19
San Diego, Ca 92189

Re: Complaint against
U. S. Border Patrol

Dear Mr. Walsh:

I am writing you again regarding Civil Right violations by U. S. Border Patrol Officers against Mexican Nationals at the San Ysidro Border area.

On August 14, 1978, Enrique Rangel Olivares #23953 and Jose Luis Ramirez #23951 were apprehended near the International Border at San Ysidro by U.S. Border Patrol. Oliveras was apprehended by Officer Gonzalez at approximately 10:p.m. and Ramirez was apprehended by Officer R.J. Wright at approximately 2:a.m..

Officer Gonzalez grabbed Oliveras by the hair, knocked him face down, placed his arms behind his back and handcuffed him. Olivares was then dragged about 10 meters to the patrol vehicle. He was then taken to the patrol station for interrogation. At the station, Officer Gonzlaez also kicked and mistreated another Mexican National, Jose Luis Ramirez.

Ramirez was apprehended by Officer Wright, who placed Ramirez's arms behind his back, handcuffing and throwing Ramirez face down to the ground. While on the ground, Ramirez was kicked continuously for an unknown length of time. He was then picked up and thrown into the patrol vehicle and transported to the station for interrogation. At the station, Officer Gonzalez kicked Ramirez knocking him to the floor, chair and all. This was done several times, while Officer Wright was interrogating Ramirez.

Because of the unwarranted and excessive use of force and the mistreatment both men received, Oliveras suffered the dislocation of both arms and Ramirez suffered great pain and injury to his head, face, legs and groin section.

Therefore, we are requesting that your office immediately conduct an investigation into the alleged violations. Mr. Rangel is presently at the Metropolitan Correctional Center and Ramirez has since been release. Although Ramirez has been released, he can be made available at your request for questioning.

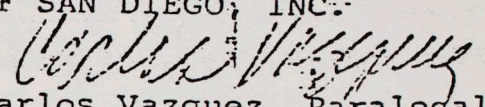
Michael H. Walsh,
U. S. Attorney, Complaint
Page 2 November 28, 1978

If you have any questions regarding the above, please call me or Mr. Nicholas Aguilar, staff attorney, at the address and telephone listed in the letterhead above.

Thank you in advance for the prompt reply in this very important matter.

Yours Truly,

LEGAL AID SOCIETY
OF SAN DIEGO, INC.


Carlos Vazquez, Paralegal
for Nicholas S. Aguilar,
Attorney

CV/hv

cc: Committee On chicano Rights,
Herman Baca, Chairman

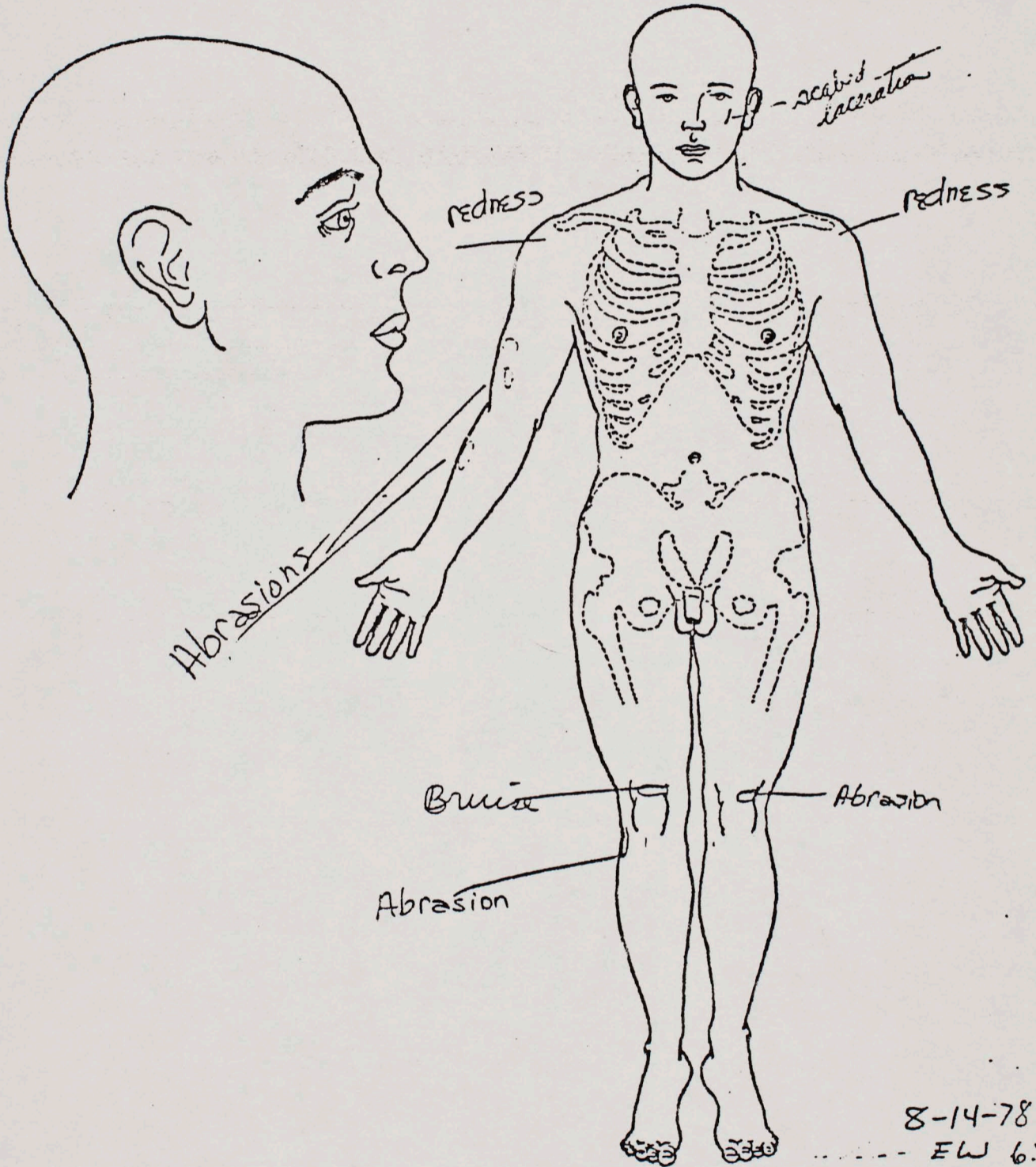
United California Mexican-
American Association,
Alberto R. Garcia, President

Leonel Castillo, Commissioner
Immigration & Naturalization Service

Timothy Barker, Attorney
Immigration Unit, LAS

CLINICAL RECORD

ANATOMICAL FIGURE



8-14-78
EW 6:30p

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

Rangel, Enrique

REGISTER NO.
23953

WARD NO.

METROPOLITAN CORRECTIONAL CENTER
808 UNION STREET
SAN DIEGO, CALIFORNIA 92101

ANATOMICAL FIGURE
Standard Form 531
531-104

Country of Citizenship Mexico	Passport Number and Country of Issue A23 058 129	File Number 69 150
U.S. Address (Residence) (Number) (Street) (City) (State) (Zip Code) 226 California St, Salinas, California		
Date, Place, Time, Manner of Last Entry EWI 2/20/78 2mi. E. SYS-CHM		Passenger Banded At 7-78
Number, Street, City, Province (State) and Country of Birth Cupareo, Gto. Mexico		
Birthdate 7/15/52 (25)	Date of Action 6/15/78	Location Code LIV-SLS
City, Province (State) and Country of Birth Cupareo, Gto. Mexico	AR Form: (Type & No.) <input checked="" type="checkbox"/> SFR	<input type="checkbox"/> Lited <input type="checkbox"/> Not Lited
Visa Issued At - NIV No.	Social Security Account Name	
Date Visa Issued	Social Security No.	Send C.O. Rec. Check to: SFR

69 150 Laborer
crooked nose
XXXX
B² Farm and Ranch check
SLS Ca. 6/15/78 IOA
PA Williams and crew
EWI In Agric.
1-6 months

Sírvase notar la acción que se ha tomado en su caso, según se indica abajo.

Usted ha violado las condiciones de su admisión a los Estados Unidos en calidad de persona no inmigrante. Por consiguiente, se le revoca el permiso concedido anteriormente para permanecer en los Estados Unidos y se requiere que usted salga del país, sufragando sus propios gastos, a más tardar el _____.

De acuerdo con la decisión adoptada en su caso, se requiere que usted salga de los Estados Unidos, sufragando sus propios gastos, a más tardar el quince de julio 1978.
Vol. Departure extended to JAN 05, 1979 by DDHP BSA

Su solicitud de prórroga para su salida de los Estados Unidos ha sido _____. Usted deberá salir del país a más tardar el _____.
Vol. Departure extended to JULY 25, 1978 by DDHP BSA

Usted debe notificar a esta oficina, Cuarto No. _____ a más tardar _____ acerca de los arreglos que ha hecho para salir del país, incluyendo la fecha, el lugar, y los medios de transporte que usted va a utilizar.
above period of time is extended to Jan 05, 1979 SHD by BSA DDHP

De no salir usted del país antes de la fecha señalada, se expone a perder el privilegio de salir del país voluntariamente y a que se tomen medidas para deportarle.

De haber una fianza pendiente en su caso, se le advierte que para acelerar la cancelación y devolución de la fianza entregado, usted tendrá que hacer arreglos por adelantado con esta oficina para que un funcionario de nuestro Servicio presencie su salida.

UTILICE LA TARJETA ADJUNTA CON LA DIRECCION IMPRESA PARA NOTIFICAR A ESTA OFICINA SOBRE LOS ARREGLOS PARA SU SALIDA. NO NECESITA FRANQUEO. En el momento de su salida, no deje de entregar la forma I-94, Registro de Llegada/Salida, conforme a las instrucciones que aparecen en esa misma forma.

Atentamente,
By: *B. Williams*
SLS BSA

DIRECTOR DE DISTRITO
CHIEF PATROL AGENT

FOR IMMIGRATION AND NATURALIZATION USE ONLY

Departed: _____
Port _____ Date _____
To _____ Via _____

I-94 stamped
 I-161 prepared

I-530 submitted
 I-756 prepared

UNDER DOCKET CONTROL AT
SFR

Form I-210 (SPANISH)
(Rev. 7-1-73) N

H-

FEDERAL DEFENDERS OF SAN DIEGO, INC.

MEMORANDUM

TO: File

DATE: 8 November 1978 ✓

FROM: MRR

RE: U.S. v. Pedro Contreras-Placencia,
aka Manuel Contreras-Placencia

Date of Alleged Beating: October 21, 1978

Name or Description of Officer(s): 5 officers allegedly beat the defendant throughout his arrest and custody; the first two officers who arrested him at the field the defendant cannot identify; the third officer who took him to the Chula Vista station is described as being an Anglo, rather short and very heavy-set; the fourth and the fifth officers who allegedly beat the defendant inside the Chula Vista station were named as Officer Phillips and/or Richard Mann (the defendant described the person who held him as the officer who signed the complaint and he described the person who actually beat him with a billy club as a rather tall, thin, pale, blond Anglo with a thin blond mustache).

Place of Alleged Beating(s): In the field near San Clemente; outside the Chula Vista station; inside the Chula Vista station in a cell that is supposed to be used for solitary confinement.

Defendant's Sentence: Defendant received 60 days by Magistrate Harris because of his extensive prior record dating back to 1962.

Assistant U.S. Attorney: David Doyle

Date of Interview by AUSA: 3 November 1978

Date of Examination by Doctor: 3 November 1978

Defendant's Story:

Defendant said that he was in a group of illegal aliens who were told to get down on the ground near the San Clemente checkpoint. Defendant said that he had been drinking a little to try to keep warm during the cold night. Defendant said that he decided to run after the agents told him to get on the ground. He was then caught by two Border Patrol agents and once he was caught he offered no resistance. The agents began hitting him on the hands. The defendant pleaded for them to "Don't hit me. I'm not going to run". The defendant offered his hands to the agents to be handcuffed. The agents then allegedly threw the defendant on the ground and after he was handcuffed proceeded to stomp on his back. The same two agents then

THE FEDERAL COMMUNITY DEFENDER ORGANIZATION FOR THE SOUTHERN DISTRICT OF CALIFORNIA

225 BROADWAY, SUITE 855, SAN DIEGO, CALIFORNIA 92101 • TELEPHONE (714) 243-8467

I-1

Memo re: Contreras-Placencia
8 November 1978
Page Two

laughed as the defendant was placed in the back of the jeep and bounced around unable to get hold of anything. He pleaded for them to undo the handcuffs and if they were going to kill him, to just go ahead and do it now. The officers then asked him what his name was and when the defendant responded, was told to shut up and that his new name was "shit".

The third agent, the one who took him to Chula Vista station, shoved the defendant out of the vehicle and up against a fence. The impact against the fence left scars on the defendant's right shoulder.

Once inside the station, the defendant was taken downstairs to a cell where the fourth and fifth agents allegedly hit him. The agent with the thin blond mustache proceeded to put the billy club up against the defendant's throat with such force that the defendant later spit up blood and was unable to even drink water for approximately 8 days. The other agent held him while this was going on and the thin agent with the blond mustache also hit him in the stomach and chest. The agents then admonished him for "being the ass hole who doesn't fight back".

The defendant pleaded to please not hit him. The agents told him that this would serve as a lesson so that he would not come back.

When he asked to see a doctor, he was told that "Mexicans don't need doctors".

AUSA's Comments: Mr. Doyle said that the investigation would continue, but he believed it was difficult to distinguish whether the defendant's wounds occurred when he was initially apprehended after the chase, or whether they were sustained at the Chula Vista station. Mr. Doyle said that it would be difficult to obtain a grand jury indictment because it was just the defendant's word against that of the Border Patrol agents.

AFFIDAVIT OF LUCIANO ORTIZ

1 I, LUCIANO ORTIZ, declare the following:

2 1. I was born on October 29, 1947 in Patillas,
3 Puerto Rico. I am a citizen of the United
4 States of America.

5
6 2. On August 29, 1978, I drove my car to
7 Imperial Beach to exercise on the beach
8 and fish on the pier.

9
10 3. While walking along the beach, an immigration
11 official suddenly appeared and stuck his
12 flash light in my face and for no reason
13 struck me with his flashlight, on my left
14 shoulder near the base of the the back of
15 my neck.

16
17 4. At the same time he cursed me and my
18 nationality. I offered to identify myself,
19 however I was not given the opportunity. I
20 did inform the immigration officer I did not
21 come from Mexico, that I was fishing and
22 exercising. I also offered to produce my
23 papers which were in my care a few blocks
24 away. This offer was also rejected.

25
26 5. The officer stated I had to come with him, and
27 he then grabbed me and struck my back with
28 his flashlight.

29
30 6. When I saw that the officer did not cease
31 striking me, I became afraid and I started
32 to run into the ocean. Then he and another

1 officer chased me, caught me, and dragged
2 me out of the ocean.
3

4 7. I was taken to San Ysidro where I was
5 apparently investigated and they discovered
6 I was not a Mexican National.

7 8. In San Ysidro, I was told to sign some
8 papers explaining my rights and other
9 things. When I refused to sign such
10 papers a Mexican Immigration officer,
11 along with an Anglo officer grabbed me, one
12 grabbed me by the hair, and the other by
13 my wrists. The Chicano officer struck my
14 face repeatedly with his fists. I was
15 knocked down. While I was on the ground
16 they both began to kick me severely and
17 repeatedly, while grabbing my hair. In
18 addition the officers grabbed my head
19 and knocked my head many times against the
20 wall. My forehead, the side and back of
21 my head were banged against the wall, I
22 lost consciousness.
23

24 9. I woke up at the Chula Vista Detention Center
25 at approximately 1:00 p.m. In Chula Vista
26 my fingerprints and photo were taken with-
27 out my consent. I was showered with water.
28 All this time I was not in total control of
29 my senses due to the physical abuse I received
30 at the hands of the Immigration officers.
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10. While in Chula Vista Detention Center they told me I was being accused of smuggling illegal aliens for gain. I was told to sign a statement accusing me of smuggling. I told them I did not do anything, I only went to the pier to fish and exercise.

11. About an hour later another Immigration official came to the room where I was detained and told me to leave this place. I do not want to see you here again, otherwise, I'll put you in jail. I told him I'm going to see a lawyer after I go to the hospital.

12. On August 29, the same Tuesday, I went to the doctor's office. I told him I could not breathe too well. There are times when I am unable to breathe through my mouth and must breathe through my nose. I am unable to breathe deeply--as a result of the immigration officer's kicking my ribs. I told him I feel dizzy and that my eye hurts and I couldn't see too well out of one eye. I also told him my back hurts where I was kicked. I now have to sleep face down or on my side. My leg hurts--skin was scraped off as a result of the kicking.

13. I have never violated any United States Immigration Laws.

.....
.....

ESTADO LIBRE ASOCIADO DE PUERTO RICO
COMMONWEALTH OF PUERTO RICO

DEPARTAMENTO DE SALUD
(DEPARTMENT OF HEALTH)

DIVISION DE REGISTRO DEMOGRAFICO DE NACIMIENTO
(DIVISION OF DEMOGRAPHIC REGISTRY)

NEGOCIADO DE REGISTRO Y
ESTADISTICA DEMOGRAFICA

No. DE ARCHIVO

83233

No escriba en este espacio

Para el Encargado del Registro

DISTRITO No. 54

1. LUGAR DEL NACIMIENTO
(a) Municipio de Patillas
(b) Zona Urbana.....
(c) Zona Rural: Barrio Jacaboa
(d) Nombre de Hospital, Institución.....
(e) Estadía de la Madre en Hospital o Institución antes del Parto.....
(Especifique Años, Meses y Días.)

2. RESIDENCIA DE LA MADRE Patillas
(a) Municipio de.....
(b) Zona Urbana.....
(c) Zona Rural, barrio Jacaboa

NOMBRE Y APELLIDOS DEL NIÑO Luciano Ortiz

Sexo M 5. Número de meses del embarazo 9 6. Gemelo, Triple, etc. No. en el orden de nacimiento 7

8. Fecha del Nacimiento 27 Oct 1947
(Día) (Mes) (Año)

PADRE
Nombre Hermenegildo Ortiz
Residencia Be. Jacaboa
Color o raza M 17. Edad al tiempo de este nacimiento 44
Natural de Patillas, P.R.
(Ciudad o Pueblo) (Estado o País)
14. Oficio, profesión u ocupación abero agricola
15. Industria o Negocio en que trabaja finca frutas tropicales
16. Fecha en que trabajó por última vez en esta ocupación Oct 1947
(Mes y Año)

MADRE
18. Nombre de Soltera.....
19. Color y raza..... 20. Edad al tiempo de este nacimiento.....
21. Natural de.....
(Ciudad o Pueblo) (Estado o País)
22. Oficio, profesión u ocupación.....
23. Industria o Negocio en que trabaja.....
24. Fecha en que trabajó por última vez en esta ocupación.....
(Mes y Año)

Número de hijos que ha tenido la madre (incluyendo el presente) 7 (a) Nacidos vivos y viviendo actualmente 6

(b) Nacidos vivos y que han fallecido..... (c) Nacidos muertos.....

¿Se usó algún preventivo contra la ceguera de los recién nacidos? si contrato plata

(a) Nombre de la persona que asistió al parto Petronila Ortiz

(b) TÍTULO: Médico..... Comadrona..... Comadrona Aux..... Enfermera..... Otros.....
(Especifique)

(c) DIRECCIÓN: Be. Jacaboa

Toda la información anterior fué suministrada por Hermenegildo Ortiz Be. Jacaboa
en su carácter de padre (Informante) niño (Dirección)

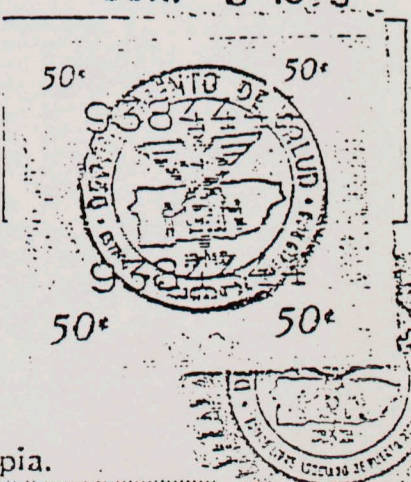
CERTIFICO QUE (asistí) (presencí) el nacimiento de este niño Luciano que nació con vida a las 8:17 M. de la fecha arriba citada y que la información dada es cierta a mi conocimiento y entender.

INSERITO HOY 7 noviembre 1947 31. Hermenegildo Ortiz
(Día) (Mes) (Año) FIRMAS DEL PADRE, MADRE, MEDICO, COMADRONA, ETC.

Carmen Solina de Gomez ENCARGADO DEL REGISTRO Luciano Morales FECHA DE EXPEDICION 27 Oct 1947
(Día) (Mes) (Año) DATE ISSUED

CERTIFICAMOS: que la que antecede es una copia fiel y exacta de un certificado original archivado bajo nuestra custodia en la División de Registro Demográfico del Departamento de Salud de Puerto Rico y que las correcciones que puedan aparecer en dicho certificado original aquí fotografiado son correcciones Bona-Fide hechas de acuerdo con las leyes que para tales fines rigen en Puerto Rico.

THIS IS TO CERTIFY: that this is a true copy of an original certificate on file in our custody in the Division of Demographic Registry of the Department of Health of Puerto Rico and that the corrections that may appear in the original certificate here photostatically reproduced are Bona-Fide corrections made in accordance to what our statutes prescribes in such cases.



Jaime Rivera Dueño
Jaime Rivera Dueño, M.D.
Secretario de Salud
Secretary of Health

José A. Torres
José A. Torres
Director, División Registro Demográfico
Director, Division of Demographic Registry

ADVERTENCIA: Es ilegal alterar o falsificar esta copia.

✓

DECLARATION OF EZEQUIEL GONZALEZ-VELASQUEZ

I am in the United States under docket control pending the processing of my immigration petition.

On July 7, 1979, as I was walking home from work in the San Diego downtown area about 1:45 a.m., I was robbed and beaten in front of the Sheriff's Office on Union & "C". I was bent over, my face bleeding, when a dark blue Plymouth-type car pulled up. The car had one red light on its roof, the number #605 near the bumper on the driver's side and bars dividing the front and back seats. There were two young Latin men in the back seat and two plainclothes officials in the front seat. The officials got out of the car, came up to me as I was bleeding and grabbed my arm, twisting it around behind me. I tried to explain to them what had just happened to me, that my ID and copies of my immigration papers had just been robbed, but that I had the originals at my home no more than five blocks away. They said many people had tried to use that excuse with them before and shoved me into the back seat of the car. Without another word they drove to the border, pulled over to the parking lot and walked us across into Mexico and then drove off.

I got in touch with my wife who went first to the sheriff's. From there, she was sent to the San Diego police who said this was an immigration problem and directed her to just bring me my original permit to cross back into the U.S. and if there were any further problems to contact their department. We did this and I was denied entry because my permit did not allow me to leave the U.S. and the INS officials and the border determined I had violated the terms of the permit. They kept my original permit but I still have a copy.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Executed this 18TH day of JULY, 1979 in CHULA VISTA, CA,

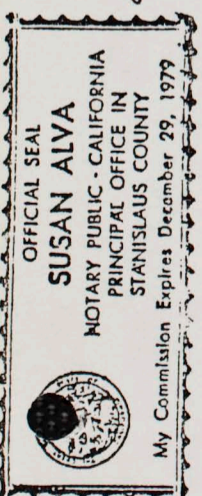
Ezequiel Gonzalez Velasquez
Ezequiel Gonzalez Velasquez

I, CARLOS VASQUEZ, declare under penalty of perjury that I am fluent in English and Spanish, have translated the above to the declarant, and he understood and affirmed its contents before signing. Executed this 18TH day of JULY, 1979 in CHULA VISTA, CA

Carlos Vasquez

H-1

Subscribed and sworn before me this 18th day of July 1979. Susan Alva



1 the plane that I was scheduled to travel on.

2 I showed the agent my California driver's license and
3 he then showed me his identification and number. His name was
4 Harry A. Thomas, and his badge number was 07908. I then asked
5 Agent Thomas if I was under arrest, and he replied that I was
6 not but that he was questioning me concerning my "nationality."
7 At this time Agent Thomas roughly grabbed my arm and began to
8 escort me out the boarding gate area into another portion of the
9 building. He tightly held my arm for approximately forty feet
10 and then released me only after I stated to him that there was
11 no need for him to act in a physically abusive manner in this
12 situation. I did proceed with Agent Thomas voluntarily, but
13 realized that were I to refuse his command, I would in all
14 likelihood be arrested. Agent Thomas required me to walk a
15 long distance with him through the public areas of the airport
16 eventually leading us to two large white unmarked doors leading
17 into a room.

18 Inside the room Agent Thomas again asked me for
19 information concerning my parents. I provided him with their
20 names and the dates of their immigration to the United States.
21 He was not satisfied with this information and I then provided
22 him with my mother's maiden name. He then asked me again if
23 my correct name was Carlos Vazquez, I replied in the affirmative
24 and handed him my driver's license for the second time and also
25 showed him my social security card. He stated to me that he
26 had not requested my social security card and did not need it,
27 and returned it to me. Agent Thomas then removed me to another
28 room where I was told to remain until he returned for me. I
29 was left alone in this room for approximately ten minutes until
30 Agent Thomas returned for me. I returned with Agent Thomas to
31 the original room that he had placed me in and he stated that
32 he was awaiting a phone call on the matter. I attempted at this

1 time to provide Agent Thomas with further information confirming
2 my status and residence in the United States. I offered Agent
3 Thomas my business card which indicates that I am a member of
4 and volunteer worker for the committee on Chicano Rights, Inc.,
5 located at 1837 Highland Avenue, National City, CA, 92050. The
6 card also indicates my business phone number as being
7 (714) 474-8195. Agent Thomas glanced at the card but did not
8 actually take it into his possession. During this time approxi-
9 mately three other persons were brought into the room and were
10 treated in a harsh manner and were physically abused. Some of
11 the personal belongings of these persons were thrown on the
12 ground and they were generally verbally and physically abused.

13 After some period of time I again attempted to talk to
14 Agent Thomas and explained to him that there were numerous high
15 officials in his agency, the Immigration and Naturalization
16 Service, that could verify my identity. Upon completion of the
17 call he indicated to me that the hospital had not located any
18 records of my birth and he further stated that I was "unable to
19 prove citizenship." A second officer in the room stated to me,
20 snapping his fingers, that "I can prove my citizenship by just
21 one phone call to the hospital I was born in." The other officer
22 asked Agent Thomas what he intended to do with me. Agent Thomas
23 replied, "I have some ideas on what to do." Shortly thereafter
24 I stated to Agent Thomas that he should either arrest me or release
25 me from custody. The second officer replied by stating that "we are
26 the law" and turned to leave the room. I again asked Agent Thomas
27 if I could use the telephone located in the room and he responded
28 that this was not possible as the phone was a "government phone."

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1 Approximately five minutes later Agent Thomas stated that I
2 could make a phone call and he lead me out of the room to a
3 public phone. I called one Alberto Garcia, President, United
4 California Mexican-American Association. I asked Mr. Garcia to
5 call an immigration official who could call Agent Thomas to
6 verify my identity. Following this phone call Agent Thomas
7 again returned me to the room in which I was initially detained.
8 Upon returning to the room I again asked Agent Thomas if I
9 was going to be released or arrested. At this time I had been
10 in his custody for over one hour. At approximately 7:35 a.m.
11 I was released from Agent Thomas' custody without explanation,
12 apology, or any statement indicating the basis for either my
13 lengthy detention or my release.

14 At no time during my incarceration was I ever informed
15 of any legal rights that I may have possessed. At no time was
16 I informed that I had the right to contact an attorney. At no
17 time was I informed that I had a right to remain silent. At no
18 time was I informed that any statements made by myself could be
19 used in civil or criminal proceedings against me. At no time was
20 I informed of the reasons for my detentions despite numerous
21 requests that I made regarding this question. Despite a number
22 of requests, I was not allowed to use a telephone until I had
23 been detained and interrogated for approximately fifth-five
24 minutes. During this entire experience I suffered great mental
25 anguish and embarrassment. During the course of my detention it
26 became clear to me that the sole basis for my detention and the
27 detention of the three other persons brought into the room
28 while I was being interrogated was our common Latin-American
29 decent. At all times during this experience I cooperated with
30 Agent Thomas and provided him with all possible information to

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1 verify my United States citizen status and residence.

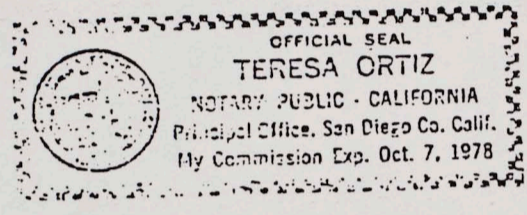
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I swear under penalty of perjury that the above facts are true and correct.

Dated: 2/27/78

Carlos Vazquez
CARLOS VAZQUEZ

Subscribed and sworn to before me on February , 1978



Teresa Ortiz

DECLARATION OF JOSE MARIA PLANCARTE

I, Jose Maria Plancarte-Barron, declare the following:

1. I was lawfully admitted to the United States as a permanent resident alien on September 18, 1971. I have continuously resided in this country since that date.
2. On November 3, 1977, I went to Tijuana, Mexico to attend a dentist appointment.
3. On November 4, 1977, I returned to the United States and proceeded to the San Diego Airport to travel back to my residence and employment in Los Angeles, California.
4. At the San Diego Airport I purchased a one-way ticket to Los Angeles. Following the purchase of the ticket, I proceeded to a set of seats across from the ticket counter to wait for my flight which was to leave in about one hour. It was about 12:00 a.m. when I sat down.
5. After about 10 minutes a person in civilian clothes came up to me while I was seated across from the ticket counter waiting for my flight. This person asked where I was going. I responded that I was going to Los Angeles. He then identified himself as an immigration officer and showed me his badge. He then asked for my documents. I presented him my Alien Registration Receipt Card (Form I-151) which contained my picture. He then grabbed my arm and took me to a room on the other side of the airport. In that room there were 5-6 persons who appeared to be under arrest. I latter learned from some of these persons that they too were apprehended

1 in the main lobby of the airport like myself.
2 The arresting officer proceeded to tell me that
3 my Alien Registration Card was fraudulent. I told
4 him it was valid, that I have lived and worked
5 in the United States for over six years. I
6 also told him that I would have to catch my
7 flight in less than an hour to get back to work
8 or I would lose my employment. He said the
9 only place I was going was back to Mexico. He
10 told me to sign a paper which was in English.
11 He said this paper would allow me to go back to
12 Mexico. I told him I did not want to go Mexico
13 but to my home in Los Angeles. He said I could
14 not leave until I signed the paper. After 5
15 hours in the room in which I was denied access to
16 a telephone to call my family, my employer or
17 an attorney, I decided to sign the paper so I
18 could get out. I was immediately taken to
19 Tijuana, Mexico, and released.

20 6. Because of the delays in being allowed to
21 re-enter the United States and securing my
22 documentation as required by law from the Immi-
23 gration and Naturalization Service, I was fired
24 from my employment of six years from Price Pfister
25 Manufacturing Company in Pacoima, California.

26 7. I have never violated any immigration law of the
27 United States.

28 8. I have never been convicted of any crime.
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1 I certify or (delare), under penalty of perjury, that the
2 foregoing is true and correct.

3 Executed on Feburary 13, 1978 at San Diego, California.
4

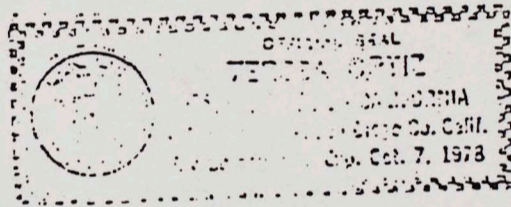
5 JOSE PLACARTE

6 JOSE MARIA PLANCARTE

7 I Teresa Ortiz am a competent translater of English into
8 Spanish and have translated all of the above in Spanish to Mr. Jose
9 Maria Placarte-Barron.
10

11 Teresa Ortiz

12 TERESA ORTIZ



I, PORFIRIO VENEGAS, I declare, under penalty of perjury, that the foregoing statement is true and correct, to the best of my ability:

1 That on August 23, 1978, at approximately 9:15 a.m., my wife
2 and my two sons age 9 and 6 left to the Border Egg Ranch, located
3 on Siempre Viva Road, Otay Mesa, to purchase two flats of eggs.
4 When I was in the process of purchasing the eggs, there was a wo-
5 man and a boy who were about two spaces in front of me and were
6 also in the process of purchasing eggs.

7 They went out the door and I proceeded to purchase the eggs.
8 As I walked down the steps of the egg ranch building, the woman
9 approached me asking me for a ride to Chula Vista. She told me
10 that that her car had broken down and that it was being repaired.
11 The woman said that she was having transmission problems. I told
12 her that I would give her a ride but that she and the young boy
13 would have to ride in the back of our truck where our boys were
14 riding. We left the egg ranch and were heading west on Otay road.

15 As I was driving west I noticed a Border Patrol car coming
16 towards me and passed me, I looked in my rear view mirror and the
17 Border Patrol man was right behind me and flashing the red lights.
18 He pulled me over. I then got out of my car and walked to the
19 Border Patrol car and asked him "Could I help you?". The Officer
20 (Stephen Chunt #11181) replied that he wanted to question the
21 people in back of my pick-up. I replied yes. The Officer asked
22 me where I lived at and then asked me for my driver's license. I
23 gave them to him and he looked at them, but returned them to me
24 immediately.

25 The Officer (Stephen Chunt) asked me to lean against the car.
26 he frisked me and hand cuffed me. The Officer then told me that
27 I was arrested for alien smuggling. He then put me in the car.
28 As I was in the car, another Officer asked me if the arresting
29 Officer had given me my rights. I replied, he had not given me
30 my rights.

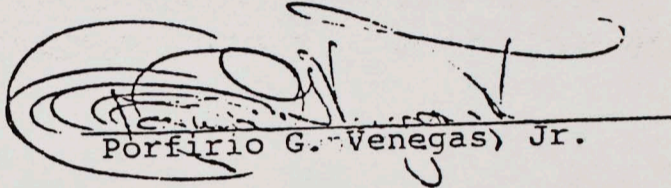
31 While on the way to the detention center in San Ysidro, the
32 arresting officer, who was driving the car, asked if my rights
were given to me, I said yes by the other officer.

At the detention Center, the arresting officer (Stephen Chunt) proceeded to fingerprint me and took my picture. He then typed out a form and asked me to read it and sign it. After reading the form, I refused to sign it because I felt that my rights were being waived due to the written statement on the form.

I had asked the arresting officer several times at the center if I could use the telephone to call an attorney, (Frank Hurst). I was denied the use of the telephone, I was told by the officer "later, later, wait a little bit." I was placed in one of their cells for about 20-45 minutes. I never was given the opportunity

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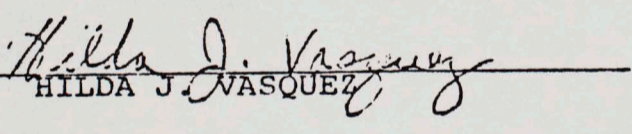
arresting officer told me that they had a slight emergency and that he had to leave. I was allowed to use the bathroom. I was told by the arresting officer that they had called the United States Attorney and that I was going to be released, since it was my first offense.. I asked the arresting officer if I was actually charged with alien smuggling. He responded that yes I was charged for that. I then asked him for his name and I.D., His name is Officer Stephen Chunt #11181. I thanked him. While in the bathroom the arresting officer gave me the above information I was then released. I left the building feeling humiliated. The other officers just looked on.


Porfirio G. Venegas, Jr.

Date 8/24/78

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.
On August 24, 1978 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared _____
Porfirio G. Venegas, Jr.


_____, known to me
to be the person _____ whose name is subscribed to the
within instrument and acknowledged that he executed the
same.


HILDA J. VASQUEZ

Name (Typed or Printed)
Notary Public in and for said County and State



FOR NOTARY SEAL OR STAMP



OFFICIAL SEAL
HILDA J. VASQUEZ
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My comm. expires APR 9, 1982

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Misc.-166 (G.S.) Ack. Individual (Rev. 9-68)
Staple

I, Otilia Venegas, declare under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge:

1 It was August 23, 1978, at about 9:15 a.m. my husband and
2 I, with our two children Phillip and Paul left to the Border Egg
3 Ranch, located on Siempre Viva Road, Otay Mesa. When we got to
4 the Egg ranch, my husband got out of the pick-up and told our
5 sons to remain in the back of the truck. He then entered the store
6 for the purpose of purchasing two flats of eggs. As he was walking
7 out, a woman with a young boy approached him at the steps and was
8 talking to him. Then they walked towards the truck. My husband
9 told me he was giving them a ride to Chula Vista, because her car
10 had broken down. As we were driving home, a Border Patrol car
11 passed us up and before we knew it my husband told me that we
12 were being stopped by a Border Patrolman.

13 My husband got out of the truck and walked up to them. I
14 turned around to see what was going on through the back window,
15 when I saw another patrolman come up to the truck and began
16 yelling at the woman and the young boy. Then he came to the drivers
17 side and began asking me where I lived and how long I lived at
18 that address. I answered him, "I live in Otay". He then asked me
19 how long had I lived there, I said "twenty years". He came around
20 the truck towards the back and began to ask my sons where they
21 lived at. They answered him. Then he asked me if they were my child
22 ren, I replied "yes".

23 I told him that I had to hurry and get home because I had
24 another son at home that had to be at the doctor's office at 10:45.
25 My son had water in his knee and had to be treated for that. He
26 then told me that I was going to have to go with them to their
27 station. I was allowed to drive the truck. During the whole ordeal,
28 when they were hand-cuffing my husband, my son Phillip was crying
29 because he was frightened by the whole thing.

30 The officer then told me to drive between the two patrol
31 cars, and so I did.

32 When we arrived at the station at about 10:a.m. I was asked
for my I.D.. I showed them my driver's license. The officer then
began to fill out a form. He told me that he was not going to
give me my rights, because I was going to be a material witness.

I was then taken to another room and had my picture taken.
At that time, I told him that all we did was to give them a ride.
The officer said that he believed us, but it was not up to him.

While the officer was completing the form, the woman that
was riding in the back of the truck came into the room. The woman
began to apologize for all the trouble she had caused. She was
sorry that she asked us for the ride and if she would have known
that it was going to cause all the trouble, she would never had
asked us for the ride. The officer told her to keep her mouth

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shut and not to say anything.

The officer then finished filling the form out and he then released me. Before I left, I asked him what was going to happen to my husband. He responded that my husband would be able to call us at home or at the doctors office. Then, I left all worried and nervous, thinking about what had happened. It felt like a nightmare.

Otilia Venegas
Otilia Venegas

Date 8/24/78

Misc.-166 (G.S.) Act. Individual (Rev. 9-68)
Staple

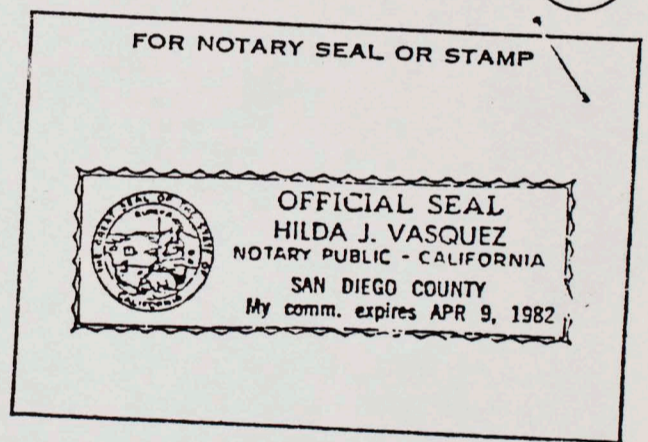
STATE OF CALIFORNIA
COUNTY OF San Diego } SS.
On August 24, 1978 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared Otilia Venegas



known to me
to be the person whose name is subscribed to the
within instrument and acknowledged that she executed the
same.

Hilda J. Vasquez

HILDA J. VASQUEZ
Name (Typed or Printed)
Notary Public in and for said County and State



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I, Jose Salvador Zapata, under oath to tell the truth affirm and declare the following:

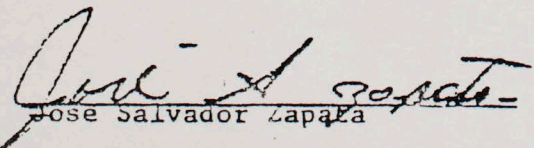
That on Monday, April 22, 1974, I arrived in San Ysidro from Fallbrook and stopped to buy groceries for my family living in Mexico. During my shopping I met an old friend (whom I have known for 4 years) by the name of Prieto who is employed by the Big Star supermarket. We talked for a few minutes about how the families were. Then he mentioned something about going to Los Angeles to correct his immigration documents. Then I said that I was ^{going} to Anaheim for a doctor's appointment and to see if I could receive more medicine. I was previously at University Hospital under medi-cal for a head concussion. I offered to give him a ride to Los Angeles. We agreed to meet in the parking lot adjacent to the Big Star supermarket, on Tuesday the 23 between the hours of 12 noon and 1:00 p.m. Then I left to Mexico. The time of visit in Mexico was Monday night til Tuesday afternoon. I then began my return trip to the U.S. with my daughter Sylvia. At approximately 12:30 p.m. I crossed the border, I then proceeded to the Big Star Supermarket parking lot called Hutchinson's brokers parking (parking receipt in my possession) .

My daughter and I left the car and entered the store to buy ice-cream. While leaving the store I met my friend Prieto outside, he mentioned that he had two other friends needing a ride to Los Angeles and I could give them a ride also. I said sure why not. We then decided to walk towards the car, I paid for the parking and started down the little hill and stopped at the corner. I then made a right turn and proceeded toward San Ysidro Blvd. I made my stop at the three-way stop signs. I then proceeded north. I then noticed in the rear view mirror the police car with red lights, I then pulled over to the right.

The officer got out of his car came directly to my side and without saying a word grabbed my arm pulled me out of the car and took me to his car. He told me to stay and not to move, he then returned to my car and said to my companions to get out of the car, which they did. They stood on the right side of my car then another policeman came, a mexican-american officer, I then asked the other (american) officer if I could speak to the mexican-american officer. He replied I don't care, I don't understand spanish. He did not let me. Officer Pakkula then went to his radio while the other officer continued to interrogate my friends. Then officer Pakkula asked me for my driver's license. I gave it to him. He then asked me for my registration for the vehicle. I handed him all the registration papers. He then told me that they were not the registration papers. He then began to write out a traffic ticket. He then told me to sign the ticket, I said no that I would not sign it and that I wanted to speak to the mexican-american officer. He finally let me talk to him, I explain to the officer that I would sign the ticket but that I had never committed the violation, and I would go to court. I felt that if officer Pakkula stopped me for those violations, why then did he put me through the process of pulling me out and my friends out of the car without no reason treating me like a criminal, with no respect and no cosideration of my rights.

I would also mentioned that the officer did not permit my friends to continue the trip with me. I feel that the officer made a mistake thinking I was someone else. He probably thought I was a person who charged fees to people for rides up north, and after finding no wrong doings in my part decided to cite me for the violation mentioned on traffic ticket.

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


Jose Salvador Zapata

"STATEMENT"

I, ENRIQUE DAVALOS, residing at Romano #100, La Mesa, Tijuana, B. C. Mexico and employed at Empresas Fimbres, CALI MAX Revolucion, wish to state and affirm that on February 4th, 1978 after my wife, ELVIA MURPHY DE DAVALOS, and I got out of work at approximately 9:00 p.m. we went to our home to pick up some belongings that we were to take on our trip to Disneyland. We then arrived at the San Ysidro port of entry at approximately 11:00 p.m. being referred to Secondary Inspection; in Secondary Inspection we requested a permit for both of us to go beyond the 25 mile limit. We were issued form SW-434 (one only) for both of us with the ending numbers of each of our border crossing cards by an Immigration Inspector; we then proceeded inland without any problem, at our arriving at the San Onofre Border Patrol Check Point at approximately 1:00 a.m. of February 5th, we were pulled over by a Border Patrol Officer. He requested to see our I-186 cards with our permits, we demonstrated with the SW-434, and the officer replied back to us by telling my wife to get out of the car and alleging that one permit was missing without giving us the opportunity to speak, he also stated that there were some numbers missing from the SW-434 form. He then in a very nasty attitude order my wife to get out of my car and order her to get into his office. and abusively told me to get out of the area. I asked again for an explanation as to why he was taking this attitude against us, he got me by the jacket and threaten to beat me up and take my I-186 card. I did not want to leave my wife at the mercy of such individual, I was very concerned of what was going to be the destiny of my wife with an individual like that Border Patrol Officer but I did not have any other alternative but to leave. I then returned back to Tijuana and waited for my wife to returned to Mexico. I HEREBY WITH STATE AND DECLARE THAT THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF FACT.

Enrique Davalos

ENRIQUE DAVALOS

"STATEMENT"

I, ELVIA MURPHY DE LAVALOS, residing at Romano #100, La Mesa, Tijuana, B.C. Mexico and employed at Empresas Fimbres, Credit Department, wish to state and affirm that on February 4th, 1978 after my husband, ENRIQUE LAVALOS CERDA, and I got out of work at approximately 9:00 p.m. we went to our home to pick up some belongings that we were to take on our trip to Disneyland. We then arrived at the San Ysidro port of entry at approximately 11:00 p.m. being referred to Secondary Inspection; in Secondary Inspection we requested a permit for both of us to go beyond the 25 mile limit. We were issued form SW-434 (one only) for both of us with the ending numbers of each of our border crossing cards by an Immigration Inspector; we then proceeded inland without any problem, at our arriving at the San Onofre Border Patrol Check Point at approximately 1:00 a.m. of February 5th, we were pulled over by a Border Patrol Officer. He requested to see our I-186 cards with our permits, we demonstrated him form SW-434, and the officer replied back by telling me to get out of the car alleging that one permit was missing without giving us the opportunity to speak, he also stated that there were some numbers missing from the SW-434 form. He then in a very nasty attitude ordered me out of my husband's car to go to his office and abusively told my husband to leave the area. My husband again asked him for an explanation as to why he was taking this attitude against us, he got my husband by the jacket and threaten to beat him up and to take his I-186 card. My husband did not want to leave me by myself at the mercy of this individual, he was very concerned of what was going to be my destiny with an individual like that Border Patrol Officer but he did not have any other alternative but to leave. I was then ordered by the same Border Patrol Officer to go in his office and then was told to go in a room with another Officer, where I was ordered to take my clothes off. The room was dirty, unsanitary, very poorly cared for the officer proceeded to search me touching my body with her dirty hands also touching my sensitive parts and putting me in a very embarrassing situation. I pleaded with the officer not to touch and asked her why I was being treated like an animal and she only replied and stated "I DO NOT SPEAK SPANISH" I was then returned back with other individuals and stayed there without food or water until I was returned back to the Mexican Border and released to the Mexican Authorities at about 7:00 a.m. in the morning of February 5th, 1978. I HEREBY SUBSCRIBE AND DECLARE THAT THE FOREGOING

IS A TRUE AND CORRECT STATEMENT OF FACT.

DECLARATION OF MOISES PAZ

I, MOISES PAZ, declare: That I am employed at CASA FAMILIAR, located at 3037 Coronado Avenue, San Diego, California, 92154.

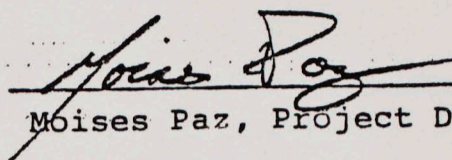
That I am a United States Citizen residing at 6595 Montezuma Rd., San Diego, Ca and my responsibility at CASA FAMILIAR is that of Project Director for AMANECER, Youth Counseling Program. On Friday, June 29, 1979, our Youth Counseling Program sponsored an outing to Imperial Beach Shores, south of the pier. The outing consisted of 29 underprivileged youth, all of which are U.S. Citizens, ranging from 14 to 16 years of age.

Upon arriving at the beach at approximately 1:15 p.m., we left one counselor with a small group and returned to the Teen Post for another group. WE arrived the second time and both groups gathered together while waiting for the last members of the party. When we all were together, a group of boys had gone to the restrooms, on their return to the group, they mentioned to me that they were stopped and questioned by an unidentified I.N.S. agent. I responded that we should not let it bother our outing. Approximately five minutes after, Officer S.P. Kean appeared on the scene and began to question the group again. I immediately approached officer Kean to inform him that I was in charge of the group, and also that we had just been interageted by an I.N.S. agent. Rudely ingoring any of the adults present officer Kean approached the Youth for a second time interrogating them as to their place of birth and national origin. After causing a scene, intimidating the youth, and questioning about seven youths, officer Kean left the scene yelling his name and badge number challenging us to file a complaint. The manner in which we were all dealt with was very unprofessional, rude and highly aggressive, to such a degree that a few of the adolescents began to pick up rocks to go throw them at officer Kean.

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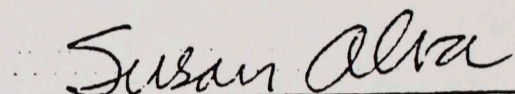
Luckily we were able to stop this action.

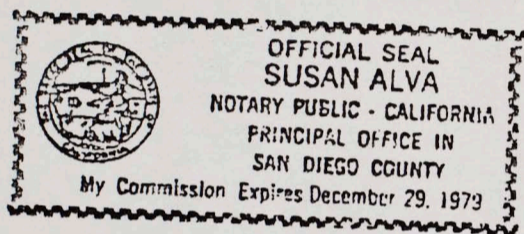
I declare under penalty of perjury that the above is true and correct to the best of my knowledge. Executed in San Diego, California this 17 day of July, 1979.


Moises Paz, Project Director

SUBSCRIBED AND SWORN BEFORE ME IN SAN DIEGO, CALIFORNIA

THIS 17TH DAY OF JULY, 1979.


Susan Alva



AFFIDAVIT

I, GUILLERMO LOPEZ CORONADO do state:

Yo, GUILLERMO LOPEZ CORONADO digo le siguiente:

1. I was born on June 25, 1957, in Mexicali, Mexico.
1. Naci en Junio 25, 1957 en Mexicali, Mexico.
2. My father Raymundo Onate Coronado is a legal permanent resident alien of the United States, A 12-987-601, and residing in the United States.
2. Mi padre es Raymundo Onate Coronado el es residente legal de los Estados Unidos, A 12-987-601, y reside en los Estados Unidos.
3. My mother Guadalupe Lopez de Coronado is a legal permanent resident alien of the United States, A 30-536-810, and residing in the United States.
3. Mi madre es Guadalupe Lopez de Coronado y es residente legal de los Estados Unidos, A 30-536-810 ye reside en Estados Unidos.
4. I currently have an Immigration Petition pending before the United States consulate in Tijuana, filed on my behalf by my father with priority date of 1968.
4. Presentemente tengo una peticion de Inmigracion pendiente en el consulado Americano por parte de mi padre con preferencia y con fecha de 1968.
5. I entered the United States in 2/75 with my valid Nonresident Alien Mexican Border Crossing card, Form I-186. I have not left the United States since that entry except for the incident described below.
5. Yo entre a los Estados Unidos el 2/75 con mi pasaporte local forma I-186. No e dejado los Estados Unidos desde esa entrada excepto por el incidente que voy a describir aqui abajo.
6. On Wednesday, October 5, 1977 I was stopped by a San Diego City Police Officer as I was proceeding north on interstate 5 (about 2 miles North of the City of San Diego). The officer called the Immigration Service. One officer from the Immigration Service arrived and I was taken to the San Ysidro Immigration Substation. I was there questioned by an Immigration officer by the name of Jones. I told him that my parents were lawful immigrants living in the United States and that an Immigration petition was filed before December 31, 1976 and is currently pending on my behalf in the United States Consulate in Tijuana.

S-1

I also requested to speak to an attorney at the Legal Aid Society of San Diego and showed him a business card from that office.

6. El Miercoles fui parado por oficiales de la policia de la ciudad de San Diego cuando yo iba para el Norte del Interstate 5 (como 3 millas al Norte de la Ciudad de San Diego). Los oficiales llamaron al servicio de Inmigracion un oficial de Inmigracion de San Ysidro. Alli me hicieron preguntas un oficial de Inmigracion su nombre es Jones. Yo le dije a el que mis padres eran residentes legales y que viven en Estados Unidos y que yo tenia una peticion metida antes de Diciembre 31, 1976 y que esta pendiente en el consulado Americano en Tijuana. Y tambien pedi hablar con un abogado del Legal Aid Society de San Diego y les ensene la targeta de la oficina del Legal Aid Society de San Diego.
7. The Legal Aid Society of San Diego is representing me in the Immigration process. My request to contact an attorney was denied. I requested to be allowed to remain in the United States.

I was then told to sign a paper which was not explained to me and I was immediately returned to Mexico.

7. La Oficina del Legal Aid Society of San Diego me esta representando a mi en mi proceso de Inmigracion. Mi requerimineto para llamar a un abogado me fue negada. Tambien pedi que me dejaran aqui en los Estados Unidos.

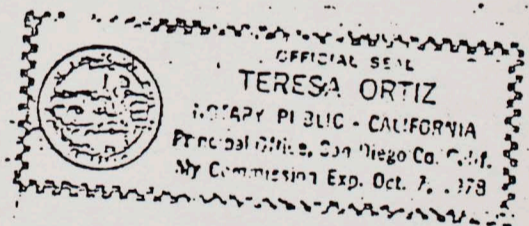
Ellos me digeron que firmara un papel la cual no me explicaron a mi, y luego inmediatamente fui devuelto a Mexico.

I swear under the penalty of perjury that the statement above is true and correct.

Juro bajo penalidad de perjurio que lo que antes arriba digo es la verdad y esta correcto.

Guillermo Coronado Lopez
GUILLERMO CORONADO LOPEZ 10

SUBSCRIBED and sworn to before me.
this 14 day of February 1978
Teresa Ortiz
NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA



I, Gilberto Alvarez Carrion, declare that I am a Legal Resident Alien, A-11-322-278, residing at 1389 Don Carlos Court, Chula Vista, California; employed by San Diego State University and have been residing in the area for the last fifty years.

On the morning of July 1, 1979, at approximately 2:A.M., I was in Mexico and approached the border crossing from the eastside, where the lines of cars were waiting to cross into the United States. A customs officer left his inspection gate, came over to me on the Mexican side of the border and screamed "get in back of the line". I got out of the car and said, among other things, that he did not have any authority on this side of the border. He then hit me in the left jaw and knocked me unconscious. I regained some state of semi-consciousness and found myself being hit, pushed and shoved around repeatedly by the same officer and two others.

The next thing I remember is being dragged across the gates, handcuffed, by the three officers. I was taken into a building and I sat down on a bench. I was bleeding from my right elbow and a cut over my left eye. My right index finger and left wrist were hurting me tremendously (I was later treated for a broken finger, chipped wrist, bruises and other injuries).

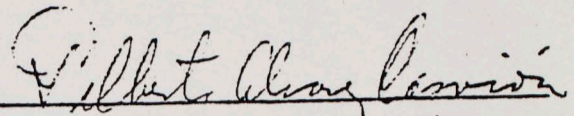
As I was sitting on the bench one officer took pictures of me, the handcuffs were removed and I was offered coffee. A man came in shouting "why have the handcuffs been removed?" Two hours later the same man identified himself as a federal investigator and took me to another room. He read me my rights and I said that I wanted to call my lawyer, but that I would go ahead and explain what had happened. He preferred to have his supervisor present during my statement to him. The supervisor listened but began to misquote so much of what I was saying, that I refused to say any more without my lawyer being present. They asked me to wash the blood from my face and arms but I preferred to have witnesses (lawyer, wife) to verify my injuries.

A brief declaration was taken in the presence of my lawyer. The federal investigator informed my lawyer that he did not know what the next step would be but that he would notify us.

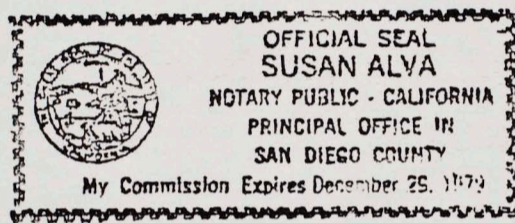
T-1

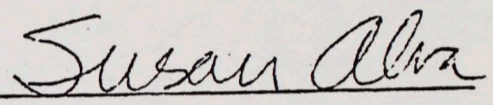
I was released to my lawyers' custody .
I declare under penalty of perjury that the above statement is
true and correct to the best of my ability.

Executed on this 19 day of July 1979, in Chula Vista,
California.


Gilberto Alvarez Carrion

SUBSCRIBED AND SWORN BEFORE ME THIS 19TH DAY OF July 1979,
IN THE COUNTY OF SAN DIEGO AND STATE OF CALIFORNIA.




Susan ALVA
Notory Public

Customs Agent Held In Alien Smuggling Conspiracy Case

By GINA LUBRANO

Staff Writer, The San Diego Union

A U.S. Customs official who allegedly charged \$50 a person to allow carloads of illegal aliens cross the border through his inspection lane was jailed yesterday on smuggling conspiracy charges.

Inspector Alexander Ralston Trench, 55, of 9416 Barbic Lane, Spring Valley, was arrested at his home following a 2½-month investigation by the Border Patrol's anti-smuggling unit and the U.S. Customs internal affairs office.

The balding, white-haired Trench, a retired Air Force major, told U.S. Magistrate Harry R. McCue that he has been with Customs since February, 1970.

He sat with one hand cupping his chin and the other holding a straw hat with a green print band while McCue interviewed three women and three men arrested in connection with the case.

Assistant U.S. Attorney Howard Allen asked McCue to set Trench's bail at \$100,000, and McCue agreed, calling it "reasonable under the circumstances."

McCue, who set bail review for 2 p.m. Monday, called Trench's alleged role in the conspiracy a "calculus breach of duty and trust," say-



ALEXANDER RALSTON TRENCH
... held in case

ing that an affidavit filed in connection with the complaint told "a rather sordid story."

Michael McCabe, an attorney ap-

pearing on behalf of Trench, asked for a lower bail, saying that with an income of \$17,605 a year Trench did not have the resources to post that high a bond. McCue, however, did not budge. "He didn't do it for noble motives," the magistrate said.

McCue pointed out that the affidavit told of a newsboy, stationed as a lookout, who warned drivers smuggling aliens when Trench was off duty. "They stopped dead in their tracks" when Trench was not at the gate, McCue said.

Drivers sometimes pretended to have car trouble until Trench returned on duty from breaks, according to the affidavit. When tipped that he was manning a different gate than expected, they made rapid lane changes to be where he could let them pass, the affidavit said.

Allen said that Trench — while under surveillance during the 2½-month period — was observed allowing hundreds of illegal aliens through his lane. Investigators said they believed that he was being paid \$50 per person.

Agents, arrest warrants in hand, had Trench under surveillance between 6 a.m. and 7 a.m. yesterday and said they watched him allow six

(Continued on B-4, Col. 1)

stances when he allegedly this office," said U.S. Attor-
ne Michael Walsh. "We will
prosecute any such cases to
the full extent of the law and
request appropriate periods
of incarceration for convict-
ed defendants."

(Continued from Page B-1)
"smuggling vehicles" enter
the United States through his
lane.
Five of those were stopped
and eight illegal aliens were
found, in addition to the driv-
ers, according to Allen. One
of the vehicles, containing
three aliens, was driven by
Marla de la Luz-Hurtado, 26,
a singer from Santa Ana,
who was taken into custody.
Allen told McCue that she
has been observed bringing
aliens across the border "on
an almost daily basis" and
when Trench was on duty.
The two had been observed
meeting on a number of
occasions, Allen said.
He asked that her bail be
set at \$100,000 and McCue
agreed.

Bail was set at \$75,000
each for Victoria Maciel, 48,
of 723 Twin Oaks Ave., Chula
Vista, and Joe Lopez-Espar-
za, 56, an employed U.S.
citizen living in Tijuana.
McCue set bail at \$50,000
each for Estella Leon Sosa,
53, of Los Angeles; Stephen
Paul Novobilski, 20, an
American living in the La
Mesa suburb of Tijuana, and
Manuel Mendoza-Lara, 21, of
Tijuana.

Seven others named in the
complaint remained fugi-
tives as of yesterday.
McCue, who asked defend-
ants about their ability to
hire attorneys to represent
them, made a point of ap-
pointing female lawyers to
represent the women. How-
ever, Allen asked that one of
the attorneys be disqualified
because she had represented
aliens held as witnesses in
smuggling cases.

After scanning his list con-
taining names of attorneys
who could be appointed by
the court to represent indi-
vidual defendants, McCue ap-

The affidavit filed with the
court said that officials were
told about Trench's role in
the smuggling conspiracy
through an informant.
Trench, a 22-year veteran of
the Air Force who received a
bachelor's degree in educa-
tion from the University of
Maryland following his mil-
itary discharge, was known
to the informant only as "El
Viejito" (old man) when he
went to the Border Patrol on
Jan. 7.

Surveillance of Trench re-
sulted in a 14-page affidavit
that outlined his meetings
with Luz-Hurtado, also
known as Lucha, and in-

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ET 24 MAR 78

BORDER BUS

U.S. Customs agent,

6 others arrested

By WILLIAM POLK

A U.S. Customs Service inspector was among seven people arrested today in an alleged smuggling ring accused of allowing hundreds of illegal aliens to enter the United States.

Assistant U.S. Attorney Howard Allen said Alexander Ralston Trench, 55, of 9416 Barbic Lane, Spring Valley, was taken into custody at his home.

Trench, a customs inspector for about six years, is charged with conspiracy to smuggle aliens into the United States through his gate at the San Ysidro border crossing.

Meanwhile, violence flared anew on the border with a rash of attacks on illegal aliens entering the country.

Police said the border had been relatively quiet for the last three months.

Allen said Trench and the six other suspects were arrested after a 2½-month investigation by the anti-smuggling unit of the Chula Vista Border Patrol office and the Customs Service office of internal affairs.

The others were identified by Allen as Victoria Maciel, 48, of 723 Twin Oaks Ave.; Stephen Paul Nobilski, 20, of 1349 Elden Ave.; Chula Vista; Maria de la Luz-Hurtado, 26, of Santa Ana; Estella Leon-Sousa, 53, of Los Angeles, and Joe Lopez-Esparza, 56, and Manuel Mendoza, 21, both of Tijuana.

A complaint issued by the U.S. attorney's office here charges Trench with receiving \$50 a head for each illegal alien allowed to pass undetected through his inspection lane at the border.

aliens were said to be paying smuggling fees ranging from \$50 to \$200 to defendants other than Trench.

Officials said several other per-

CONTINUED FROM PAGE 1

sons are still being sought in connection with the case.

Border Patrol investigator Frank J. Petraglia said the operation was uncovered by information from an informant who said a smuggler was using a customs inspector to slip aliens into the United States.

Petraglia said in an affidavit that he and his partner, agent Miguel Vallina, began surveillance of the San Ysidro port of entry shortly after receiving this information in January.

In his affidavit, filed with the complaint, Petraglia said Trench allowed at least 17 vehicles carrying illegal aliens to pass through his gate during the investigation.

"It is my best estimate that inspector Trench has allowed hundreds of illegal aliens to cross into the United States through his lane while working primary inspection," Petraglia said.

Investigators were unable to say exactly how many aliens may have been allowed into the country.

Police said the three-month lull in gang-style attacks on illegal aliens crossing the border into the United States ended with the robberies of illegals in separate border zones Wednesday night.

A 25-year-old Mexican man and his 27-year-old wife were terrorized by three Mexicans armed with pis-

tols and knives as the couple crossed the border at Monument Field in the beach area.

Raul Valerio Martine and his wife, Juana, turned over \$350 in Mexican pesos and a sandwich after one of the bandits pressed the muzzle of a large-caliber automatic against his head and another jabbed at his throat with a switchblade knife.

As the bandits fled, Valerio told police he heard the voice of a female illegal alien shout, "They have guns." He then heard two shots.

The other holdup occurred in Dead Man's Canyon when Gabriel Vinegas Garcia, 37, and Ramona Gonzalez, 23, of Guadalajara, were robbed at knifepoint by three Mexican youths.

One of the bandits tried to rape Gonzalez, according to police accounts, but he was restrained by the others. Vinegas Garcia said he lost about \$200 in pesos.

These were the eighth and ninth known holdups along the smuggling routes so far this year.

Police Department spokesman Bill Robinson said the robberies occurred in areas where the SDFD's special border crime task force was not on patrol.

Last year, there were 112 reported robberies of illegal aliens. Robinson said more may have occurred but an illegal alien who reports the crime also faces deportation and he indicated this may cut down on the number reporting crimes.

Accused In Shooting

9/14/78
Police in Mexi-
border patrol-
co area with
citizen who
border last Sun-

Meanwhile, U.S. Attorney Michael Walsh's office, the FBI, the Imperial County district attorney's office and the Mexican consulate all were investigating to determine if the border patrolman had acted improperly in the incident.

It is unlikely that the officer, William V. Elliott, 23, will have to face prosecution in Mexico.

Elliott, according to the charge, fired his gun, wounding Jose Rodriguez-Gomez, 30, in the left knee.

According to the Mexican investigators, Elliott then returned Rodriguez-Gomez to the border, sending him back into Mexico without medical attention.

Assistant U.S. Attorney Peter K. Nunez said Rodriguez-Gomez since has been paroled back to the United States, where his wound is being treated at El Centro Community Hospital. After treatment, he will be returned to Mexico.

Nunez said the incident at the border occurred on the banks of the New River about 11 p.m. Sunday.

A sensor alerted the Border Patrol to activity near the scene and Elliott was dispatched to investigate, Nunez said.

Authorities probe shooting of alien by border guard

By WILLIAM POLK

The shooting of an illegal alien by a U.S. Border Patrolman in Calexico is under investigation by the U.S. attorney's office here.

Officials said the alien, identified as Jose Rodriguez-Gomez, 30, of Zacatecas, Mexico, apparently was returned to Mexico without being given medical aid after being shot in the knee by Patrolman William Elliott late Sunday.

Assistant U.S. Attorney Peter K. Nunez said his office is one of several American and Mexican agencies looking into the shooting.

He said Mexican authorities already have charged Elliott, 23, with "discharging a firearm and causing injury." But no U.S. charges have been filed, pending the outcome of in-

vestigations on this side of the border.

Nunez said the Imperial County District Attorney's office, the FBI, the Mexican consulate, and the State Judicial Police in Mexico were among the other agencies also looking into the case.

Rodriguez-Gomez, meanwhile, has been returned to this country for treatment of his wound at El Centro Community Hospital, where he was reported in satisfactory condition.

Elliott, 23, of Calexico, was still on duty yesterday and there are no plans to suspend him, pending the outcome of the U.S. investigations, said Bill King, deputy chief patrol agent at the Border Patrol's El Centro sector headquarters. Elliott's version of the shooting, King said, is that

he thought Rodriguez-Gomez had a gun when he suddenly emerged from a group of six aliens attempting illegal entry in the New River area Sunday night.

While it is unlikely Elliott will be turned over to Mexican authorities, officials on this side of the border have indicated charges may be filed if investigations find that the officer acted improperly or illegally in the shooting incident.

2 Charged With Violating Civil Rights of Alien

Two men who claimed to be Ku Klux Klan members were indicted Friday for an incident last spring in which they allegedly abducted a man and then turned him over to the Border Patrol as an illegal alien.

The three-count federal grand jury indictment, returned in San Diego, accused Robert L. Cole, 28, and Carl Leroy Shipton Jr., 37, of depriving Juan Mendez Ruiz of his civil rights last April 3.

The two men were accused of picking up Ruiz in San Clemente while he was hitchhiking, threatening him and then driving him to the Border Patrol headquarters.

The two defendants reportedly were wearing White Power T-shirts at the time of the incident.

On the way to the Border Patrol headquarters, Shipton threw Ruiz's passport out of the car window, according to the indictment.

Cole allegedly told a Border Patrol agent that Ruiz, a resident alien, was "wet," the indictment further alleged.

If convicted, the two men could receive maximum penalties of 11 years imprisonment and \$21,000 in fines.

The grand jury began investigating the incident two months ago and the leader of the California Ku Klux Klan was called to testify.

Tom Metzger of Fallbrook said, however, that he invoked the Fifth Amendment before U.S. prosecutors asked him any questions about Cole Shipton.

Asst. U.S. Atty. Stephen A. Mayo said that neither defendant, both from the San Bernardino area, has been arrested. *L.A. Times 11/4/78*

Los Angeles Times 5
J Sat., Nov. 4, 1978-Part II

Camp Pendleton Ejects Klansman

CAMP PENDLETON — A member of the Ku Klux Klan was escorted off this Marine Corps base Friday after he tried to deliver flowers to the memorial service of a marine, also a Klan member, who was shot and killed Monday.

The 3 by 1 1/2-foot wide arrangement of white daisies included red carnations that spelled out the letters "KKK."

Naval intelligence officers, apparently tipped by a florist that the flowers were en route to the base chapel, met Klan member Clyde Teeple at the chapel and escorted him off the base, a Marine Corps spokesman said.

Lt. Col. Dan Brown said Teeple was removed from the base because of the fear of a possible disturbance.

Teeple, a Fallbrook resident, said he was detained and questioned for 45 minutes and that both he and his car were searched.

The service was being held for Lance Cpl. Hugh L. Finigan, who was shot by his roommate Monday in what has been ruled an accidental death.

Teeple and other Klan members, however, have charged that Finigan was about to disclose to authorities the operation of a narcotics ring on the base when he was killed.

aparecio un sueno el cual dice que
Border Patrol lo Agredió a Golpes

que andaba igualmente uniformado sólo que a bordo de una pannel pero con el escudo de la misma policía.
Dice que fue este segundo oficial policia el que al verlo herido y tirado por los golpes recibidos, lo vino a tirar a la salida de la aduana de carga mexicana, dejándolo abandonado a su suerte. Sólo que ahora no aparece y sus familiares dijeron que no saben nada de este hombre y que hace mucho es muy vago.

primero a puñetazos, y luego que lo vió tirado en el suelo, lo agredió a puntapiés en diferentes partes del cuerpo, causándole las múltiples lesiones que aquí le fueron certificadas por los médicos que le atendieron.
Dijo que había intentado cruzar la frontera hacia el vecino país del norte, cuando lo sorprendió una patrulla de esta mencionada corporación californiana y el patrullero, lo condujo ante un oficial

Policia Judicial, Jesús Medina dijo a EL MEXICANO que sus agentes Dámaso Marroquín, Félix y Leonardo Arellano Vega, fueron los encargados de investigar todo esto, porque el lesionado y denunciante, Víctor Cruz Gutiérrez Torres, dijo al Agente Investigador de Delitos del Fuero Común, que se querellaba formalmente contra uno de los oficiales de la Border Patrol, por haberlo lesionado

Agentes del MEXICANO que sus agentes Dámaso Marroquín, Félix y Leonardo Arellano Vega, fueron los encargados de investigar todo esto, porque el lesionado y denunciante, Víctor Cruz Gutiérrez Torres, dijo al Agente Investigador de Delitos del Fuero Común, que se querellaba formalmente contra uno de los oficiales de la Border Patrol, por haberlo lesionado

COMPILED BY THE COMMITTEE ON CHICANO RIGHTS, 1837 HIGHLAND AVE., NATIONAL CITY, 92050 # (714) 474-8195

KEY AREA SITE

S.D. Union 7-10-79

down Planned egal Alien Camp

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man said yes-

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.

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"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.

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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.

TIJUANA PAPER SAYS MAN. SUCCUMBS S.D. FROM BEATING AFTER ARREST AT BORDER

7-10-79

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 arched. 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

Border patrol agent guilty of assault

7-12-79

Star News

A 27-year-old former Border Patrol agent this week was found guilty of assault with a deadly weapon and now faces a possible six-year prison term.

Superior Court Judge Howard Bechevsky this week found Donald Roy Heidt, of 516 Flower St., guilty in the June 1978 shooting of Emiliano Z. Coleman, 24, of 317 Cottonwood Rd. who was shot once in the stomach following a fight at a Chula Vista restaurant.

Heidt faces a four-year term for the actual assault, as well as an additional two-year term because a gun was used.

An Aug. 31 sentencing date has been set.

According to police reports, the incident began as an argument between restaurant

goers as the establishment was closing.

Police said Coleman and Heidt had argued inside the bar. The argument apparently continued outside where Heidt was involved in a

minor auto collision with a friend of Coleman's.

Police said Coleman attempted to keep Heidt at the accident scene, and that's when the shooting occurred.

RECOMMENDATIONS

- A. MAY 24, 1980 CHICANO NATIONAL
IMMIGRATION RESOLUTIONS
- B. BILL OF RIGHTS FOR UNDOCUMENTED WORKERS
- C. COMMITTEE ON CHICANO RIGHTS OPPOSITION
TO THE SELECT COMMISSION RECOMMENDATIONS
- D. NATIONAL CENTER FOR IMMIGRANT RIGHTS
ANALYSIS ON THE SELECT COMMISSION
RECOMMENDATIONS



Committee on Chicano Rights, Inc

RESOLUTIONS PASSED AT THE NATIONAL CHICANO IMMIGRATION CONFERENCE

May 24, 1980

BORDER VIOLENCE WORKSHOP

1. THAT THIS CONFERENCE GO ON RECORD in calling for the abolishment of the INS/Border Patrol.
2. THAT THIS CONFERENCE GO ON RECORD in calling for the abolishment of the militarization policy between the U.S./Mexico as a solution to the immigration issue.
3. THAT THIS CONFERENCE GO ON RECORD in calling for the immediate termination of the policy of incarcerating children and their mothers in federal prisons.
4. THAT THIS CONFERENCE GO ON RECORD as appointing a representative group of this conference to present the most degrading violations of human rights (i.e. incarceration of children, rape of women, handcuffed individuals shot and killed, etc.) to international Human Rights Organizations (i.e. the United Nations, International Amnesty, Federation fo the Rights of Man, etc.) with the understanding that the long range solutions be in our people's self-determination.
5. THAT THIS CONFERENCE GO ON RECORD in calling for an end to the racist term of illegal alien.

ADMINISTRATION OF JUSTICE

1. THAT THIS CONFERENCE GO ON RECORD as supporting the creation of a broad-based coalition to end all residential sweeps.
2. THAT THIS CONFERENCE GO ON RECORD in support of the Legal Services Corporation and oppose all legislation that discriminates against immigrants and that the Conference oppose the O'Brien amendment.
3. THAT THIS CONFERENCE GO ON RECORD as opposing any collaboration with the INS/Border Patrol which will result in sweeps being conducted in work places and/or the community.

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

CHICANO/MEXICANO PERSPECTIVE

1. THAT THIS CONFERENCE GO ON RECORD as demanding unconditional residency for all people with all rights and privileges of indigeneous people as provided for in the Treaty of Guadalupe Hidalgo.
2. THAT THIS CONFERENCE GO ON RECORD as abolishing all quotas on immigration from countries where the USA has political, economic, and military domination.
3. THAT THIS CONFERENCE GO ON RECORD demanding that Mexican Government support progressive groups in Mexico and Chicano groups in their struggle for Human Rights and demand compliance with the Treaty of Guadalupe of Hidalgo.
4. THAT THIS CONFERENCE GO ON RECORD as supporting the fact "Que Somos un Pueblo Sin Fronteras," and that the struggle for immigrant rights is part and parcel of the struggle for the Chicano/Mexicano rights to self-determination.
5. THAT THIS CONFERENCE GO ON RECORD as supporting the Vogue Coach struggle and other similar progressive Union organizing efforts on behalf of undocumented workers.
6. THAT THIS CONFERENCE GO ON RECORD as calling for the denouncement of U.S. Ambassador, Julian Nava, for his support of the foreign guest worker program and his ignorance on the Immigration Issue.
7. THAT THIS CONFERENCE GO ON RECORD as developing an informational network and campaign to inform and educate our people of the Immigration Issue.

ECONOMICS, LABOR AND FOREIGN WORKER PROGRAM

1. THAT THIS CONFERENCE GO ON RECORD as supporting an Open-Border for immigrant workers and a Closed-Border for Multi-National Corporations.
2. THAT THIS CONFERENCE GO ON RECORD as supporting the demands presented at the International Immigration Conference in Mexico City held on April 28, 1980.
3. THAT THIS CONFERENCE GO ON RECORD as opposing all forms of contract labor such as the H-2 Program, Temporary Visa program or foreign guest-worker program.

RESOLUTIONS: continued

CULTURAL WORKSHOP

1. THAT THIS CONFERENCE GO ON RECORD as recognizing Art and Culture as a link to the Immigration Issue, not just as a form of entertainment.
2. THAT THIS CONFERENCE GO ON RECORD as acknowledging that culture be used as a weapon for Resistance.
3. THAT THIS CONFERENCE GO ON RECORD as opposing the commercialism of cultural workers by big business industries such as Coors and Oil Companies.

EDUCATION WORKSHOP

1. THAT THIS CONFERENCE GO ON RECORD to politicize the Chicano community of its civil and educational rights.
2. THAT THIS CONFERENCE GO ON RECORD as a force to pressure the educational system to be accountable in assuring academic, social and economic competence for all Chicano students.
3. THAT THIS CONFERENCE GO ON RECORD to develop an educational system based on democratic, humanistic and social consciousness principles that guarantee the Chicano community the right to social, economic, and political power, as defined by the Chicano community.
4. THAT THIS CONFERENCE GO ON RECORD demanding the right to free educational services and benefits that maintain and develop the primary language and culture of the Chicano/Mexicano community in all institutions of society.

CHURCH WORKSHOP

1. THAT THIS CONFERENCE GO ON RECORD AS endorsing the Ecumenical Network that met here to affirm its willingness to continue to meet with and give support to Grass Roots organizations concerned with Immigration efforts.
2. THAT THIS CONFERENCE GO ON RECORD as endorsing the Ecumenical Network Southwest's meeting in the spring of 1981 to critique the report of the President's Select Commission on Immigration.
3. THAT THIS CONFERENCE GO ON RECORD AS endorsing the Ecumenical Network's desire to communicate with Grass Roots organizations to aid them in getting their message to the people.
4. THAT THIS CONFERENCE GO ON RECORD as endorsing an agreement by the Ecumenical Network that the economic, political and social causes of immigration should be emphasized in education on immigration.

HEALTH AND SOCIAL SERVICES WORKSHOP

1. THAT THIS CONFERENCE GO ON RECORD in supporting that all health care and social services facilities must provide their services regardless of citizenship.
2. THAT THIS CONFERENCE GO ON RECORD in supporting health care and social service benefits should be rendered to the undocumented without immigration las consequences past or present.
3. THAT THIS CONFERENCE GO ON RECORD in supporting hehceforth, that the medi-cal standard form MC-6 or its equivalent be eliminated. (the MC-6 form is used in our health service system to identify and eliminate health care benefits to the undocumented)
4. THAT THIS CONFERENCE GO ON RECORD in supporting that the collection of information regarding status and its forwarding to INS or dissemination in violation of the person's right to privacy and due process of law be stopped immediately.
5. THAT THIS CONFERENCE GO ON RECORD in supporting an immediate creation of an emergency lane at all ports of entry to allow emergency medical treatment.
6. THAT THIS CONFERENCE GO ON RECORD in supporting that all providers of health care and social services have bilingual and bicultural professional staff.

.....

AND FINALLY THAT THIS CONFERENCE GO ON RECORD as ENDORSING THAT A NATIONAL CAMPAIGN BE UNDERTAKEN TO EDUCATE THE GENERAL POPULATION AND ELECTED OFFICIAIAL REGARDING THE FULL CHARACTER OF HUMAN RIGHTS, HEALTH NEEDS AND TAX CONTRIBUTIONS OF UNDOCUMENTED PERSONS.

IN ADDITION THAT THIS CONFERENCE GO ON RECORD AS ENDORSING, ENCOURAGING, AND SUPPORTING ALL COMMUNITY GROUPS THROUGHOUT THE COUNTRY TO IMPLEMENT THE STATED GOALS OF THIS CHICANO NATIONAL IMMIGRATION CONFERENCE.



Committee on Chicano Rights, Inc

RESOLUCIONES ADOPTADAS EN LA CONFERENCIA CHICANA NACIONAL DE INMIGRACION

24 DE MAYO DE 1980

VIOLENCIA EN LA FRONTERA

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Pedir la abolicion de la Patrulla Fronteriza/INS
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Pedir la abolicion de la militarizacion y sistemas policiacos en la frontera, entre Estados Unidos y Mexico.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Pedir la abolicion del encarcelamiento de niños y sus madres en las prisiones Federales, por la Patrulla Fronteriza y el INS.
4. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Que representantes de esta Conferencia sean designados para exponer las violencias a los Derechos Humanos y civiles cometidos por el INS y la Patrulla Fronteriza, ante organismo como la Organizacion de las Naciones Unidas y Amnistia Internacional, en el entendimiento que la solución a largo plazo esta en la autodeterminacion del movimiento chicano.
5. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Acabar con el termino racista de "Illegal Allien"

ADMINISTRACION DE JUSTICIA

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos la creacion de una organizacion ampliamente representada para dar fin a las redes residenciales.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos a La Corporacion de Servicios Legales y nos oponemos a toda aquella legislacion que descrimine contra los inmigrantes y esta conferencia se opone a la Enmienda O'Brien.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Nos oponemos a toda colaboracion con el INS/Patrulla Fronteriza que resulte en redes conducidas en lugares de trabajo y en la comunidad.

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

PERSPPECTIVA CHICANA/MEXICANA

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Demandar residencia incondicional y derechos y privilegios de ciudadanos para toda persona, de acuerdo con el Tratado de Guadalupe Hidalgo.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Anular todas las cuotas de inmigracion de paises en los cuales los Estados Unidos domina economica, politica y militarmente.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Analizar y criticar la politica inmigratoria de ambos gobiernos y que se exsija de estos gobiernos una actitud mas severa en favor de estos trabajadores o de lo contrario se rompera todo trato con el.
4. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyan el hecho "Que Somos un Pueblo Sin Fronteras", y que la lucha por los derechos de los inmigrantes es parte inseparrable de la lucha por los derechos de los Chicanos/Mexicanos a la auto determinacion.
5. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos los esfuerzos de los trabajadores de la compania "Vogue Coach" y otras uniones similares que van hacia adelante, organizando esfuerzos en defensa de los trabajadores indocumentados.
6. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Denunciamos al Embajador de los Estados Unidos, Julian Nava, por su apoyo al programa de trabajadores huespedes, y por su ignorancia a los problemas de inmigracion.
7. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Desarrollar una cadena de informacion y una campana para informar a educar a nuestra gente sobre el problema de inmigracion.

LA ECONOMIA, EL TRABAJO, Y EL PROGRAMA DE TRABAJADORES HUESPEDES.

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos una frontera abierta para trabajadores inmigrados y una frontera cerrada para corporaciones multi-nacionales.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Estamos a favor de las alegaciones de derecho presentadas en la Conferencia Internacional de Inmigracion que se llevo acabo en la ciudad de Mexico el 28 de Abril de 1980.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Se opone a toda forma de "trabajadores contratados" como el programa H2, programas de visas temporales o programas de trabajadores huespedes.

TALLER CULTURAL

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - El arte y la cultura deben ser como una cadena que se una al problema de inmigracion y lo ayude y que no solo sea una forma mas de entretenimiento.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - acordamos que nuestra cultura debe usarse como un arma para resistir.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Nos oponemos al comercialismo de trabajadores culturales por las grandes industrias como Coors y las Companias Petroleras.

TALLER DE EDUCACION

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Dar caracter politico a la comunidad Chicana sobre sus derechos civiles y educativos.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Como una fuerza para precionar al systema educacional para que sea responsable en asegurar la competencia academica, social y economica para todos los estudiantes Chicanos.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Desarrollar un systema educativo basado en un systema democratico, humanitario y principios de consciencia social que garanticen a la comunidad Chicana el derecho al poder social, economico y politico, como señala la comunidad Chicana.
4. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Reclamamos el derecho de servicios educacionales y de beneficios que mantengan y desarrollen el idioma principal y la cultura de la comunidad Chicana/Mexicana en todas las instituciones de nuestra sociedad.
5. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Condenamos al Estado de Texas por su reciente ley que niega la educacion en las escuelas publicas a niños de personas indocumentadas.

TALLER DE LA IGLESIA

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos la cadena Ecumenica que se reunio aqui para afirmar su deceso de continuar a reunir y dar sosten a las organizaciones comprometidas en los esfuerzos de inmigracion.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyan la junta de la Cadena Ecumenica del Suroeste que llevara acabo en la primavera de 1981, para examinar el reporte Presidencial de la Comission Selecta de Inmigracion.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos el deceso de la Cadena Ecumenica de comunicarse con organizaciones para ayudarles a llevar su mensaje a la gente.

CONTINUACION

4. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos un acuerdo con la Cadena Ecumenica que las causas economicas, politicas y sociales de inmigracion deben ser acentuadas en la educacion sobre inmigracion.

TALLER DE SALUD Y SERVICIOS SOCIALES

1. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Todas las instituciones de Salud y Servicios Sociales deben proporcionar sus servicios a quienes los requieran, sin importar su ciudadania.
2. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Apoyamos dar a los indocumentados los beneficios de salud y servicios sociales sin consecuencia s bajo la ley de inmigracion, pasadas o presentes.
3. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Desde ahora, que la forma MC-6 o sus equivalentes sean eliminados. (La forma MC-6 es usada en el sistema de servicios de salud para reportar la condición de inmigrante de una persona al Servicio de Inmigracion y Naturalizacion)
4. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Alto a la recopilación de informacion sobre la situación de inmigrante del paciente, usando para otros fines por el INS, o difusion de estos datos, en violacion del derecho de privacidad de las personas, y puesto bajo proceso legal en caso necesario.
5. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Creación inmediata de una línea de emergencia en todos los puertos de entrada para permitir tratamiento médico de emergencia, a fin de atender a los pacientes sin tener que esperar a que el INS determine si puede ser admitido en Estados Unidos o no.
6. QUE ESTA CONFERENCIA SEA ACENTUADA EN EL REGISTRO - Todos los proveedores de servicios sociales y de salud deben tener personal profesional, bilingue y bicultural, en proporción a las necesidades de la comunidad.

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Y FINALMENTE QUE ESTA CONFERENCIA SEA CENTUADA EN EL REGISTRO APOYAMOS QUE SE EMPRENDA UNA CAMPAÑA NACIONAL PARA EDUCAR AL PUBLICO EN GENERAL Y A LOS POLITICOS SOBRE LAS CRACTERISTICAS DE DERECHOS HUMANOS, LAS NECESIDADES DE SALUBRIDAD Y LAS CONTRIBUCIONES DE IMPUESTOS DE LAS PERSONAS INDOCUMENTADAS.

ADEMAS QUE ESTA CONFERENCIA SEA ACNTUADA EN EL REGISTRO QUE APOYA Y FOMENTA A LOS GRUPOS DE LA COMUNIDAD Y GRUPOS POR TODO EL PAIS A IMPLEMENTAR LOS OBJETIVOS ESTABLECIDOS POR LA CONFERENCIA CHICANA NACIONAL DE INMIGRACION!!

Carta de Derechos Para Los Trabajadores Indocumentados

Artículo I: Derecho a la residencia legal, demostrando simplemente su calidad de trabajador y contribuyente, para lo que se les otorgará su visa de residente permanente.

Artículo II: Derecho a un procedimiento justo y legal que garantice la inviolabilidad de su domicilio, la privacidad de su persona y otros derechos civiles para el trabajador y su familia, suspendiéndose totalmente las redadas fabriles, domiciliarias y en lugares públicos, así como todo tipo de deportaciones y prácticas anti-constitucionales.

Artículo III: Derecho a la reunificación de las familias para todo trabajador con o sin documentos que así lo desee. Se podrá trasladar al conyuge, hijos y padres sin más trámites que demostrar su calidad de trabajador y contribuyente en la sociedad norteamericana.

Artículo IV: Derecho automático a legalizar su residencia sin tener que regresar a su lugar de origen, como lo exige actualmente la ley de Inmigración de Estados Unidos.

Artículo V: Derecho de gozar plenamente de derechos sindicales, sociales y económicos que disfrutan el resto de los trabajadores ciudadanos.

Artículo VI: Derecho a la vivienda en condiciones de higiene y seguridad adecuadas para todo trabajador cíclico o por obra determinada.

Artículo VII: Derecho a los servicios de salud y atención médica gratuita y adecuada, guarderías y demás beneficios en las mismas condiciones que los recibe cualquier ciudadano norteamericano.

Artículo VIII: Derecho a recibir educación pública adecuada en el idioma materno, utilizando el inglés como segunda lengua y acceso sin restricciones a la cultura de su país de origen.

Artículo IX: Derecho a disfrutar de los seguros de incapacidad (parcial o permanente), por accidente de trabajo, enfermedades profesionales, vejez o muerte. En caso de fallecimiento, los gastos de traslado a su lugar de origen correrán a cargo del patrón, y los beneficios de los seguros correspondientes serán entregados a los familiares no importando su lugar de residencia.

Artículo X: Derecho a la organización sindical, ya sea ingresando a sindicatos ya existentes o formando nuevos, para la defensa de sus derechos laborales y el mejoramiento de sus salarios y sus condiciones de vida y de trabajo.

(A) Derecho de Negociaciones Colectivas para los trabajadores agrícolas y trabajadores públicos para garantizar su derecho a la organización sindical.

Artículo XI: Derecho al uso de la lengua materna en los tribunales cualquiera que sea el carácter de estos, para adquirir la ciudadanía, en procesos judiciales y en todo arreglo contractual público o privado.

Artículo XII: Derecho a que se le otorguen plenas facilidades para el ejercicio del voto en elecciones federales de su país de origen. Este derecho se ejercerá a través de consulados y todo lugar (sindicatos, escuelas, demás) designados por autoridades competentes.

Artículo XIII: Derecho desde el momento de legalizar su residencia y sin necesidad de adquirir la ciudadanía norteamericana de ejercer el voto en las elecciones locales y estatales en Estados Unidos. Este derecho nace de su condición de contribuyente, de trabajador y de residente.

Comisión Internacional Coordinadora
1ra Conferencia Internacional Por Los Derechos Plenos de los Trabajadores Indocumentados



P.O. Box 819
El Mirage, Arizona 85335
(602) 977-1219

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Los Angeles, California 90005
(213) 383-7057

1642 s. Blue Island
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(312) 226-0173

P.O. Box 876
San Juan, Texas 78589
(512) 787-5984

Bill of Rights for the Undocumented Worker

Article I: Every immigrant worker shall have the right to establish legal residency by demonstrating a status as wage earner and taxpayer.

Article II: Every immigrant worker shall have all of the Constitutional Rights guaranteed all persons in the U.S. This right shall include but not be limited to: the right to due process, and the right to be free in their persons and possessions from unreasonable searches and seizures; and such rights shall not be violated by raids in factories, residential areas and in public places and shall be free from deportations and other unconstitutional practices.

Article III: Every immigrant worker shall have the right to be reunited with his or her family in country where he or she is a wage earner.

Article IV: Every immigrant worker shall have the right to legalize and adjust their status within the U.S. without having to return to their country of origin.

Article V: Every immigrant worker shall fully enjoy all the rights guaranteed to citizen workers including socio-economic and labor rights.

Article VI: Every immigrant worker, particularly seasonal workers, shall be provided adequate housing, health and safety provisions.

Article VII: Every immigrant worker shall be guaranteed the same rights enjoyed by U.S. citizens especially the right of access to free and adequate social and health services, child-care, and other similar social benefits.

Article VIII: Every immigrant person shall have the right to quality public education in his or her native language, utilizing English as a second language and shall not be restricted from fully practicing the culture of his or her country of origin.

Article IX: Every immigrant worker shall have the right to receive disability insurance (partial or permanent), workers compensation, retirement and death benefits. In the event of a death, the cost of transporting the deceased to his or her country of origin shall be borne by the employer, and any corresponding benefits shall be delivered to the family of the deceased without regard to their place of residency.

Article X: Every immigrant worker shall have a right to organize and to collective bargaining, including the right to join existing unions or form new ones, for the defense of their labor rights and for the improvement of their wages and living and working conditions.

A) The right to collective bargaining shall include agricultural and public service workers in order to protect their right to organize.

Article XI: Every immigrant worker shall have the right to utilize his native language in all legal proceedings, (i.e., to acquire citizenship, in judicial proceedings, etc.) and in all private or public contract agreements.

Article XII: Every immigrant worker shall have the right to exercise their right to vote in their native country's federal elections. This right should be facilitated through consulates and all other places (unions, halls, schools, etc.) designated by competent authorities.

Article XIII: Every immigrant worker shall have the right to vote in local and state elections from the moment of legalizing their immigration status without having to become citizens. The right is based on their status as taxpayers, workers and residents.



International Coordinating Committee
1st International Conference for the Full Rights of Undocumented Workers

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Committee on Chicano Rights, Inc

December 3, 1980

Reverend Ted Hesburgh
Select Commission On Immigration
and Refugee Policy
New Executive Office Building, Room 2020
726 Jackson Place, N.W.
Washington D.C. 20506

Dear Reverend Hesburgh,

The Committee On Chicano Rights condemns the attempts by the Select Commission On Immigration and Refugee Policy to hold a "secret meeting" for the purpose of voting on staff recommendations which will inevitably affect the "human rights" of millions of immigrants and the basic constitutional rights of every citizen in the United States.

The proposed recommendations which the Commission will be voting on are riddled with major contradictions. The report is faulty, racist and represents a total waste of taxpayers monies. In fact, the report is nothing more than a re-hash of the bankrupt 1977 "Carter Immigration Plan", which was unanimously rejected by the American public and the U.S. Congress.

We question the credibility of a report which is suppose to be objective and emperical, when in fact the report was drafted by a staff of individuals with no immigration experience, manipulated by the self-serving Immigration and Naturalization Service and State Department bureacrats. In addition, further doubt has been cast on the Commissions work by totally ignoring the massive public input and expert research of individuals, organizations and concerned citizens on major Immigration policy questions.

For example, the Commission's staff recommendation calling for a "slightly expanded and streamline" H-2 program, in our opinion, is nothing more than "Twentieth Century Slavery". This recommendation which could result in the massive numbers of Foreign Workers is a gross contradiction, when at the present time there are at least four million U.S. workers unemployed. The H-2 program which is now in affect represents the last remnants of the old Bracero Program and an expanded program can only mean further exploitation of this captive work force.

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Secondly, the proposed employee eligibility/employer responsibility recommendation will cost 2 1/2 billion dollars and requires every U.S. Citizen to carry a National Identification Card will be a giant step backwards in civil rights legislation for the 20 million Chicano/Latinos in the United States. In essence, this proposal represents a gun pointed at the head of the Chicano/Latino Community. This is a dangerous and simplistic recommendation that is reminiscent of totalitarian states like Nazi Germany and South Africa. Identification Cards are effective only in theory, as we have seen proven in other European countries. It is highly unlikely that Congress would ever approve of sending business executives to jail. In practice, it will be the Chicano/Latino Community who employers and law-enforcement agencies will be asking to present I.D. cards.

Aside from ignoring the civil liberties question and being expensive (180 to 230 million dollars annually) the recommendations will prove to be unworkable and difficult to enforce. In practice, it will hurt the very people it intends to help. It will increase unemployment, since no provisions were presented for an appeal system for redress. Businessmen who hire undocumented workers will not cooperate due to the large profit involved and the giant legal loop holes which have been provided by the proposed recommendations. The additional recommendation calling for curbing "illegal migration" will prove to be another bankrupt effort in resolving the immigration issue.

Immigration, as it has been pointed out by experts and community organizations is not a law enforcement problem, but rather is a social, economic and political issue. The proposed plan to increase the militarization of the U.S./Mexican Border is the wrong approach in resolving this issue between two friendly nations.

We condemn the violation of the principle of reunifying families as recommended by the Commission's staff to eliminate the Fifth Preference Category by creating a new Independent Immigrant Category which will benefit the affluent, with a quota of 250,000.

Since the causes that make up the immigration issue, such as the economic domination by Multi-National Corporations in foreign countries, the bankrupt revolving door immigration policy, the secondary labor market in the U.S. and the issue of guaranteeing and protecting the human and civil rights of the undocumented have not been addressed by the Commission, that this Report is totally unacceptable and will be opposed by our organization and the Chicano/Latino Community.

Sincerely,

Herman Baca

Herman Baca, Chairman

cc: President elect Ronald Regan
President Jose Lopez Portillo
Honorable Judge Cruz Reynoso
News Media



Committee on Chicano Rights, Inc

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Lefy.

FOR IMMEDIATE PRESS RELEASE

DEC. 4, 1980

San Diego Ca.

THE COMMITTEE ON CHICANO RIGHTS AT A PRESS CONFERENCE TODAY CONDEMNED THE SELECT COMMISSION AND IMMIGRATION AND REFUGEE POLICY MEETING IN VIRGINIA AS IMPROPER AND ILLEGAL. ACCORDING TO CCR CHAIRMAN HERMAN BACA " THE UPCOMING MEETING IS NOTHING BUT A FRAUD AND A CHARADE THAT IS BEING PERPETRATED ON THE AMERICAN PUBLIC BY "LAME DUCK" CARTER APPOINTEE'S." THE MEETING WHERE THE COMMISSION IS EXPECTED TO VOTE ON STAFF RECOMMENDATIONS WILL HAVE LONG RANGE FOREIGN POLICY RAMIFICATION AND WILL INEVITABLY AFFECT THE HUMAN RIGHTS OF MILLIONS OF UNDOCUMENTED IMMIGRANTS AND THE CONSTITUTIONAL RIGHTS OF EVERY UNITED STATES CITIZEN. "THE EIGHTEEN MONTH FOUR HUNDRED PAGE REPORT BESIDES BEING RIDDLED WITH MAJOR CONTRADICTIONS STANDS AS A SYMBOL OF THE COMMISSION'S LACK OF SERIOUSNESS IN ADDRESSING THE IMMIGRATION ISSUE. FURTHERMORE, "THE FACT THAT THE COMMISSION NEVER HELD HEARINGS IN THE BORDER CITIES, HAD LITTLE COMMUNICATIONS WITH MEXICO, NEVER ADDRESSED THE CAUSES OF IMMIGRATION AND DISREGARDED THE MASSIVE PUBLIC TESTIMONY WHICH WAS IN OPPOSITION TO ITS PROPOSED RECOMMENDATION PROVES THAT THE IMMIGRATION ISSUE WILL NOT BE SOLVED."

IN CONCLUDING, BACA STATED THAT IT IS LUDICROUS FOR THE COMMISSION TO EXPECT THAT IN ONE DAY IT WILL BE ABLE TO READ, STUDY, ANALYZE AND MAKE DECISIONS WHICH WILL AFFECT FOREIGN POLICY, THE CIVIL LIBERTIES OF THE AMERICAN PEOPLE AND THE EXPENDITURES OF BILLIONS OF DOLLARS.

FOR FURTHER INFORMATION CALL HERMAN BACA, 714-474-8195

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

The New York Times

NEW YORK, FRIDAY, DECEMBER 5, 1980

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Legalized Status For Most Aliens In U.S. Proposed

Federal Panel's Staff Also Backs Wide Job Permits

By JOHN M. CREWDSON
Special to The New York Times

SAN DIEGO, Dec. 4 — The staff of a Federal select commission on immigration policy has recommended that virtually all illegal aliens now in the United States eventually be made eligible for citizenship. At the same time, the staff recommended issuing work permits to all Americans and laws forbidding the employment of anyone lacking one.

In a 400-page report, the commission's staff said that issuing permits and other stiff measures that it recommended could all but eliminate illegal immigration in 10 years. The consideration of such permits has evoked concern among civil libertarians, who say they fear that the documents might, in time, become a national identity card.

The 16-member panel, known officially as the Select Commission on Immigration and Refugee Policy, will meet Saturday in Warrenton, Va., to vote on the recommendations. Nina Solarz, a commission spokesman, said that while all the recommendations might not be approved "in every detail," she believed that the commissioners agreed with most of them.

She expressed surprise that the staff report, which she said was being kept "under lock and key" until Saturday's meeting, had been made public prematurely. The report, the result of 18 months of study and public hearings, was made available here by the San Diego-based Committee on Chicano Rights, which

would not say how it had been obtained.

'Guest Worker' Plan Opposed

In its report, the commission's staff also recommended against an expanded "guest worker" program that would allow foreign nationals to fill agricultural or other vacant jobs on a temporary basis, an idea that has gained currency among businessmen and conservative legislators in recent years. Labor unions have generally opposed the concept, but President-elect Ronald Reagan said in his election campaign that he generally favored this approach to allow Mexican laborers to work in the United States.

The need for such a temporary work force, the report said, could not be estimated until after some of its other recommendations, such as legalization of the aliens' status and the restrictions on employers, had been in effect for some time.

Nearly all of the major recommendations would require new legislation, and it is unclear how Republican control of the Senate in the next Congress will affect the reception the report gets there. In addition, the Reagan Administration will have an opportunity to amend the commission's findings in January before they are delivered to the House and Senate.

The report contains some 50 recommendations, touching on nearly every

aspect of immigration and refugee policy. These are among the major ones:

¶A strengthening of efforts to enforce existing immigration laws, including additional funds for the United States Border Patrol, more immigration inspectors at ports of entry, more airplanes and helicopters for patrolling the border and replacement of the aging sensors that are designed to detect illegal entrants.

¶An upgrading of the operations of the Immigration and Naturalization Service, which the report said had acquired an image as "an inbred, mismanaged and, at times, corrupt agency," by improving the training of its employees, establishing a code of ethics and vigorously investigating allegations of "malfeasance" and corruption.

¶The appointment, with the consent of the Senate, of the commissioner of immigration for a term of seven years, something the report said might help reduce the "managerial weakness" of the immigration service.

¶The establishment of a Federal interagency body to handle "mass asylum emergencies," such as the arrival last spring of tens of thousands of Cuban and Haitian refugees in Florida.

The commission has estimated that there are 3.5 million to 6 million illegal aliens in the United States, most of them

employed taxpayers who receive "minimal welfare benefits" and who in some instances enable low-paying businesses, such as garment manufacturers, to successfully compete with foreign firms.

Roundup Called Destructive

To continue such individuals in their current illegal status, the report said, would simply perpetuate as a "fugitive underclass" those who, in many cases, were making a positive contribution to the American economy.

The only alternative to giving them legal status, the report said, was to attempt to round up all illegal aliens and expel them in a mass deportation that would be "destructive" to the civil liberties of Americans and, in the end, probably unsuccessful as well.

The report acknowledged that legalization might encourage further unlawful immigration and might convince some aliens who would otherwise have returned home to remain here. It nonetheless proposed the granting of permanent resident status to aliens who had resided in the United States for two or three years before the enabling legislation was passed.

Those aliens not eligible under this criteria would be given "conditional entrant

status" leading to permanent residence after five years, provided that they had been employed in the United States for four of the five years. After another five years, a permanent resident alien could petition to become a naturalized citizen.

Similar to Amnesty Program

The proposal is similar to the so-called amnesty program sent to Congress by the Carter Administration more than three years ago that failed to win approval.

In rejecting the concept of a guest worker program similar to the exchange of workers among Common Market countries, the report noted the concern of the State Department that, "based on past history," such a program "has much potential for complicating or even damaging our relationships with Mexico."

Cards Issued by Government

About 30,000 foreign agricultural workers are now admitted to the United States each year, most of them residents of the British West Indies.

Under what the staff report termed an "employer responsibility program," prospective employees would be required to demonstrate their eligibility to work in this country before being hired, with the responsibility for ascertaining that eligibility falling to the employer.

Citizens and resident aliens found eligible for employment, it said, would be issued cards by a Government agency. The cards would include name, date of birth, sex, a photograph and "an identifying number unique to that individual."

Job applicants would be required to show the cards to employers, who would report their names and numbers to Washington. Employers who failed to make such reports would be liable for administrative citations, fines of up to \$1,000 for each ineligible worker employed and, after repeated violations, criminal prosecutions and jail sentences. Aliens found working without permission would be "promptly deported." There is now no Federal statute that prohibits the employment of illegal aliens.

Many Americans, the report said, might resent carrying such a card "as both an intrusion on their freedom and as an irritant," and it acknowledged that the document could eventually turn into a national identity card "despite initial legislative prohibition."

But the staff estimated that the system, which might cost as much as \$230 million a year to administer, could reduce illegal immigration in this country by 30 percent in the first year of operation and by 95 percent in the 10th or 11th year.

Immigration study riddled with contradictions: Baca

By HUGH GRAMBAU
TRIBUNE Staff Writer

The Committee on Chicano Rights says it had acquired a copy of a federal study of immigration and refugee policies and adds the draft report indicates the 1½-year study will recommend to Congress:

- National worker identification cards.
- Beefed-up border security patrols.
- A slightly modified temporary foreign worker program.

CCR chairman Herman Baca said the 400-page document, prepared over 18 months at a cost of \$2 million, was "riddled with major contradictions" and was a rehash of a plan rejected by Congress in 1977.

"We question the credibility of the report ... drafted by a staff of individuals with no immigration experience, manipulated by the self-serving Immigration and Naturalization Service and State Department bureaucrats," Baca said.

The 16-member Select Commission on Immigration and Refugee Policy was appointed by President Carter nearly two years ago to recommend legislation to the White House and Congress.

The group's final recommendations are due this month, with a report to be made to President-elect Ronald Reagan and Congress next month.

The report obtained by Baca and made available to reporters yesterday contains alternative proposals



HERMAN BACA

and staff recommendations that will be voted on secretly tomorrow, Baca said.

Baca, who refused to say how his committee got the copy, said the proposal for a slightly expanded and streamlined temporary worker program was "nothing more than 20th century slavery."

He predicted that a national identity card for workers would be a serious setback to the civil liberties of the 20 million Chicanos and Latinos in the United States.

"This is a dangerous and simplistic recommendation, reminiscent of totalitarian states like Nazi Germany and South Africa," he said. "In practice, it will be the Chicano-Latino community whom employers and law enforcement agencies will be asking for ID cards."

Baca charged that proposed penalties for employers who hire undocumented immigrants are unlikely to

be approved by Congress or enforced.

He said the plan would cost \$2.5 billion over 15 years and would cost between \$180 million and \$240 million to maintain, according to the staff figures.

Baca said the commission staff recommended elimination of the current immigration law which allows U.S. citizens to bring brothers and sisters to this country.

"We condemn the violation of the principle of reunifying families," Baca said.

He said another recommendation creates an "independent immigrant" category, which, he said, would benefit affluent, white-collar immigrants.

The CCR's excerpts indicated the report calls for a highly visible deterrent along the border with funds provided for sensor systems, additional light planes, helicopters and other equipment.

"Only after illegal migrants are excluded from the labor market through an employment eligibility program (ID cards) will border interdiction and deterrence have a lower priority," the report said, adding:

"The expanded use of aircraft sensor systems and night viewing devices will raise the effectiveness of the border patrol agents in providing this deterrent."

The staff also recom-

mended more border inspectors, a mobile inspection force and replacement of all border-crossing cards with a counterfeit-resistant card.

"The proposed plan to increase the militarization of the U.S.-Mexican border is the wrong approach in resolving the issue between two friendly nations," Baca said.

The staff recommendation for a streamlined H-2 program would allow workers to enter the country for a specified time when the Labor Department identified a particular area of labor shortage in the United States.

The program is currently used primarily in Florida for seasonal entry of sugar cane cutters from Jamaica. Such workers are not allowed to bring relatives and must return to their country after a specified time.

The Fresno Bee

FRESNO, CALIFORNIA, Friday Morning, December 5, 1980

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Guest-worker plan rapped as 'slavery'

RICARDO PIMENTEL
staff writer

Expanding the national guest-worker program is tantamount to reinstating slavery, Chicano activist says, and other recent proposals on immigrants and refugees are contradictory and weighted in favor of big farming interests.

Herman Baca is founder-chairman of the Committee on Chicano Rights, a San Diego-based organization that has waged a decades-

old struggle against perceived Immigration and Naturalization Service abuse of illegal aliens and U.S.-born Latinos. The proposals he is speaking out against are contained in a staff report that the U.S. Commission on Immigration and Refugee Policy is scheduled to review this weekend.

If the bipartisan, 16-member panel accepts the recommendations, it will include them in a report to Congress early next year.

As it stands, the report recommends that

Congress increase by 40 percent the number of illegal aliens allowed into the United States and the expansion of the existing guest-worker program. It also recommends that all persons eligible to work in the United States, including American citizens, be made to carry national identification cards.

A copy of the inch-thick report was obtained by the Dallas Times Herald last

See Aliens, back page

Aliens

Continued from Page A1

week. Baca also has a copy, and he's not too happy with what he's read.

The report was written with the knowledge that by the year 2000, the United States will need from 5 million to 20 million foreign workers to maintain economic growth, Baca said in a telephone interview. Thus its conclusions are geared toward ensuring cheap and subservient labor, mostly from Mexico.

The recommendations on the guest-worker program and the national identification card are particularly dangerous, in Baca's opinion.

An expanded foreign-workers program will depress wages, he said, and the workers under the program will have few rights.

"These workers will have few freedoms. They may not change employers. If he complains about working conditions, he may be sent home. In other words, deported, blacklisted and never allowed to work in the United States again," Baca said. "All the discretion is in the hands of employers."

Nor will foreign workers be allowed to negotiate their salaries, he added.

Baca explained that about 30,000 foreign workers are legally allowed to enter the United States to work in jobs that the Department of Labor has determined Americans will not or cannot do. The report recommends "streamlining" the program, making it easier for employers to certify the jobs for foreign workers.

The foreign worker will have to sign a one- to 11-month contract, renewable for up to three years. Baca said that at the end of the period — no ands, ifs or buts — the worker must return home. However, the Dallas Times Herald reported that a small number of the workers may become eligible for naturalization after their work period. The guidelines on who is eligible for naturalization are not precise.

Baca said the worker will leave the country, but not before he has paid enormous amounts in Social Security taxes and, perhaps, unemployment compensation fees, from which he will never reap benefits.

"The danger here is that it is the remnants of the old bracero program," Baca said. "It (the bracero program) is the most humane program ever conceived — on paper. In reality, according to its ex-director, it was a slave program."

An expanded program opens the door for mass importation of foreign labor. This is an unconscionable act, Baca said, in light of the 4 million jobless U.S. workers today.

"In our opinion, it is nothing more than 20th century slavery," he said, although he acknowledged that there are provisions in the report for equal treatment of foreign workers.

But he belittled these, saying that in theory it sounds fine, but in practice, the foreign worker will end up with the short end of the stick.

"You know this is ludicrous. They can't even enforce minimum-wage laws, can't even enforce OSHA (Occupational Safety and Health Administration) regulations ... yet they say this is going to be enforced," Baca said.

"It's ridiculous. The whole system has built in exploitation factors. It's rampant."

The report is unabashedly forward with its desire that foreign workers simply do their time and leave and that the expanded program will be a boon to agricultural employers.

It reads, "Enforcement is enhanced when workers are contracted to specific employers. Under the current H-2 program, workers have an excellent rate of return to their mother country" or "will help employers meet emergency agricultural needs."

But, Baca maintains, a contractual program by any other name still comes up bracero.

"We have a saying around here. All of the contract programs for the importation of foreign worker are like Snickers bars. No matter how you cut it (Snickers), it comes up peanuts. No matter how you cut it (guest-worker programs), it comes up bracero, bracero," he said.

There are several drawbacks to the national identification card proposal, Baca said, foremost of which is that it will infringe on the rights of Latino-Americans. They will be the only ones asked to show them.

Although Mexican undocumented workers comprise less than 50 percent of all the undocumented workers in the United States, 95 percent of all apprehensions are Mexicans, he said.

And the report's given reason for the card — to protect American labor — is ridiculous, he added.

"This is the contradiction. They are saying this is necessary to protect the jobs of American citizens, even though their (guest-worker) program is going to import anywhere upward of 30,000 workers."

He described the card program as a "pointed at the head of the Latino-Chicano community."

"It is reminiscent of totalitarian nations like Nazi Germany and South Africa."

The card allegedly will make it easier to penalize employers who hire illegal aliens. However, according to the Chicano activists in the 11 states where laws exist that provide for prosecution of employers who knowingly hire undocumented workers, only one employer has been brought to court since 1977, and then was assessed only a \$250 fine.

But Baca is not merely criticizing. He has a partial solution to the immigration problem. Totally against contracted foreign labor, he wants to legalize all illegal aliens in the United States holding jobs.

His reasoning?

"If a person is good enough to work, pay taxes and make contributions to society, he's good enough to have rights."

Por Rogelio LAVENANT SIFUENTES

NATIONAL CITY.- "El Comité de Derechos Chicanos condena los intentos de la Selecta Comisión sobre Inmigración y Política de Refugiados, por tener una "reunión secreta" para votar sobre recomendaciones que inevita-

blemente afectará los derechos humanos de millones de inmigrantes y los derechos constitucionales básicos de todos los ciudadanos de los Estados Unidos".

Tal es lo expresado por Herman Baca, líder del mencionado organismo, que ayer ofreció una conferen-

cia de prensa para manifestar la oposición a los planes de la Selecta Comisión por ampliar "ligeramente" el Programa H-2, "que representa el último remanente del Programa de Bracero y sería aumentar la explotación de la mano de trabajo cautiva".

Dió a conocer el

El Comité de Derechos Chicanos Condena Intentos de la Comisión Sobre Inmigración y Política de Refugiados

Presidente del Comité de Derechos Chicanos, que obtuvo una copia del reporte de 400 páginas, del estudio federal sobre las políticas de inmigración y refugiados políticos, mismo que contiene las recomendaciones que -según dijo- la citada comisión, nombrada por el Presidente Carter hace dos años, "analizará" y votará secretamente el sábado próximo.

Entre las recomendaciones que contiene este documento, Herman Baca mencionó tres, principalmente: tarjetas de identificación de trabajadores en todo el país, aumentar la vigilancia en la frontera Estados Unidos-México, y un programa de braceros ligeramente modificado.

"Todas estas medidas son racistas -apuntó Baca-, y solo muestran una tendencia a profundizar las

medidas para su retorno a la esclavitud en pleno siglo Veinte, pero no tienden a resolver el problema de inmigración".

Conforme lo comentado por Herman Baca, "la próxima reunión de la Selecta Comisión es nada más que un fraude y una charada que está siendo perpetrada sobre el público norteamericano por "agazapados" nombrados por Carter".

El reporte del estudio de 18 meses, en 400 páginas, además de estar repleto de contradicciones, se coloca como un símbolo de la falta de seriedad de la Comisión en atender este asunto", citó el dirigente chicano.

"Aun más -agregó-, el hecho de que la Comisión nunca tuvo audiencias en las ciudades fronterizas, de que tuvo muy poca comunicación con México, que nunca se

enfocó a las causas de la inmigración y despreció el testimonio público masivo, el cual estuvo en oposición a sus propuestas recomendaciones, prueba que el problema de inmigración no será resuelto".

Por otra parte, Herman Baca, cuyos seguidores se cuentan por miles -reveló que, ante la intención de la Selecta Comisión de sesionar el sábado para tomar acuerdos y aprobar las recomendaciones que a mediados de febrero deberán ser presentados al Presidente (electo) Ronald Reagan, optó por enviar una larga carta al director de la Comisión Reverendo Ted Hesburgh, diciéndole:

"Las propuestas recomendaciones que la Comisión d votará con confusas

"Las propuestas recomendaciones que la Comisión votará son confusas y tienen

mayores contradicciones. El reporte es erróneo, racista y representa un total desperdicio del dinero de los contribuyentes. En efecto, el reporte es nada más que un refrito del fracasado "Plan de Inmigración Carter"-1977, el cual fue unánimemente rechazado por el pueblo y el congreso norteamericanos".

"Nosotros cuestionamos la credibilidad de un reporte que se supone debe ser objetivo y empírico, cuando en efecto el reporte fue esbozado o escrito por un grupo de individuos sin experiencia en inmigración, manipulado por el Servicio de Inmigración y Naturalización y los burócratas del Departamento de Estado. Además, mayor duda ha sido originada en el trabajo de la Comisión por ignorar totalmente la opinión del público y las encuestas de individuos

expertos, organizaciones y ciudadanos interesados en las principales cuestiones de la política de Inmigración".

"Por ejemplo, la recomendación del equipo de la Comisión pidiendo un "ligeramente ampliado y reforzado" Programa H-2, en nuestra opinión es nada más que la "esclavitud en el Siglo Veinte". Esta recomendación que podría resultar en los números masivos de trabajadores extranjeros, es una gran contradicción, cuando actualmente hay al menos cuatro millones de trabajadores norteamericanos desempleados. El Programa H-2 que está ahora en efecto, representa el último remanente del antiguo Programa de Braceros y un programa ampliado solamente puede significar mayor explotación de esta fuerza de trabajo cautiva".

Sweeping Changes Urged On US Immigration Policies

By Spencer Rich
Washington Post

WASHINGTON — The Select Commission on Immigration Thursday recommended sweeping changes in national immigration law, including making it a crime to employ an illegal alien, much stronger border enforcement, and "amnesty" for up to 3 million illegal entrants who came to the United States before Jan. 1, 1980.

The recommendations were included in the final report of the commission, headed by the Rev. Theodore Hesburgh, president of Notre Dame. Taken as a whole, the commission proposals were designed to keep the door to legal

immigration open, even widen it a bit, while clamping down harshly on border-jumping and other forms of illegal entry.

The report said there are from 3.5 million to 6 million illegal immi-

grants now in the United States, over half of hispanic origin, the bulk from Mexico.

One key recommendation of the commission was substantial improvement of border control.

Federal Panel Urges That Illegal Aliens ²⁻²⁷⁻⁸¹ Be Allowed Residency

Wall Street

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—Illegal aliens should be granted legal residency and immigration quotas should be increased, a federal panel urged; but enforcement against further illegal inflows should be toughened.

The Select Commission on Immigration and Refugee Policy submits its report to Congress and to the President today, after more than two years of study.

"We recommend closing the back door to undocumented or illegal migration, (and) opening the front door a little more to accommodate legal migration in the interests of this country," said Theodore Hesburgh, chairman, in his introduction to the 500-page report.

The report also urges admitting more persons who don't have relatives in the U.S.

Current immigration laws allow legal admissions of 270,000 persons annually, plus an unlimited number of close relatives and a varying quota of refugees. The commission recommends boosting the annual limit to 450,000 for five years, and 350,000 thereafter. The panel estimates that 150,000 close relatives and an average of 50,000 refugees will continue to enter each year.

The commission recommended passing a law against hiring illegal aliens. It also said a new form of identification was needed to indicate that job applicants were legal residents, but the panel was unable to agree on one.

The panel said such an identification system could require spending as much as \$220 million a year.

The commission estimated that 3.5 million to six million illegal aliens live in the U.S. Those who have lived here continuously since Jan. 1, 1980, should be granted legal status, it said. However, such legalization should be conditioned on tougher border enforcement, the panel added.

Sacramento Bee

SACRAMENTO, CALIFORNIA, Friday, February 27, 1981

Hispanics Say Federal Alien Report Is Racist

By Dale Vargas
Bee Staff Writer

A group of California Hispanic activists Thursday criticized a draft report by a federal Select Commission on Immigration as "faulty, racist and a total waste of taxpayers' money."

Herman Baca, chairman of the San Diego-based Committee on Chicano Rights Inc., told a Sacramento news conference that the commission's proposal for an expanded temporary work permit program was "nothing more than 20th century slavery."

Baca was among those holding the news conference to open a two-day immigration workshop at La Semilla Cultural Center.

Ricardo Torres of the Sacramento Immigration Committee, which is co-sponsoring the workshop, used the news conference to issue a "call for action . . . to organize to protect the rights of immigrants and to protest the inhumane treatment of undocumented workers in our communities."

"Our call to action not only denounces "Reaganomics" and its anti-alien, nationalist fervor, but also denounces all the preceding administrations for their insensitivity and lack of action in creating a humane immigration policy," Torres said.

Torres said about 150 persons are registered for the workshop, which is being conducted in both English and Spanish. Workshop speakers will provide information to participants, who are expected to return to various Northern California communities and distribute the information on the rights of immigrants, he said.

Torres, Baca and Bert Corona, a professor at California State University, Los Angeles, aimed their criticism at three of about 50 recommen-

dations contained in the voluminous report prepared by the 16-member Select Commission on Immigration and Refugee Policy. The commission's report, a copy of which was obtained by Torres' committee, recommends a "slightly expanded and streamlined" temporary worker program; the issuance of work permits to all U.S. citizens; and laws forbidding employment of anyone not having a card.

When asked if he favored what is referred to as "unconditional amnesty" for undocumented aliens, Corona said, "We don't like the term amnesty. The only crime these people have committed is being here without a visa. Amnesty can be unconditional only with a visa." He said he is one of the organizers of a national campaign to get a million people to wire President Reagan asking for permanent visas and equal rights for "undocumented taxpayers."

The report includes a proposal for permanent resident status for certain eligible aliens, but it is not the blanket proposal desired by the activists.

Undocumented workers pay taxes and contribute to American society, Corona said, but they are denied the rights of Americans. Denying permanent visas, he said, "is a violation of all human rights so highly touted in this country."

The commission's proposals are a "contradiction of reality," said Baca. He opposed the report, he said, because it does not address the social, economic and political causes of immigration problems.

Each of the speakers opposed the issuance of worker cards. Such a program would be expensive and the proposal "is a dangerous and simplistic recommendation that is reminiscent of totalitarian states like Nazi Germany and South Africa," said Baca.

Chicanos rip immigration policies

By MICHAEL ACKLEY
SACRAMENTO UNION STAFF WRITER

A group of Chicano activists called Thursday for a campaign against immigration policies they said would perpetuate "20th century slavery."

Representatives of three organizations held a press conference at La Serrilla Cultural Center to criticize findings of the president's Select Committee on Immigration.

Spokesmen Ricardo Torres, Herman Baca and Bert Corona decried what they termed a "law-enforcement approach to a social, political and economic problem."

Torres represented the Sacramento Immigration Committee, Baca the San Diego-based Committee for Chicano Rights, and Corona the Los Angeles-based National Immigration Coalition.

They zeroed in on two of the select committee's recommendations:

✓ That the current "H-2" temporary worker program be streamlined and slightly expanded.

✓ That every United States citizen carry a national identification card.

Torres called the former a means of importing "cheap, powerless workers to fulfill the labor demands of big business."

"Whatever the name of the program," said Baca, "any way you cut it, it comes up 'bracero.'"

Baca said a national identity card would be "a giant step backwards in civil rights legislation for the 20 million Chicano/Latinos in the U.S.," adding that it represented a threat to the rights of all Americans.

"This is a dangerous and simplistic recommendation that is reminiscent of totalitarian states like Nazi Germany and South Africa," he said.

Torres said although the select committee recommendations have yet to be forwarded to President Reagan, an effort was under way to send a million telegrams to Reagan, opposing the proposals.

The three also criticized Border Patrol activities and what Baca called "the militarization of the U.S.-Mexico border."

Corona said that frequently whole families, including children born in the United States, are deported to Mexico. He called for issuance of visas to "undocumented" workers and cited academic studies that indicate such workers have no adverse effect on the national economy.

Baca maintained that the best way to deal with the problem of immigrant workers would be to enforce existing government regulations pertaining to minimum wage levels, occupational health and safety, Social Security and other areas.

"The policy makers have refused to address the problems of this condary labor market because of powerful political interests who make massive profits from the existing situation," Baca said.

The press conference was held in conjunction with a two-day workshop on immigration issues, ending today, at the cultural center, 312 20th St.

3-point proposal on illegal aliens

✓Chicano activists assail proposed immigration policies, Today 8. laws."

WASHINGTON (AP) — A national commission on immigration recommended Thursday a three-point enforcement program to deal with illegal aliens, followed by a one-time amnesty which could make up to 4 million illegal aliens permanent residents of the United States.

The 16-member Select Commission on Immigration and Refugee Policy, in its final report, recommended increased funding for the Border Patrol to provide for more personnel, replacement of sensor systems and additional light planes and helicopters.

The commission also called for sanctions against employers who hire illegal aliens and a national identification system for aliens.

The commission said after enforcement measures designed to curtail future illegal migration to the United States are instituted, then legalization to undocumented aliens in the country as of Jan. 1, 1980, should be permitted to become permanent residents.

U.S. officials estimate there are between 3.5 million and 6 million illegal aliens in this country. However, officials say they don't believe that all of them would take part in an amnesty program.

The Rev. Theodore M. Hesburgh, president of Notre Dame University, who was chairman of the commission during its two years of study, said in the introduction of the report:

"We recommend closing the back door to undocumented, illegal migration, opening the front door a little more to accommodate legal migration in the interests of the country, defining our immigration goals clearly and providing a structure to implement them effectively, and setting forth procedures which will lead to fair and efficient adjudication and administration of U. S. immigration

The commission was appointed by former President Carter.

The 500-page report, containing 85 recommendations, was sent to President Reagan and Congress, where hearings are expected to be held this spring.

Most of the report's contents were made known last December and January when the commission, in open meeting, voted on each of 107 proposals.

However, criticism of the report came immediately from several groups, including the Mexican American Legal Defense and Educational Fund.

Vilma S. Martinez, president and general counsel of the fund, issued a statement in which she said: "After two years of hearings, research and analysis, the commission has failed to produce a sound strategy for the humane and realistic enforcement of immigration policy. The policies they have recommended today do not confront the issues facing this nation.

"Their plans resemble a militarized program, calling for increased use of helicopters, sensors, and radar at the Mexican border," she said. "The commission has scapegoated Mexican immigrants as the root a 'problem' which is unsubstantiated by the facts."

There was no commission vote on the entire report, but one of the most controversial issues was the identification system for aliens which passed by a vote of 9-7.

Several of the commissioners — including Patricia Roberts Harris, former secretary of health and human services, Sen. Edward M. Kennedy, D-Mass., and former Rep. Elizabeth Holtzman, D-N.Y. — submitted supplemental statements in which, among other things, they opposed any identification or data bank system.

More H-2 Workers to be Exploited

Submitted by
Texas Farmworkers Union

This year the Tobacco Growers Association of North Carolina and Virginia and the Agriculture Growers Association of Virginia brought 1,100 workers under the H-2 program from Mexico, to work in the tobacco and apple harvest. The growers in North Carolina and Virginia, and in many other states around the country, continue to use the H-2 program as a method for obtaining exploitable workers from Mexico who must work without guarantees of labor protections. These workers are maintained in a state of semi-slavery.

These growers have historically relied upon undocumented workers and H-2 workers from many other countries. In 1976 they utilized 166 Puerto Ricans, and in 1978 they used 544 Puerto Ricans, in 1978 they brought 650 H-2 workers from Mexico for the tobacco and apple harvest. In 1980 they brought 1,100 H-2 workers from Mexico.

The working conditions for these laborers are terrible. Of the 554 Puerto Rican workers brought into Virginia for the tobacco and apple harvest in 1978, 64% lasted only two days and only 19 lasted for the entire season.

The use of foreign workers is part of a labor chain which has historically served agricultural interests in the Southern States. These interests first used black slaves from Africa and other countries and then share-croppers who gave part of their harvest to the large landowners in return for use of the land. With the exodus of the share-croppers to the cities in search of better wages and working conditions, the multi-million dollar tobacco industry turned to the use of Mexicans and workers from other Latin American countries. So, in the last ten to fifteen years, the employment of foreign workers has been the answer for the tobacco industry. The local workforce has refused to work under the miserable conditions imposed by the industry. The exploitation of migrant workers leaves the growers with illicit and massive profits.

In 1980 one acre of tobacco yielded \$1,200 compared to one acre of corn which yields \$60 and soy beans which yield \$87 per acre. The tobacco crop occupies .3% of the designated farm land and is the sixth largest crop behind corn, soy bean, hay, wheat and cotton.

In 1979 approximately 275 thousand growers in the U.S. harvested a crop of 1.5 billion pounds of tobacco valued at 2.55 billion dollars. Virginia was the sixth leading producer. North Carolina produced 621.4 million pounds of tobacco valued at 867 million dollars. In 1979 Kentucky produced 343 million pounds of tobacco valued at 490 million dollars. Virginia produced 110 million pounds valued at 153 million dollars. At this time flue cured tobacco is selling at \$1.50 per pound. This tobacco ends up in the hands of trans-national corporations like Phillip Morris, Commonwealth Tobacco Company of Virginia, Chesterfield King and others.

The political clout of these companies could be seen this year when several State Representatives and national Senators opposed the Department of Labor when it tried to increase the

hourly wage of H-2 workers to \$4.51 per hour. DOL was forced to reduce the wage to \$3.20 per hour. The collusion to extort these farmworkers is international in nature. The Mexican government as well as the U.S. government benefit the growers and themselves when they hand out temporary H-2 permits. The connection begins in Mexico, where David and Manuel Trujillo, with residents in Cuernavaca attain workers for both U.S. grower Associations. The charge the workers \$1,200 pesos to sign up for the program. This year Manuel and David are alleged to have obtained \$48,000 pesos from the workers. These workers are recruited from the following states in Mexico: Morelos, Michoacan, Guanajuato, Guerrero, and Tamaulipas. From these states they go to Laredo, Texas, and from Laredo to Virginia. These H-2 workers are not provided with a contract which guarantees their work and are not even guaranteed they will receive 8 hours of work per day. Some workers must walk up to sixteen miles into town to buy their food and other necessities of life. When they are sick they are not taken to doctors because they do not have qualify for public services and don't have medical insurance. They are totally isolated from all forms of assistance because their camps are located in the woods and social service workers are not provided access to the camps. Workers labor in the fields without sanitation facilities. They are forced to work at a very rapid pace. Many workers have been beaten by their supervisors.

This past summer, when organizers from the Texas Farmworkers Union visited the labor camps to inform workers of their rights and attempt to organize them, their lives were threatened unless they left the camps. Even when the H-2 workers go to church services, they are constantly under surveillance by the growers to avoid their communication with union organizers. *Many workers state that they would prefer to come to the U.S. to work as undocumented workers rather than H-2 workers.*

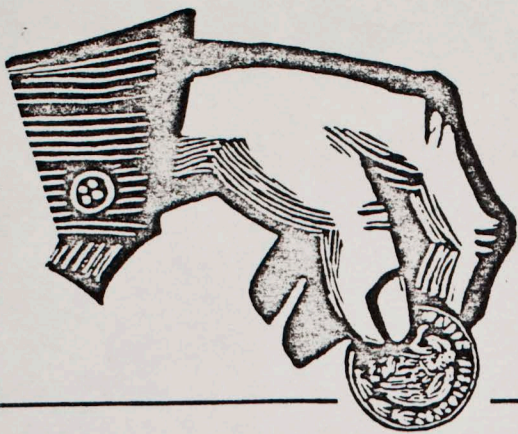
The exploitation of these workers through the H-2 program produces millions of dollars in profits which the growers are unwilling to abandon. The Texas Farmworkers Union presented a detailed analysis of the H-2 program prepared by the National Center for Immigrants' Rights to the Select Commission on Immigration and Refugee Policy. Because of the lobbying power of the growers with the Select Commission, the Commission refused to acknowledge the slavery conditions of H-2 workers in the United States today. The Texas Farmworkers Union has also called upon the Department of Labor to form a committee made up of unions, churches and other organizations so that the H-2 program can be monitored and supervised effectively. The Department of Labor has ignored this request to date. The TFW will continue to organize these workers in Mexico and the United States in order to protect their human and civil rights. For more information contact the Texas Farmworkers Union, P.O. Box 876, San Juan, Texas, 78589. Telephone: (512) 843-8381.

At press time, information related to the H-2 program was received. See Late Bulletin on page 9.

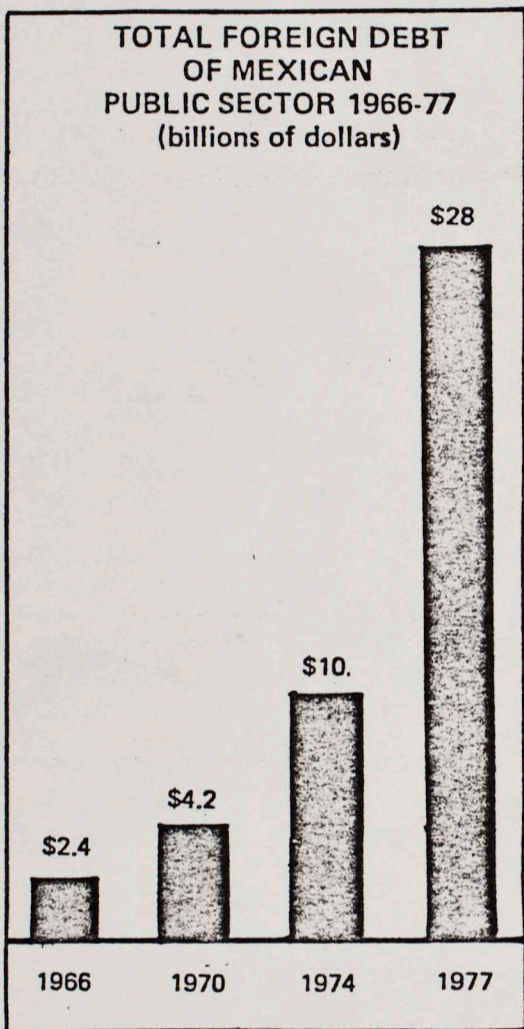
The Roots of Immigration

A FACT SHEET ON FOREIGN DOMINATION & POVERTY IN MEXICO

- The transnational corporations, with over \$5 billion invested, control 35% of Mexico's total industrial production and employ 16% of all industrial workers. \$2 billion in profits and payments on royalties, patents and interests were sucked out of Mexico by the transnationals between 1961-71.
- About 3/4 of Mexico's foreign trade is with the U.S. and in 1975 Mexico imported \$4.5 billion more than it exported.
- Chronic unemployment now affects more than 40% of all Mexicans of working age. In Ciudad Juarez, across the river from El Paso, 43% of the 800,000 residents are jobless.
- The Mexican government has sought foreign loans to finance development, which has pushed its foreign debt to a staggering \$28 billion -- nearly \$500 for every man, woman and child in the country.
- Agribusiness corporations like Del Monte and Anderson Clayton have come to dominate Mexican agriculture, fostering a system which produces luxury food items for the U.S. market rather than provide for Mexico's hungry. One half of all the vegetables consumed in the U.S. during winter months come from Mexico, while every day more than 1,000 Mexican children die of malnutrition.
- Largely because of the spread of "modern" agriculture, the number of landless peasants rose from 1.5 million in 1950 to some 5 million today. There are more than 8 million migrant workers constantly on the move in search of temporary jobs, earning an average of \$2.50-\$3.00 per day in the Northwest region.
- Migration of landless campesinos to urban areas adds 1,000 unemployed per day to Mexico City, already with a population of 13 million. It is the most polluted city in the Western Hemisphere and is expected to be the largest by the year 2000.
- Approximately 3.5 million peasants and fishermen live on less than one peso (five cents) a day, according to a recent study from Mexico. 9.9 million Mexicans eat no meat. 11.1 eat no eggs. 18.3 million consume no milk products. 80 per cent of these families live in rural communities where there is no medical services, electricity or running water.
- Numerous studies have shown that the presence of large foreign corporations and their ties with the Mexican ruling elites has increased the concentration of wealth in fewer and fewer hands. Robert McNamara of the World Bank claims that Mexico's richest 10% now take over 50% of the national wealth, while the poorest 40% have seen their share shrink from 14% to 11% in the past twenty years.
- The average working life of a miner in Mexico is 10 years, due to overwork and black-lung disease, and doctors estimate that every day 4 million Mexican workers are subjected to poisonous fumes in their workplaces.



FOREIGN INVESTMENT IN MEXICO



Source: Robert Castaneda, "Los limites del Reformismo en Mexico," *Cuadernos Politicos* #8, Ap-Jun, 76.

**Foreign Investment in Mexico
1940-1973**
(millions of dollars)

Year	Total	Manufacturing Industry
1940	449	32
1950	566	148
1960	1,081	602
1970	2,822	2,083
1973	4,677	2,768

source: Sepulveda & Chumacero, *La inversion extranjera en Mexico.*

**Percentage Participation of the
Transnational Companies, Private
National Companies & State Companies
in Mexico's Industrial Production, 1970.**
(selected industries)

Industrial Sector	Nat.		
	TNCs	Priv.	State
Food	21.5	74.8	3.7
Beverages	30.0	69.8	0.2
Paper & cellulose	32.9	61.9	5.2
Rubber products	63.9	31.4	4.7
Chemicals	50.7	43.2	6.1
Petroleum products & coke	48.7	46.7	4.6
Basic metals	46.6	40.6	12.8
Non-electrical machinery	52.1	47.4	0.5
Electrical machinery	50.1	49.9	-
Transportation equipment	64.0	21.1	14.9
Total	34.9	60.2	4.9

Source: F. Fajnzylber & T. Martinez Tarrago, *Las Empresas Transnacionales*

Special Issue

Select Commission on Immigration and Refugee Policy —A Lost Opportunity for Progress

This double issue of the *Immigration Law Bulletin* (covering November 1980 through January 1981) addresses some of the major questions voted upon by the Select Commission on Immigration and Refugee Policy. Future editions of the *Immigration Law Bulletin* will deal with issues voted on by the Commission not covered here. The final report of the Commission will be submitted to President Reagan and the Congress on or about March 15, 1981. It will probably include an official report of approximately 100-200 pages containing a discussion of the broad conclusions reached by the Commissioners and an Appendix dealing in more detail with the data and research papers collected by the Commission.

The final votes of the Commission, to the extent available to NCIR, are reported on in an article in this edition. Many of the votes on critical issues were closely divided, reflecting continuing confusion over the meaning of available demographic data, the economic impacts of migration, the inter-relationship between migration and U.S. foreign policy, and the long-range goals of U.S. immigration policy. Reports received by NCIR from the offices of various Commissioners indicate a fair amount of displeasure with the failure of the Commission staff to coherently analyze existing research data and to integrate such data into plausible policy options. Materials prepared by the staff for the final Commission meeting (December 6-7, 1980) were received by the Commissioners only a few days before the meeting at which most of the final votes were recorded. Some of the Commissioners had not had an opportunity to even review these materials before the final meeting. Some Commissioners felt that the staff materials were inadequate to form the basis for rational discussion and voting on crucial issues.

The final meeting was marked by confusion as the Commissioners struggled with a multitude of complex questions without having access to materials clearly defining the current state of the law, summaries of empirical data or policy options. Judge Reynoso, one of the few Commissioners who had clearly studied the staff materials before the meeting, was often forced to abstain from voting "on the basis of not understanding" the issues being voted on. [All quotes are taken from the transcript of the December 7 final meeting.] Some of the staff recommendations, unsupported by empirical data, were termed "outrageous" and a "disservice" to the Commission by Judge Reynoso. Commissioner Otero suggested at one point that the absence of explanatory material supporting staff recommendations could lead to the conclusion that there is some subterfuge taking place. When asked to vote on criteria for admitting a new category of "independent" immigrants, Commissioner Otero said he was being asked to vote in a "vacuum" as the staff had provided no guidance as to how this [eligibility for immigrant status] would be handled." Commissioner Ochi concluded that the proposed staff criteria were "too undefined ..." Discussing possible

amendments to the adjustment of status statute (Section 245) the Commissioners were thoroughly confused on how the *current* statute operates and Sam Bernsen, Director of Legal Research for the Commission, eventually had to clarify Attorney General Civiletti's incorrect interpretation of the statute which had formed the basis of a lengthy, largely incoherent discussion. Sam Bernsen opposed the staff recommendation (to restrict access to adjustment of status), saying "this is an airlines bill. You are making money for the transportation companies."

Dealing with the complex socio-political question of a worldwide numerical limitation on lawful immigration, Father Hesburgh said "the thing is so complicated ... the best we could do is to say we would agree with a certain ballpark figure. *I would say 450,000 is as good as any others I have seen.*" No objective explanation was provided for this "ballpark figure." Commissioner Holtzman commented that "I don't understand" the basis

(Continued on page 2)

January, 1981

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Select Commission—A Lost Opportunity

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for the staff recommendation on numbers, the staff [has not] provided those reasons." Father Hesburgh finally suggested that the "various options", which were listed on "one sheet of paper", be provided to the Commissioners "and they can look at it during the noon [lunch] hour ..." He added that the Commission's conclusions on numerical limitations "dosen't make that much difference" because it would ultimately "be decided by the Congress and we are merely giving a suggestion ..." After the lunch hour a confused discussion on numerical limitations continued — Congressman McClory participated in the discussion *mistakenly thinking they were discussing "legalization ..."* Such was the nature of the Commission's final meeting. At no time was the public input discussed, in fact the staff had never seriously quantified or analyzed the input received at public hearings. And, while viturally every expert in the country must have submitted research to the staff, these materials were never studied and incorporated into staff recommendations.

In the final analysis the Select Commission gathered a large volume of public testimony and expert research but failed to analyze this data and incorporate it into policy options. Staff recommendations and Commission votes were therefore ultimately based on an inadequate factual record. Highly complex questions, such as where to set a cap on lawful immigration, how to "streamline" the "H-2" temporary worker program, whether to enact an employers' sanctions law and if so how it should be implemented, etc., were approached in a manner aimed more at winning public and Congressional acceptance rather than a search for empirical truths.

This Commission represents a lost opportunity to seriously address the immigration issues faced by this country today. The positions adopted involve multiple contradictions. While agreeing that unlawful migration may, at best, involve some job displacement in the marginal sectors of the secondary labor market, the Commission supports the development of a billion-dollar "secure" national ID card to implement an employer sanctions law. The Commission failed to consider the severe difficulties that poor persons will have in obtaining birth certificates and other documents which will be required to establish eligibility for a "secure" ID card. The Commission failed to consider the need for (or cost of) an administrative appeal process for persons denied an ID work card. The Commission did not consider the impact of taking money that would be required to implement a "secure" national ID card and placing it instead into a job-training program for those workers in the marginal sectors of the secondary labor market who *might* suffer job displacement because of illegal migration. As pointed out by numerous experts, the implementation of a "secure" national ID work will negatively impact on the very workers who the program would ostensibly be established to help. At the same time as proposing a new "independent" category of immigrants unrelated to family reunification, the Commission voted to continue the policy of deporting the mothers and fathers of minor U.S. citizen children (a practice which frequently involves the *de facto* deportation of the U.S. citizen child). While agreeing that job displacement may occur in marginal areas of the secondary labor market, the Commission endorsed a "streamlined" H-2 temporary worker program which would increase the number of H-2 workers entering the U.S. to work in direct competition with workers in the marginal sectors of the secondary labor market. While supporting a fairly liberal amnesty program, the Commission voted to implement amnesty only *after* an "effective enforcement mechanism is

in place ..." Seemingly undocumented workers will first be flushed out of the labor market (through employer sanctions) and many deported *before* an amnesty program is implemented.

Senator Alan Simpson has been designated as the Chairman of a new Senate subcommittee on immigration. He has already stated that he will hold further hearings before legislation is introduced in the Senate. The Commission's findings and recommendations will undoubtedly form the framework for the legislative package ultimately introduced by Senator Simpson. Concerned individuals and organizations will therefore have a further opportunity to express their views on the many complex issues involved in the immigration question.

The articles appearing in this edition have been edited by NCIR. Where materials are deleted, four dots (....) will appear in the text. Emphasis (text in italics) has been added by the editors and may or may not appear in the original research papers. Complete texts of these articles should be available through the Select Commission under the Freedom of Information Act. They are also available through NCIR at our cost of reproduction and postage.

Attorney Sought for NCIR Washington, D.C. Office

NCIR is presently accepting applications for an attorney position available in Washington, D.C. Duties will include monitoring immigration legislation, client advocacy on regulation and policy changes, and selected litigation in the D.C. Circuit. Salary range: \$18,000 to \$24,000 depending on experience. Applications must be received by March 15, 1981. Selection will be made by March 30, 1981. We are hoping to locate an attorney who could begin in the position by April 15, 1981. Forward resume and writing samples to Timothy Barker, NCIR, 1550 W. 8th St., Los Angeles, CA 90017.

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The National Center for Immigrants' Rights is actively soliciting articles from immigration attorneys for publication in the Immigration Law Bulletin. Please send all material for consideration to:

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Discriminatory Effects of Employer Sanctions

Prepared by
Institute for Public Representation
Washington, D.C.
(November, 1980)

This paper presents an analysis by the Institute for Public Representation ("IPR") of proposals for the imposition of sanctions against employers hiring undocumented alien workers. The analysis focuses on the discriminatory effects of alternative schemes for employer sanctions combined with systems for uniform verification of worker status

I. INTRODUCTION

Employer sanctions proposals which are not combined with safeguards against racial discrimination are widely regarded as unworthy of serious consideration. All observers recognize that a law simply making it illegal for an employer to hire persons suspected of being undocumented aliens would cause a massive increase in employment discrimination. A person who "appeared foreign", whether he was a citizen, a resident alien, or an undocumented worker, would be subjected to special scrutiny and other discriminatory burdens when seeking employment

IPR undertook this analysis in order to test the assumption that the various "objective verification" schemes under review would not increase discrimination. As explained in detail herein, we have determined that this assumption is untenable. While the opportunities and incentives for discrimination that would be created by the proposed "objective" schemes would be less obvious than those created by a "subjective" verification program, they would be no less real or significant.

The administrative burdens imposed on employees by each of the programs would fall almost exclusively on marginal workers with transitional work status. In contravention of their stated purposes, the programs would place more barriers in the path of minority youth seeking employment. In addition the administrative procedures that would be employed by the programs to ascertain work authorization status would be extremely discriminatory. Each of the schemes would accord government officials extensive discretion to decide who is authorized to work. These officials will inevitably apply a far more stringent test to Hispanics, Asians and other persons of foreign ancestry.

Employers already inclined to discriminate will perceive that discrimination against persons of foreign ancestry is somehow legitimized by the program. Other employers may feel it is their civic duty to go beyond the minimum requirements of the sanctions program and make their own subjective assessments of a job applicant's work authorization status.

Moreover, the proposed programs would encourage many employers to discriminate by furnishing an apparently legitimate but actually pretextual basis for discrimination based on race and national origin. Employers would be delegated the authority to match the characteristics of prospective employees with information furnished by the government. An employer who is in fact discriminating could insulate himself from a civil rights action by claiming that he was not satisfied that a particular applicant conformed to the government's description

Finally, the proposed programs will cause employers to discriminate by rendering existing civil remedies less effective. Since claims of employment discrimination against Hispanics, Asians and other persons of foreign ancestry will substantially increase, the already backlogged EEOC will be capable of handling fewer cases alleging employment discrimination against blacks and other minorities.

II. ISSUANCE OF WORKER AUTHORIZATION OR IDENTIFICATION CARDS

Under this scheme, workers seeking new jobs or falling within certain age brackets would apply for work permits at local Employment Service offices. A worker would nominate two or more data sources to validate his or her application for a work permit, including: (a) filing an income tax return nine years or more before the date of application; (b) withholding of social security taxes in the same time frame; (c) service in the United States armed forces at any time; and (d) employment by the United States government.

Workers found eligible would be issued work authorization cards with their photographs, other identifying data and, perhaps, fingerprints. Workers unable to prove legal status but whose applications appeared "plausible" would be issued temporary permits while various data systems would be searched for proof of legitimate presence in the work force. Workers whose applications did not appear "plausible" would be referred to the nearest INS office for deportation procedures The employer could not hire any persons without a card or whose characteristics did not match those on the card. [Editors Note: On January 6, 1981, the Commission by a slim majority voted to support creation of a "secure" national ID card to be issued to all persons authorized to work in the United States.] Employers would be required to keep detailed records of all "transactions" with workers so that INS could assess compliance with verification obligations.

III. NATIONAL EMPLOYABILITY DATA BANKS

Under this scheme, workers would apply for work authorization status in a similar fashion to the process described above. Workers found eligible would be given a unique work permit number and would have a work permit file constructed for him or her. The work permit file would consist of data from the nominated data sources and identifying information on the individual, such as full name, date and place of birth, full names of both parents and height and weight.

When an individual applied for a job, the employer would call the data bank and provide the applicant's number, and, in turn, would be provided with two sets of information. First, he would be told either that the number was a valid one for a legitimate worker, or that the number did not exist, in which case the worker could not be hired. Secondly, if the number was valid, identifying data would be supplied to the employer If the information supplied did not accord with the worker's charac-

(Continued on page 4)

...Discriminatory Effects

(Continued from page 3)

teristics, the employer would be prohibited from hiring the worker

IV. AFFIDAVIT-BASED EMPLOYER REPORTER SYSTEM

In this scheme, employers would be required to keep records containing employee affidavits asserting legal authorization to work in the United States and some form of substantiating documentation. A copy of these employee records would be sent to the government which would then screen them, focusing attention on geographical areas and industries where undocumented workers are expected to concentrate. When incomplete or unclear data is submitted, employers would be required to secure additional information and forward it to the government.

When INS received complete employee records it would check these records against its own data files and other data systems. Where INS' follow-up of a specific worker's records indicated a high probability of illegal status, the employer would be required to give the worker a brief period of time to obtain documentation from INS of his legitimacy; if the worker did not do so he would be fired at the end of the time period

The principal enforcement activity would take place in the field by INS investigators. Employers would have the responsibility of maintaining a file of new-hire reports. Investigators would examine the file and ask a 'sampling' of workers to identify themselves. One or more instances of new workers who could not be linked with the new-hires reports file would suggest that the employer had failed to file reports and could subject the employer to prosecution

V. IMPACTS OF PROPOSED SANCTIONS SCHEMES ON EMPLOYMENT DISCRIMINATION

Employer sanctions schemes that do not safeguard against racial discrimination are regarded as unworthy of serious consideration in a society committed to stamping out racial bigotry in the hiring and promotion of workers. Accordingly, *the fundamental acceptability of the proposed sanctions schemes under review hinges on the assumption that they would not cause discrimination.* Proponents of the systems would support this assumption by arguing that the schemes involve simply objective verification responsibilities for employers which furnish little room for an employer's exercise of discretion

The assumption that the schemes will operate in a non-discriminatory manner is as incorrect as it is superficially appealing. The proposed schemes will generate discrimination against Hispanic-Americans, Asian Americans, other minorities of foreign ancestry and blacks in both the employment and law enforcement contexts

A. Discrimination in the Administration of the Program

1. Discrimination in the Determination of Work Authorization Status

Under the proposed systems, receiving governmental authorization to work will be essential for all individuals seeking legal employment in the United States Under the proposed programs, only workers seeking new jobs or changing jobs would

be required to obtain government authorization to work. In addition, only these persons would be required to present identification cards to employers for verification, have their status checked by computer or submit affidavits. Thus the program's administrative burdens would fall squarely on individuals with a highly transitional and fluid work status. Those persons with permanent, stable employment would hardly be affected by the programs. Persons with unstable occupational patterns, in turn, are disproportionately minority citizens.³ Thus, *the proposed systems place their heavy administrative burdens primarily on those minority individuals who find it most difficult to get stable jobs and who have historically been exposed to extreme employment discrimination*

Of even greater concern, however, are the disastrous practical consequences the programs would have for already marginal minority workers. *Many of these workers may drop out of the employment market altogether instead of expending time and energy obtaining government permission to work at tedious and low-paying jobs.* Other poor, minority persons, too unsophisticated to comply with the requirements of the proposed systems or wary of contact with the government will, in essence, become illegal workers. Employers will benefit from the 'black market' in labor that will flourish under the proposed systems by paying these workers even lower wages and providing even worse working conditions than are presently available. *Employees who have not achieved legal work authorization status will be unlikely to report Fair Labor Standards Act or Occupational Health and Safety Act violations to the government*

The procedures by which applicants must obtain government authorization to work under the systems will discriminate against minority citizens in another way. As noted above, in the ID card and data bank schemes, individuals seeking work authorization must nominate at least two data sources to document legitimate presence in the United States While established, economically secure members of society will have no trouble finding themselves in IRS or social security data banks, this will be no easy task for many minority job applicants The failure to support a worker permit application or affidavit with valid data sources will result in complete denial of governmental permission to work or, at least, a delayed determination of employment eligibility

2. Discrimination in the Reissuance of Cards

The foregoing discussion suggests another way in which the administration of the identification card system will discriminate against foreign-looking persons. It can be expected that many people will lose or accidentally destroy their work authorization cards. The process for reissuing lost cards will invariably function in a discriminatory way. Persons without characteristics indicating foreign ancestry who claim loss of their cards will be granted temporary replacement cards while their data records are analyzed. Hispanic-Americans claiming loss of ID cards are not likely to be so treated; their applications for reissuance will be viewed skeptically until their authorization to work is definitely established

3. Discrimination in the Resolution of Conflicts Between Data Bank Records and Information Supplied by Employers

.... When an employer calls a permit number into the data center, or submits an employee affidavit, a government official

(Continued on page 15)

... Discriminatory Effects

(Continued from page 4)

must determine whether information submitted by the employer matches information on that employee in the government's possession. It can be expected that discrepancies between information furnished by the employer and existing or newly constructed data bank records will occur frequently. In many instances, there will be errors in the transcribing of information from the employee's original work permit application to the data bank record. In other cases employers will commit errors when relating particular information to the data bank clerk

These inevitable informational discrepancies will be resolved in a highly discriminatory fashion. As the above discussion suggests, questions about job applicants who are not apparently of foreign ancestry will be treated in a different fashion from questions about applicants who "appear" foreign or have foreign surnames The job applications of these persons will be held up while questions are resolved. Obviously, persons whose authorization status is held in limbo will suffer in the labor marketplace compared with the job applicants whose 'employability' is ascertained immediately

VI. CONCLUSION

We believe that, given the present state of knowledge and analysis, there are compelling reasons for refraining from recommending an employer sanctions law to Congress. While we are not presently qualified to adopt a position on the necessity for stringent measures to curtail unauthorized entry and employment, we are aware of the widespread sentiment in favor of some such measures. However, given what is presently known, we do not believe that employer sanctions are an appropriate means for accomplishing the desired ends

The rationale for our position is as follows. We have detailed at length our concerns about the risk of discrimination posed by the scheme. We also summarize above some of the threats to essential civil liberties and personal autonomy. Clearly, such risks should not be undertaken without both a compelling necessity for and a reasonable expectation that the scheme will indeed yield the desired outcome. There has yet been no such showing.³

There should be no mistake about the impact of an employer sanctions scheme on American life. The mechanisms required for effective enforcement of such a scheme will have more than a marginal effect on our society. Not only will any such scheme raise concerns about discrimination and civil liberties, but will do so in the context of one of the most significant areas of an individual's life, employment.

While these effects will vary with the particular scheme used, there can be no question that an such scheme will bring the government into aspects of the individual's life hitherto impermeable to such intervention. While the regulation of the employment relationship to ensure minimum standards for workers and peaceful and effective dispute-resolution is a commonplace of our law, employer sanctions will be concerned with something more than such incidental aspects of the relationship. *In order to be enforceable, a sanctions scheme will inevitably allow government to determine who may or may not work. One may legitimately be concerned about the susceptibility of such a scheme to abuse by government officials.* The obtaining and proving of authorization to work will become

Impact of Immigrants On Social Services

Prepared by: Julian Simon
University of Illinois
(September 1980)

I. INTRODUCTION

A rational immigration policy would take into account all the costs and benefits of immigrants with respect to natives' incomes, employment, and tax burdens, with their net balance. The main aim of this study is to estimate the amounts of public services that immigrants use, including social security, unemployment compensation, public assistance, food stamps, and education

A secondary aim of the study is to estimate the incomes of immigrant families, and from these income to roughly calculate the taxes paid by immigrants. With such data on tax contributions, plus the data on transfers to the immigrants, it should then be possible to estimate the net transfers between immigrants and natives, that is, the net effect of immigrants on natives through the public coffers.

The basic source of data is the 1976 Survey of Income and Education (SIE), conducted by the Bureau of the Census.

Estimates are developed for all immigrants entering in a
(Continued on page 16)

additional considerations in decisions to relocate and to seek or change jobs, inhibiting the mobility of domestic labor

The Institute for Public Representation proposes, in light of the above considerations that

1. The Select Commission refrain from recommending an employer sanctions law to Congress and the President;
2. The Commission transmit to Congress and the President its sense that the concerns detailed above suggest that such a law would, on the present record, be ill-advised;
3. The Commission should recommend to Congress and the President the expansion of laws which protect efforts at labor organization, and enhanced enforcement of labor laws
4. The Immigration and Nationality Act should be amended to prohibit the Immigration and Naturalization Service from acting upon complaints of undocumented workers from employers who are faced with union organizing drives or complaints about terms and conditions of work

1. Editor's Note: On January 6, 1981 the Commission by a slim majority voted to support creation of a "secure" national ID card to be issued to all persons authorized to work in the United States.
2. See e.g., Equal Employment Opportunity Commission, *Equal Employment Opportunity Report: Job Patterns for Minorities and Women in Private Industry*, p. xviii (1975).
3. Indeed, Vernon Briggs, Professor of Industrial and Labor Relations at Cornell University and a leading scholar and proponent of employer sanctions, has stated that candidly speaking, one must say that the enactment of a law against employment of illegal aliens will not accomplish much.
Briggs, *The Quest for an Enforceable Immigration Policy, Employment and Training*, Fall 1979, Pg. 385, 393.

Alternatives to Employer Sanctions

Prepared by Notre Dame University Law School
Center for the Study of Human Rights
(Fall 1980)

I. INTRODUCTION

In the early 1970's, Congressional hearings were held to examine the alternative measures to deal with the problem of undocumented workers. The hearings revealed an alarming lack of concrete statistics on the number of undocumented workers in the U.S. at any given time, their impact on the American labor force, and their effect on the economy in general. Despite widespread belief that undocumented workers depress the U.S. economy, many experts and significant statistical studies note contrary findings.¹ Estimates of the number of undocumented workers in the U.S. range from 3 million to 10-12 million, with most studies placing the figure at approximately 6 million undocumented workers currently in the U.S. Absent a knowledge of these fundamental facts on the scope and nature of the problem, policy-making is rendered a difficult, if not impossible, task

II. EXISTING STATUTORY CONTROLS ON UNDOCUMENTED WORKERS

Both proponents and opponents of statutory controls on undocumented or "illegal" aliens within the American labor force agree that undocumented workers have an impact on the labor market. Due to lack of adequate data, however, the precise effects on the labor market are disputed—indeed, unknown.² Proponents of employer sanctions and other restrictive policies maintain that undocumented workers displace native or resident workers and have a depressive influence on wages and working conditions. Most of the government agencies involved in immigration issues are numbered within the ranks of these "restrictionists." Opponents of more restrictive immigration policies insist that such conclusions are based upon unreliable data and ignore key factors spurring employment of undocumented workers, such as their high productivity.³ Such conclusory analyses obscure the potential for exploitation of these workers which the present system both condones and perpetuates.

Effective enforcement of existing labor, tax and social security legislation offers an alternative to enactment of specific employer sanctions or of mandatory "work card" requirements. Use of existing laws may act either as a component of legislation controlling employment of undocumented aliens or as an interim measure pending the enactment of specific sanctions. Reliance on existing statutes has two benefits. First, it reinforces the accepted social policy against substandard wages and working condition. It thereby diminishes exploitation of undocumented workers. Secondly, it relies upon administrative and enforcement machinery already in existence. Examination

of existing means for the control of undocumented migration, thus, places demands for stricter methods in perspective.

(1) The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA)⁴ is a constitutional exercise of the Commerce Power, by which the existence of wages and labor conditions detrimental to the well-being of workers engaged in interstate commerce is prohibited. The FLSA affords equal protection to all employees regardless of citizenship status. Enforcement of the FLSA vis-a-vis undocumented workers would inhibit the growth of a secondary labor force, composed of underpaid alien workers. Because of this secondary labor force negates the normal supply-and-demand responses of the labor market, restraint of its growth may increase the availability and quality of jobs for domestic workers. The FLSA defines an "employee" as "any individual employed by an employer"⁵. An "employer" is "any person acting directly or indirectly in the interest of an employer in relation to an employee." Undocumented aliens have been granted the benefits of such protective labor legislation for,

[it would be anomalous to allow an employer to benefit from violations of protective labor laws on the basis that his employee lacked the right to employment. That would encourage the hiring of illegal employees, for the employer would realize a financial advantage by hiring illegal migrants, while being immune from prosecution. This double advantage would provide employers with a substantial incentive to prefer illegal migrants over legal workers.⁶

The FLSA require payment of the statutorily mandated minimum wage⁷ and of wages at one and one-half times an employee's regular wage rate for work in excess of the statutorily designated workweek of forty hours.⁸ 29 U.S.C. §213 exempts from coverage many types of businesses, several of which are particularly likely to employ undocumented aliens.⁹ Section 213 exempts far fewer businesses from the minimum wage provisions of Section 206 than from the provision in Section 207 regulating maximum hours and overtime pay. However, notwithstanding the exemption of § 213 (a) (6) for migrant agricultural workers who commute from their permanent residence to work, the FLSA exempts from coverage no worker on the basis of citizenship.

Any direct violation of FLSA provisions is unlawful according to 29 U.S.C. §215 (Supp. 1978). That section also provides that any person who transports or sells goods with knowledge that they were produced in violation of sections 206 and 207 is liable under the the FLSA. Willful violations of the FLSA are penalized under section 216 of the FLSA, Willful violations by "any person" are punishable by a fine of up to \$10,000 NS imprisonment for up to six months.¹⁰ An employer violating sections 206 or 207 is liable to injured employees for the amount of back wages due and for an equal amount in liquidated damages. In addition, violations of section 215 and the failure to pay back wages due an employee may be enjoined under 29 U.S.C. §217 (Supp. 1978).

The injured employee must initiate all causes of action brought under the FLSA. The statute requires that notice of the consent of each employee be filed in court before that employee be named a party plaintiff in any suit.¹¹ This provision exposes undocumented aliens to the possibility of deportation once their

(Continued on page 6)

... Alternative Measures

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identity is so published.

Stricter enforcement of the FLSA offers the advantage of reducing both the exploitative working conditions of undocumented aliens and the economic incentive for hiring them. It will benefit the entire American work force by reinforcing the United States' commitment to decent wages and working conditions for all workers, native or alien. It will curtail exploitation of undocumented workers by employers who at present fear no sanctions for employment of such workers under substandard conditions. In doing so, broader enforcement of the FLSA will eliminate the existing *de facto* exemption of illegal aliens from FLSA coverage.

However, before effective enforcement of the FLSA can begin to remedy the problem of undocumented workers, the remedy available to an aggrieved employee must be changed. Presently, the sole remedy available to injured employees is the private cause of action provided under FLSA section 216. Any action by the Secretary of Labor in the employee's behalf extinguishes the employee's cause of action. However, an alien who is in violation of United States immigration laws risks deportation if he sues under the FLSA, for his illegal status will be discovered. Thus, the protective provisions of the FLSA can never be an effective restraint on either employment or exploitation of undocumented aliens until the provisions can be effectively enforced by these aliens without risk of deportation

(2) The National Labor Relations Act

The National Labor Relations Act (NLRA)¹² broadly defines "employee" to

... include any employee [; it] shall not be limited to the employees of an particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment.¹³

This definition specifically excludes agricultural laborers, domestic-service employees and employees of anyone who falls outside the NLRA's definition of "employer."¹⁴ Case law requires a broad reading of this definition with respect to the abuses which the Act is intended to correct. Thus, unless an employee falls within a specific exclusion in 29 U.S.C. § 152 (3), he is covered by the NLRA

Section 8 of the NLRA defines "unfair labor practices." It states that neither an employer¹⁵ nor a labor organization¹⁶ may interfere with rights guaranteed by 29 U.S.C. §157 or discriminate against an employee in the exercise of those rights. This section also specifies that the employer and the representative of the employees have a mutual obligation to bargain collectively "in good faith with respect to wages, hours, and other terms and conditions of employment."¹⁷ Collective bargaining is conducted on behalf of the employees by their elected representatives. The election of these representatives, however, does not vitiate the right of "any individual employee or group of employees" to present grievances to the employer for adjustment.

These provisions are enforced by two sections of the NLRA. Section 10 vests in the National Labor Relations Board the power to prevent any person from committing an unfair labor practice which affects commerce.¹⁸ This provision empowers the

Board to issue complaints and conduct hearings into charges of such unfair labor practices. Willful resistance or interference with NLRB functions is punishable by fines of up to \$5,000.00 or imprisonment of up to one year or both.¹⁹

Undocumented workers have no legal right to be present in the United States and are entitled only to certain fundamental rights. Two recent cases, however, have upheld their right to protection under the NLRA. In *NLRB v. Sure-Tan, Inc.*,²⁰ Sure-Tan opposed enforcement of an order issued by the Board to bargain collectively with the employee union, six of its members being undocumented aliens. The company interposed two defenses: first, that the employees' illegal status was contrary to U.S. immigration laws and therefore negated the election and NLRB certification of the union; second, that these aliens were deported after the election of the union, thereby vitiating that election. The court rejected these claims. In keeping with the NLRA's indifference to alien status, the established policy of including aliens within the statutory definition of "employee" was given great deference. The court noted that no federal statute forbids employment of undocumented aliens. The court intended that its holding benefit the union, not the deported violators of U.S. immigration law

The Ninth Circuit followed the holding of *NLRB v. Sure Tan* in *NLRB v. Apollo Tire, Co.*²¹ The defendant company in this case had laid off undocumented aliens, in violation of 29 U.S.C. §158(a) (1) and (4) (Supp. 1978), for filing complaints with the Wage and Hour Division of the Department of Labor. The court's holding emphasized that unfair labor practices were subject to NLRA remedies, regardless of the employees' status.

The major flaw of the NLRA vis-a-vis undocumented aliens lies in enforcement. As illustrated in *Sure-Tan*, any undocumented alien seeking protection under the NLRA faces the very real risk of deportation and loss of livelihood. In light of this risk, aliens are constrained to enforce their rights only when they are guaranteed anonymity or when they are willing to risk deportation. *If the NLRA were effectively enforced with regard to undocumented aliens, the economic incentive for employers to hire aliens at substandard rates would be removed. Such enforcement could remedy not only the allegedly depressive impact of undocumented aliens on American wage levels²² but also the possible exploitation of these aliens by American employers.* Elimination of the NLRA exemption for workers in the agriculture industry, a major employer of undocumented workers, would broaden the NLRA's impact.

(3) The Potential of Other Federal Laws to Control Illegal Immigration

Federal legislation regulating employee benefits, tax payments and health standards may effectively augment enforcement standards under the FLSA and NLRA. Recognition of the role that undocumented workers play in these federal programs may encourage equal protection of workers in the United States, regardless of alien status. In addition, it may effect two goals of the American labor force: decent working conditions and egalitarian treatment. Current laws provide no disincentive to the employment of undocumented aliens. Furthermore, these laws lack provisions as to the discovery of an individual's citizenship status and as to documentation of employment. *Amendments to these laws may increase their utility as a method of regulating immigration and provide a less drastic means of control than would employer sanctions or implementation of a work card.*

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Alternative Measures

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III. NEED FOR OSHA ENFORCEMENT

OSHA provides another tool by which to demonstrate the United States' commitment to decent working conditions for all people, citizens and aliens alike. *Enforcement on behalf of undocumented aliens would help eliminate tacit exploitation of their illegal status.* However, OSHA has a significant drawback: because it does not specifically discourage their employment, OSHA does not decrease the undocumented aliens' drive for pursuing employment in this country.

IV. CONCLUSION

Before more drastic means are considered as tools for discouraging undocumented migration, the application of existing labor and tax laws as controls should be examined. Use of these statutory provisions offers two important advantages. First, enforcement machinery for the FLSA, the NLRA, the IIRCA, tax withholding statutes and OSHA already exists and could be employed as a control upon the provision of adequate housing and personnel. Second, the question of discriminatory treatment of aliens, especially with regard to Mexicans, need never arise.

Enforcement of labor and tax statutes alone may prove inadequate as a check on undocumented migration. Alternatives which provide stronger means for controlling employment of undocumented workers include use of a work card and sanctions against "knowing" employment of such workers

Editor's Note: This research paper goes on to analyze in great detail how an employer sanctions law could be implemented. The paper simply outlines the mechanisms that would be involved while not actually supporting an employer sanctions law as a policy alternative.]

FOOTNOTES

1. See Select Commission on Immigration and Refugee Policy, *Semi-annual Report to Congress* 14 (1980).
2. See, e.g., *Illegal Aliens: Hearings before Subcomm. No. 1 of the House Comm. on the Judiciary*, 93rd Cong., 1st Sess. 19, 559, 574, 944, 1145, 1323 (1973); C. Keely, *The Disposable Worker: Historical and Comparative Perspectives on Clandestine Migration* (1976) [hereinafter cited as *The Disposable Worker*]. See also, Domestic Council Committee on Illegal Aliens, *Preliminary Report* (1976).
3. Mexican American Legal Defense and Education Fund, *The Impact of Undocumented Aliens on the U.S. Labor Market and on U.S. Public Assistance Programs* 1, 7 (1978).
4. 29 U.S.C. §§ 201-217 (Supp. 1978) Regulations are found at 29 C.F.R. § 776.0 *et seq.* (1979).
5. 29 U.S.C. § 203(d) (Supp. 1978).
6. *Interagency Task Force On Immigration Policy, Staff Report at* 362 (1979).
7. 29 U.S.C. § 206 (Supp. 1978).
8. 29 U.S.C. § 207 (Supp. 1978).
9. 29 U.S.C. § 213 (a) (6) (Supp. 1978) exempts certain establishments and businesses from coverage under either § 206 or § 207. 29 U.S.C. § 213 (a) (b) (supp. 1978) is particularly applicable to alien laborers, as it exempts certain agricultural workers who work as "hand-harvest laborers." 29 U.S.C. § 213(b) (12) (13) (16) and (21) (Supp. 1978). 29 U.S.C. § 213(c) (Supp. 1978) provides a specific exemption from the child-labor restrictions of 29 U.S.C. § 212 (Supp. 1978) for

- agricultural employment of children.
10. 29 U.S.C. § 216 (Supp. 1978). 29 U.S.C. § 211 (Supp. 1978) provides a means for both enforcing the provisions of the FLSA and for discovering violations subject to § 216(a) penalties. It provides for administrative inspections and investigations by the Wage and Hour Division of the Department of Labor. It also requires employers to keep records on their employees and on wages and working conditions. See *Guidebook*, supra note 16, at 289.
11. 29 U.S.C. § 216(b) (Supp. 1978). Section 216(c) authorizes the Secretary of Labor to supervise any payments owing to employees, acceptance of which constitutes a waiver of the right of action under subsection b. In addition, the Secretary may sue to recover these back wages, if the employee files a written request with the Department of Labor. Any action by the Secretary of Labor extinguishes the employee's right to sue in his own behalf; this right can be terminated without the employee's consent. See *Guidebook*, supra note 16, at 296.
12. 29 U.S.C. §§ 151-169 (Supp. 1978). Regulations are found at 29 C.F.R. § 100.735 (1980).
13. 29 U.S.C. § 152(3) (Supp. 1978).
14. The term "employer" includes any person acting as an agent of a private employer, either directly or indirectly; it also covers labor unions in their capacities as employees. Exemptions for independent contractors, supervisors and individuals employed by employers who do not fall within the NLRA definition of "employer" were added in 1947. Conference Report on the Labor-Management Relations Act of § 904, 80th Cong., 1st Sess., reprinted in [1947] U.S. Code Cong. & Ad. News 1135, 1137-1139. The conference committee rejected the wording of "individuals employed in agriculture," as proposed in the Senate bill, in favor of the narrower exemption of "agricultural laborers."
15. 29 U.S.C. § 158 (a) (Supp. 1978).
16. 29 U.S.C. § 158 (b) (Supp. 1978).
17. 29 U.S.C. § 158(d) (Supp. 1978). This subsection provides that no existing collective-bargaining contract shall be terminated or modified by any of the parties without (1) serving written notice, (2) offering to renegotiate, (3) notifying the Federal Mediation and Conciliation Service and (4) continuing under the contract terms for at least 60 days. 29 U.S.C. § 158(c) (Supp. 1978) guarantees the free expression of opinion in any labor matter, as long as it does not make "Threat[s] of reprisal or force or promise[s] of benefit."
18. 29 U.S.C. § 160 (Supp. 1978).
19. 29 U.S.C. § 162 (Supp. 1978).
20. 583 F.2d 355 (7th Cir. 1978).
21. 604 F.2d 1180 (9th Cir. 1979).
22. See Interagency Task Force on Immigration Policy, *Staff Report Companion Papers* 47-61 (August 1979).
23. I.R.C. § 3101 *et seq.*
24. I.R.C. § 3401 *et seq.*
25. I.R.C. § 3402.
26. I.R.C. § 3401(a) and (c).
27. I.R.C. § 3401(a).
28. I.R.C. § 6205.
29. I.R.C. § 6672.
30. I.R.C. § 7202.
31. I.R.C. § 3301.
32. See I.R.C. §§ 3306(c) and (i), 3121(d).
33. 29 U.S.C. § 651 *et seq.* (supp. 1978). Regulations are found at 29 C.F.R. § 1975.1 *et seq.* (1980).
34. 29 U.S.C. § 652(b) (Supp. 1978).
35. 29 U.S.C. §§ 659(b) and 666 (Supp. 1978).
36. 29 U.S.C. § 666(e) (Supp. 1978).

Opposition to a U.S. Temporary Worker Program

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(December, 1980)

The Select Commission on Immigration and Refugee Policy voted to "streamline the H-2 [temporary worker] program." By "streamline" the majority of Commissioners meant *reduction* of the employers' responsibilities in locating domestic workers before importing foreign contract laborers. This policy decision ignores voluminous expert testimony and writings on the total failure of the H-2 program, the horrendous suffering endured by H-2 workers, the economic dependence on foreign workers which develops in employers of H-2 workers, and the social and political ramifications of expanding this program ...

The concluding words of an extensive 1980 report prepared by the Congressional Research Service, Library of Congress on temporary workers sum up the issue facing the Select Commission:

If the decision is made to move in the direction of an expanded temporary worker program, among the principal lessons to be learned from our 22-year experience with the bracero program and from the European guestworker experience is that *the seriousness, complexity, and far-reaching consequences of such an undertaking can hardly be overestimated.*¹

1. PAST U.S. TEMPORARY WORKER PROGRAMS

Only months after the United States enacted the most restric-

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A. Federal Insurance Contributions Act and Income Tax Withholding

Employers of undocumented workers generally comply with the Federal Insurance Contributions Act (FICA)²³ and the income tax withholding²⁴ provisions of the Internal Revenue Code, because violations of these laws are easily detected. Payment requirements are based upon the number of persons employed, a number that inspectors can readily ascertain. In the survey of undocumented workers conducted by David North and Marion Houstoun, the rate of compliance with these provisions exceeded 75 percent

The withholding provisions of the Code require every employer to deduct a specified amount of an employee's wages for the payment of the employee's income tax.²⁵ This amount is determined from tables established by the Secretary of the Treasury. All employees, regardless of alien status, are subject to these withholding provisions.²⁶ Earnings from certain types of labor or services are not included in the broad definition of "wages" in this chapter of the Code.²⁷

"Every employer is liable for sums deducted under either the FICA or the withholding provisions. Underpayment of these employment taxes may be adjusted or assessed and collected.²⁸ Evasion of these taxes or failure to collect or to account truthfully for them may be penalized by an amount equal to the tax evaded.²⁹ Any person who willfully neglects to deduct or account truthfully for taxes is guilty of a felony punishable by fines of up to \$10,000.00 or imprisonment for a maximum of five years or both.³⁰

Strict enforcement of these provisions would signal a firm commitment to equal protection of all workers without regard to citizenship status. Although it may diminish only slightly the motivation to hire undocumented aliens, greater enforcement of these provisions, in conjunction with increased reliance on other

statutes, would function as a control on undocumented migration

B. Federal Unemployment Tax Act

The Federal Unemployment Tax Act requires employers to pay excise taxes constituting a fixed percentage of total wages paid out during the year.³¹ Monies so received are credited to an employment security administration account in order to provide unemployment compensation. This account is the source of disbursements to the various state accounts in the Unemployment Trust Fund, a pool of federal monies for unemployment compensation.

Pay-in requirements under the Act cover all individuals without regard to citizenship status³²

In order for the Act to function as a disincentive to employment of undocumented workers, it must be amended, making the employer bear the onus of misrepresentation of legal status of his employees. The Act currently penalizes only the employee and, thus, does not discourage future employment of undocumented aliens. Such an amendment must address, however, the complex question of how it can be proven that an employer "knowingly" employed an undocumented alien.

C. Occupational Safety and Health Act

The Occupational Safety and Health Act (OSHA)³³ regulates hazards in the workplace through the establishment and enforcement of mandatory health and safety standards. Employers are obliged to provide places of employment free from hazards likely to cause death or serious injury. OSHA affords equal protection to all employees, regardless of citizenship or immigrant status.³⁴ Upon citation for OSHA violations, an employer may be assessed a penalty. Civil penalties are assessed for failure to correct cited violations³⁵ and criminal penalties for willful violations of the act.³⁶

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tive immigration legislation in its history, the Immigration Act of 1917, the first foreign labor program was devised and implemented.² In May 1917, a "temporary" farm worker program was established. This program lasted until 1922. As has been the historical experience with subsequent temporary foreign worker programs in the United States and Western Europe, rules and regulations promulgated to protect these early temporary workers from exploitation "were unenforced."³ And, as with later temporary worker programs adopted in the United States and abroad, large numbers of temporary workers in the 1917-22 program remained in the United States after the termination of the program. It is estimated that of the 76,862 Mexican workers involved in the program, only 34,922 ever returned to Mexico⁴

The Mexican Labor Program, commonly called the Bracero Program, was formalized in August 1942 as a result of a bilateral agreement reached between the U.S. and Mexico. Temporary workers admitted in this program were originally limited to agricultural work. Later the program was expanded into other sectors of the economy. Implementation of the Bracero program resulted in massive civil rights and labor law violations by employers. The Braceros were "captive workers who were totally subject to the unilateral demands of employers ..."⁵

Both during the Bracero Program and following its termination in 1964, the United States experienced a continuing growth in the number of undocumented workers entering the country.⁶ During its twenty-two years of existence, approximately four million temporary workers entered the United States in the Bracero Program.⁷ Since the termination of the now discredited Bracero Program, the United States has continued to allow entry to temporary foreign workers under the "H-2" program⁸

2. H-2 TEMPORARY WORKER

The Immigration and Nationality Act of 1952 authorized the Attorney General, acting through the Immigration and Naturalization Service (INS), to admit temporary workers for temporary jobs "if unemployed persons capable of performing such service or labor cannot be found in this country."⁹ The legislative history of this law clearly demonstrates that it was intended to alleviate unusual domestic labor shortages during periods of exceptional production. The H-2 program was a response to the findings of the President's Special Commission on Migratory Labor that the large-scale employment of temporary foreign labor was displacing domestic workers and depressing wages and working conditions.¹⁰ The House Committee Report specifically states that

These provisions of the bill grant the Attorney General sufficient authority to admit temporarily certain alien workers ... for the purpose of *alleviating labor shortages as they may exist or may develop in certain areas of certain branches of American productive enterprises, particularly in periods of intensified production.*¹¹

The Attorney General may admit H-2 workers "after consultation with appropriate agencies of the Government, upon petition of the importing employer."¹² Under current regulations the employer's petition must be accompanied by

a certification from the Secretary of Labor ... stating that

*qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed ...*¹³

The courts have uniformly held that the H-2 program was intended to protect the jobs, wages and working conditions of domestic workers.¹⁴ In the past few years the H-2 program has been limited to approximately 25,000 workers per year.

3. IMPLEMENTATION OF THE H-2 PROGRAM, CONTRARY TO THE LEGISLATIVE INTENT OF CONGRESS, HAS DEPRESSED WAGES AND WORKING CONDITIONS

The fact that the H-2 program has had the unintended effect of depressing wages and working conditions is beyond dispute.¹⁵ The Department of Labor has conceded that "the influx of temporary foreign labor in agriculture has the effect of lowering prevailing wage rates ..."¹⁶ Earlier, in 1972, the Department of Labor stated that "foreign [H-2] workers do depress earnings."¹⁷ A comprehensive agriculture prevailing wage survey recently completed by the New York Department of Labor clearly illustrates the adverse impact from the presence of H-2 workers on the wages of domestic laborers.¹⁸ This survey compared wage rates in areas where employers used H-2 workers and areas where domestic workers were used. Wages were consistently depressed in areas where employers relied upon H-2 workers. As recognized by the Department of Labor, temporary workers can be made to work for lower wages and under depressed working conditions because they "fear repatriation."¹⁹

In the 1970's the Western European temporary worker programs were "exploding as a socio-political issue ..."

Despite its pronouncements on the depressing effects of the H-2 program, the Department of Labor has not been effective in countering these negative impacts felt by domestic workers. Employers, assured of a steady supply of cheap labor, do not "have to make the kinds of wage and working condition inducements that would attract indigenous workers to these jobs."²⁰

While the Western European temporary worker programs were "largely uncontroverted during the 1950's and early 1960's", in the 1970's they were "exploding as a socio-political issue ..."²¹ In contrast, the U.S. public and policy makers seem to be willing to live with an H-2 temporary worker program which exploits "indentured labor" (according to a leading proponent of a temporary worker model)²² and exacerbates the plight of the domestic rural poor. The labor shortages claimed by employers to promote an expanded (or continued) H-2 program are created and determined by preferences for temporary foreign workers and the increasing unwillingness of domestic workers to accept artificially low wages and working conditions brought about by a historical reliance on indentured foreign labor

4. TEMPORARY WORKER PROGRAMS HAVE NOT SERVED AS A TOOL TO REDUCE UNDOCUMENTED MIGRATION

There is strong empirical data which indicate that temporary worker programs may "compound the problem of illegal migration rather than solve it."²³ No country has yet developed a reliable method to ensure repatriation. As noted earlier in this article, massive numbers of workers in former U.S. temporary worker programs have remained in the United States or later entered in an undocumented status. This result is reflected in the fact that the INS now finds itself "in the legally dubious position of periodically renewing H-2 visas for aliens which it considers permanent residents of the Virgin Islands."²⁴

The consequences of Western European use of temporary worker program affirms the U.S. experience:

The Western European experience ... casts doubt upon the starting assumption of a foreign worker policy that the programme and its workers are temporary ... [Millions of supposedly temporary foreign workers and their dependents have become long term of permanent residents of Western Europe.]²⁵

As the staff of the Select Commission states: "The only proven method of assuring compliance [with repatriation requirements] is the use of effective enforcement."²⁶ However, the history of temporary worker programs both here and abroad suggests that very substantial resources must be made available to ensure repatriation of temporary foreign workers. Governments have seldom committed sufficient resources for enforcement purposes except during times of economic down-swings.

5. THOSE SEEKING A CONTINUED OR EXPANDED TEMPORARY WORKER PROGRAM HAVE FAILED TO ESTABLISH THE ECONOMIC NEED FOR SUCH A PROGRAM

Those supporting the H-2 program have not established "the existence of a demonstrated need in the labor market."²⁷ This fact should not be surprising given that most H-2 workers enter to engage in agricultural labor, and unemployment rates in this sector of the market are among the highest in the country

When growers are currently able to claim that domestic workers cannot be located for particular harvest seasons, one need look no further than the insufficient recruiting efforts required under current D.O.L. regulations (coupled with depressed wages and working conditions caused by historical reliance on foreign labor) to explain this artificial shortage. For example, the Florida Department of Commerce, which recruits migrant farmworkers in a leading labor supply state, has specifically expressed a need for a D.O.L. rule requiring an *expanded* recruitment period.²⁸ As one expert has said:

The basic problem is that the Department's certification process ... is out of phase with the need of growers and farmworkers and the time table of commitments necessary to link American Workers with American jobs.²⁹

*"The H-2 Program carries with it
the serious problem of indentured labor."*

While current recruitment is limited to 60 days, D.O.L. initially proposed a 90 day recruitment period "to allow the employment service system sufficient time to recruit U.S. migrant workers."³⁰ At that time (1978), the Department of Labor admitted that even the 90 day period would "not be long enough to recruit" domestic workers from two supply states, Florida and Texas.³¹ D.O.L.'s figures on the employment of H-2 workers shows that the numbers have not fluctuated widely and growers could easily begin recruitment for domestic workers more than 60 days before the needed date for workers. "Streamlining" the H-2 program to most Commissioners meant reducing recruitment efforts. In fact, as noted above, D.O.L. itself conceded that expanded recruitment would alleviate domestic unemployment and underemployment. The fact that growers have used H-2 programs in the past therefore does not point to a shortage of domestic workers but rather to the inadequacy of existing recruitment requirements and the artificially created low level of wage or working conditions which is precisely caused by the continued use of H-2 workers.

No available empirical data suggest an economic need for continuation or expansion of the H-2 program. The program should not be "streamlined" to reduce either the geographical range of recruitment (currently, recruitment theoretically is nationwide), or the time period during which recruitment must be undertaken.

6. TEMPORARY (H-2) WORKERS SUFFER SUPER-EXPLOITATION AT THE HANDS OF U.S. EMPLOYERS

The inability of employers who use H-2 workers and appropriate government agencies to ensure compliance with existing labor and immigration laws results in massive exploitation of temporary workers in the United States. One proponent of a temporary worker model states that expanding the H-2 program "carries with it the serious problem of indentured labor."³² As one economist points out, the H-2 worker "can only be assured of the opportunity to return again if his work and attitude please the American employer."³³ David North understates that point when he says, "it is little wonder that H-2 aliens are 'hard working and diligent.'"³⁴ As pointed out in the subsections above, rules and regulations aimed at protecting the rights and well-being of foreign workers have also generally gone unenforced in previous U.S. temporary worker programs

In response to a freedom of information request filed by the National Association of Farmworker Organizations (NAFO) on October 20, 1978, seeking records concerning D.O.L.'s imposition of sanctions against employers who have violated their obligations under the H-2 program, "the D.O.L. national office produced no documents."³⁵ Sanctions against employers currently threaten only denial of the use of H-2 workers for a one year period.³⁶ Suggestions have been made that compliance with H-2 laws will not be achieved unless D.O.L. imposed civil and/or criminal fines for violations.³⁷

The historical failure to effectively enforce the contract and statutory rights of H-2 workers significantly contributes to the employer's tendency to exploit these vulnerable workers. Housing and sanitation conditions in migrant camps where H-2 workers are often forced to live are unconscionable. Employers demand "speed-ups" and heightened productivity in a manner

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which often seriously endangers the health and well-being of H-2 workers. These are the experiences that the National Center for Immigrants' Rights and other service organizations consistently encounter in cases involving H-2 workers. This experience parallels the European guest worker programs where the maltreatment of foreign workers "has become the source of sociopolitical unrest ..."³⁸ Our inability or unwillingness to diminish the exploitation of H-2 workers mitigates in favor of elimination of the H-2 program

CONCLUSION

After considering a proposal for an expanded temporary worker program prepared for the National Commission for Manpower Policy,³⁹ Professor Eli Ginzburg, Chairman of the Commission, wrote to Secretary of Labor Ray Marshall that he was "strongly against" any expanded H-2 program.⁴⁰ With the Select Commission proposing a broad legalization ("amnesty") program, and increased lawful immigration, now is the time to face elimination of the temporary (H-2) worker program. No sound policy reasons support the proposal of the Select Commission to streamline the H-2 program. Only the short-sighted economic greed of a handful of employers will be served by the continuation of this program. Forcing these employers to abandon their reliance of H-2 workers will not in any significant way increase consumer prices⁴¹

A non-exploitative temporary worker program could conceivably be designed if unions (from both the source country and the United States) were provided a major role in the development and implementation of the program. For now we can only urge that the H-2 program, the final remnant of the contract-labor Bracero Program, be phased out.

FOOTNOTES

1. *Temporary Workers Programs: Background and Issues*, prepared for use of the Select Commission on Immigration and Refugee Policy by the Congressional Research Service, Library of Congress, February 1980, hereinafter *Temporary Worker programs*, at page 120.
2. See, e.g. Kiser & Kiser, *Mexican Workers in the United States: Historical & Political Perspectives*, Albuquerque, The University of New Mexico Press (1979) hereinafter *Kiser & Kiser*, at Chapter I.
3. *Id.* at page 10.
4. Henry Kiser, *Mexican American Labor Force Before World War II*, *Journal of Mexican American History*, Vol. 2 (1972), hereinafter *Kiser*, at page 130.
5. See Vernon Briggs, *Foreign Labor Programs as an Alternative to Illegal Immigration into the U.S.: A Dissenting View*, Center for Philosophy and Public Policy, University of Virginia, (1980), hereinafter *Briggs*, at page 4.
6. *Illegal Aliens: Estimating Their Impact on the United States*, Report of the Comptroller General to the U.S. Congress (Washington, D.C., U.S. General Accounting Office, 1980) at pages 82-83.
7. Jorge Bustamante, *Commodity Migrants: Structural Analysis of Mexican Immigration Into the United States*, in S. Ross (ed.) *Views Across the Border: The United States and Mexico*, (Albuquerque, University of New Mexico Press, 1928), hereinafter *Bustamante*, at page 196.

8. U.S.C. § 1101(a) (15) (H) (ii) (1952).

9. *Ibid.*

10. See statement of Ronald L. Goldfarb, submitted during Rulemaking on Temporary Employment of Aliens in Agriculture, (July 1, 1977) at page 3.
11. H.R. Rep. No. 1365, 83d Cong., 2d Sess., reprinted in (1952) U.S. Code Cong. & Ad. News 1653, 1698 (emphasis added).
12. 8 U.S.C. § 1184(c).
13. 8 C.F.R. § 214.2 (h) (3) (1978) (emphasis added).
14. *Florida Sugar Cane League, Inc. v. Utery*, 531 F.2d 299, 300-01 (5th Cir. 1976); *Bustos v. Mitchell*, 481 F.2d 479, 482 (D.C. Cir. 1973).
15. See e.g., J. Medoff and K. Abraham, *An Economic Analysis of the Department of Labor's H-2 Program*, Harvard University & National Bureau of Economic Research (March 1979); *Review of the Rural Manpower Service*, Department of Labor (1972) at page 33; *Briggs, Supra*, at page 20; Miller and Yeres, *A Massive Temporary Worker Programme for the U.S.: Solution of Mirage?* World Employment Programme Research, Working Papers, Int'l. Labour Office, Geneva, (1979), hereinafter *Miller & Yeres* at pages 8-12.
16. 41 Federal Register 25017, 25018 (January 22, 1976).
17. *Review of Rural Manpower Service, supra*, at page 33.
18. *Agricultural Prevailing Wage Survey Summary Report, 1978 Apple Harvest*, New York State Department of Labor, Hudson Valley Apple Area (Feb. 15, 1979) and Clinton, Essex, and Washington Counties (Jan. 24, 1979).
19. *Review of the Rural Manpower Service, supra*, at 37.
20. *Nonimmigrant Alien Labor, supra*, at page 10.
21. Sinkin, Weintraub and Ross, *A Phased Out Guest Worker Proposal*, submitted to the Select Commission on Immigration & Refugee Policy (October 9, 1980), hereinafter *Weintraub*, at page 2.
23. *Miller & Yeres, supra*, at page 38.
24. *Id.* at 12.
25. *Id.* at 16.
26. *Questions & Answers—Temporary Worker Programs*, Select Commission on Immigration & Refugee Policy, staff memorandum (1980), at page 4.
27. *Briggs, supra*, at 16.
28. See *Second Report of Plaintiffs Representative on Brennan Special Review Committee*, (April 21, 1976), [appointed by the court in *NAACP v. Brennan*, Civ. No. 72-2010, 360 F.Supp. 1006 (D.D.C. 1973)], at page 6.
29. Statement of Ronald Goldfarb, *Rulemaking on Temporary Employment of Aliens in Agriculture* before D.O.L., (July 1, 1977) at page 6.
30. 43 Federal Register at 10,307 (March 10, 1978).
31. *Ibid.*
32. *Weintraub, supra*, at page 2.
33. *Briggs, supra*, at page 12.
34. Martin & North, *Nonimmigrant Aliens in American Agriculture*, Paper presented at the Conference on Seasonal Agricultural Labor Markets in the U.S., Washington, D.C. (January 10, 1980), at page 20.
36. 20 C.F.R. § 655.210.
37. *NAFO Request for Rulemaking, supra*, at page 81; see also R. Marshall, *Rural Workers in the Rural Labor Markets*, (1974), at 106.
38. *Miller & Yeres, supra*, at page 14.
39. Edwin Reubens, *Temporary Admission of Foreign Workers: Dimensions & Policies*, Special Report No. 34, National Commission for Manpower Policy (Washington, D.C. U.S. Government Printing Office, 1979).
40. Letter to Secretary of Labor from professor Eli Ginzburg dated May 1, 1979.
41. *NAFO Request for Rulemaking, supra*, at page 95; Podany & Fochs, *Cost of Harvesting, Packaging & Storing Apples for the Fresh Market with Regional and Seasonal Comparisons*, in *USDA Fruit Situation*, TFS-191, (1974), at page 17.

Final Positions Adopted by the Select Commission

Prepared by NCIR
(January, 1981)

The following is a summary of the key votes taken by the Select Commission on Immigration and Refugee Policy at their final meetings held on December 6-7, 1980 and January 6, 1981. Some of the tallies described below may be somewhat incomplete as some Commissioners did not attend the final meetings and had mailed in their votes. We do not have access to some of these votes. However, we do not believe that these votes substantially changed the majority positions adopted by the Commission.

I. EMPLOYER SANCTIONS

All Commissioners present at the final meetings, except Judge Cruz Reynoso and Rose Ochi voted in favor of employer sanctions. At the December meeting, nine (9) Commissioners voted to use "some existing form" of identification to implement the employer sanction law, and six (6) Commissioners opposed, presumably supporting creating of a national I.D. card. However, at the same meeting, when asked to vote on creation of a "more secure" form of identification, eight (8) Commissioners voted in favor of this proposal and seven (7) were opposed. The Commission never clarified what it meant by a "more secure" identification card. Among those voting against a new "secure" national ID system were Judge Reynoso, Rose Ochi, Congressman Robert McClory, Congresswoman Elizabeth Holtzman and Secretary Patricia Harris.

II. INCREASED ENFORCEMENT OF EXISTING LABOR LAWS

Eight (8) Commissioners voted in favor of increasing enforcement of *existing* protective labor legislation, one abstained and Senator Alan Simpson voted against such increased enforcement.

III. BORDER AND INTERIOR ENFORCEMENT

By fifteen (15) to one (1) the Commissioners voted to increase Border Patrol funding levels (in an unspecified amount), increase the number of primary inspectors at points of entry, institute a "mobile inspections task force", and establish "regional border enforcement command posts ...". The Commission also voted in favor of increased funds "to encourage voluntary repatriation to the interior of Mexico." Interior enforcement was largely dealt with by the vote favoring an employer sanctions law. It was agreed that INS should receive additional funding in order to computerize a system for the "prompt tracking" of non-immigrants.

IV. TEMPORARY WORKER PROGRAM

After much confused discussion on the need (or lack of need) for a temporary worker program, the Commission rejected proposals for a new, massive temporary worker program and voted instead

to recommend that the existing "H-2" temporary worker program should be "streamlined." Specifically, with Attorney General Civiletti and Representative Hamilton Fish voting no, it was agreed that the proposed changes in the "H-2" program should (1) "improve the timeliness of decisions regarding the admission of H-2 workers" (i.e. reduce the period for recruitment of U.S. workers) and (2) "remove the current economic incentive to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers ..." The Commissioners did not further analyze or discuss the multitude of negative impacts on U.S. workers experienced due to the existing "H-2" programs as implemented by the Department of Labor.

V. LEGALIZATION

The Commission voted to extend "legalization" ("amnesty") to persons who were present in the United States before January 1, 1980. The Commission failed to agree upon the scope of a residency requirement (i.e. how long persons must have been living in the United States), and "expects Congress to establish a minimum period of continuous residency to further establish eligibility" for the legalization program. It was agreed that "the legalization program should not take place until new enforcement measures for curbing illegal migration [presumably including employer sanctions] have been instituted." With Judge Reynoso and Rose Ochi dissenting, the Commissioners voted to deport those who will make up the "residual group" of persons not qualifying for legalization. The Commission apparently failed to reach any conclusions on which particular grounds of exclusion should be applied in the legalization program. The Commission voted that the voluntary agencies should be given "a significant role" in the legalization program.

VI. NUMERICAL AND QUALITATIVE LIMITS ON IMMIGRATION

The Commission voted to retain the basic preference categories and for a world-wide limit on immigration (excluding immediate relatives and refugees). Senator Simpson voted against allowing certain categories (e.g. immediate relatives) to enter outside of numerical limitations believing that there should be a "firm cap" on lawful immigration.

The Commission voted to make the unmarried sons and daughters (over 21 years of age) of U.S. Citizens and the grandparents of adult U.S. citizens (a new category) *exempt* from numerical limitations. Judge Reynoso and Rose Ochi voted in favor of granting immigration benefits to the parents of minor U.S. citizen children; the majority of Commissioners voted against such an amendment. Nine (9) Commissioners voted to retain the present policy of admitting the spouses and unmarried sons and daughters of legal permanent residents in a preference category. Four (4) Commissioners voted in favor of exempting this group from numerical limitations and four voted to restrict the category to the unmarried sons and daughters of lawful permanent residents. Eleven (11) Commissioners voted to create a new preference category for the parents of adult legal per-

manent residents, if the parents are over the age of 60 and all of their children live in the United States. Three (3) Commissioners voted to retain the present policy which grants no benefits to the parents of permanent residents and two voted to allow immigration through a numerically limited preference.

On per-country ceilings, three (3) Commissioners voted to eliminate such ceilings, eight (8) voted to eliminate the ceilings for the spouses and minor children of lawful permanent residents, two (2) voted to maintain the present restriction, and two (2) voted to raise the ceilings to partially accommodate all sending countries.

The Commission voted to create a "new seed" independent immigration category. Immigrants with "exceptional qualifications" will be included in this "new seed" group, as will a small group of "investors". The Commissioners were split on how this new independent category should be implemented. Some Commissioners felt that it should involve U.S. employers offering jobs and a labor certification program somewhat like the existing Third and Sixth Preference systems. Some Commissioners felt that a job offer should not be required. Others felt that the Department of Labor should issue a list of job categories in which U.S. workers are available and persons falling into this list would be precluded from immigrating while others could immigrate without a labor certification.

On the question of assigning percentages to the numerically limited preferences categories, twelve (12) Commissioners voted in favor of applying percentages only to the proposed "independent" category, one (1) voted to maintain the current system, and three (3) voted to eliminate percentages and to meet visa demands in higher preferences before issuing visas in lower preferences. While the meaning of this vote is not altogether clear, apparently the Commissioners contemplate that family preference categories should not be assigned specific percentages of an overall world-wide numerical limitation. Thus, persons in higher preferences would be issued visas before persons in lower preferences.

Based on a proposal made by Congressman Fish, the Commission voted for an annual ceiling on permanent immigration of 350,000 (not including the non-numerically limited categories mentioned above). Currently the world-wide ceiling on immigration stands at 270,000. Additionally the Commission voted for 100,000 visas to be made available annually for a five year period "to phase in backlogged applicants and derivatives of legalized aliens ...". Senator Simpson unsuccessfully proposed that the present ceiling of 270,000 be maintained.

VII. GROUNDS FOR DEPORTATION AND EXCLUSION; POWERS OF INS AGENTS; LEGAL ISSUES

The Commission failed to reach any conclusions on amending the present laws concerning the grounds for deportation and exclusion.

On the reentry doctrine (permanent residents subject to the exclusion laws upon each new entry), eight (8) Commissioners voted to modify existing law so that only certain serious grounds for exclusions (crimes, national security, etc.) would be applied to permanent residents returning from brief trips abroad, three (3) voted in favor of amending current law to "include [a] detailed statutory definition of innocent, casual and brief trips abroad" (i.e. clarify the *Fleuti* standards), and two (2) voted for elimination of the reentry doctrine entirely.

Regarding suspension of deportation, eleven (11) votes favored amending the law (Section 244) so that the applicant would have to show the required period of residence and "hardship" (rather than "extreme hardship") if deported. Only one (1) Commissioner opposed this change. Nine (9) Commissioners voted to eliminate Congressional confirmation of suspension cases; four (4) opposed this amendment.

When asked whether "long-term, permanent residence in the U.S. [should] be a bar to the deportation of [lawful] permanent resident aliens, except in the case of aliens who commit certain serious crimes", five (5) Commissioners supported this proposal, three (3) were opposed, and five (5) abstained.

On the question of suppressing illegally seized evidence in deportation hearings, ten (10) Commissioners voted against such an amendment, instead supporting the notion that "enforcement officials using illegal means ... should be penalized." Three (3) Commissioners voted in favor of an amendment which would exclude illegally seized evidence in deportation proceedings.

The Commission rejected efforts to create a formal mechanism for reviewing consular decisions on visa denials. They voted instead in favor of "improving" the existing "informal review system."

Eight (8) Commissioners voted in favor of creating an Immigration Court under Article I of the U.S. Constitution. Four (4) votes opposed this change. While the Staff recommended creation of an Article I court and elimination of review in the Circuit Court of Appeals, the latter issue was apparently not presented to the Commissioners when they discussed and voted on this question.

Twelve (12) Commissioners voted in favor of notification and the right to counsel "at the time of exclusion and deportation hearings and adjudication hearings under the Act." The Commission also voted in favor of providing counsel at government expense to indigent, lawful permanent residents when alternative free legal services are unavailable. [Editor's Note: An article appearing in this edition deals with the right to counsel issue.]

The only substantive amendment to existing law on the arrest and search powers of INS officers is a proposal to statutorily require that such officers obtain *judicial* search warrants, other than in exigent circumstances, upon receiving consent, and searches conducted pursuant to a valid arrest.

VII. REFUGEES AND ASYLUM LAW

The Commission voted to retain the Refugee Act of 1980 without substantial amendment. A majority of Commissioners favored creation of an "interagency body ... to develop procedures, including contingency plans for opening and managing federal processing centers, for handling possible mass asylum emergencies." The Commission also favored the development of "group profiles" to assist in (or expedite) the determination of refugee or asylee status. Most Commissioners favored an "interagency body" including "the Coordinator for Refugee Affairs, the Department of Justice, Health and Human Services and Education, the Department of the Army, the F.B.I., the C.I.A. and the White House." A majority of Commissioners voted in favor of new procedures which would "expedite" the processing of asylum claims.

[Editor's Note: Final tabulations on all votes should be available from the Select Commission under the Freedom of Information Act.]

Public Responses to the Findings of the Select Commission

In November, 1980 the Select Commission staff issued its report in preparation for the final Commission meeting. Concerned organizations throughout the country forwarded telegrams to the Commission expressing their opposition to many of the staff recommendations. Copies of some of these communications were sent to NCIR and edited portions are reproduced below.

MIDWEST COALITION IN DEFENSE OF IMMIGRANTS

The following mailgram was sent on December 5, 1980:

"We are an umbrella organization of religious, social and community groups We are against employer sanction legislation and a national work identification card because of the discriminating impact that it will have on the legal immigrant and minority community generally The millions expended in this project should be directed at enforcement of the [existing] labor laws, which seek to protect all workers, eliminating the incentive that employers have for hiring the undocumented We are against any form of [an] H-2 program Minor U.S. citizen children should be allowed to immigrate their parents"

II. CONTINENTAL CONFERENCE/SOLIDARITY WITH HAITI

The Continental Conference/Solidarity with Haiti is an umbrella organization of Haitian refugee and support groups. A press-release issued on December 5, 1980 read as follows:

"We are shocked and dismayed at the short-sighted and racist report of the staff of the Select Commission on Immigration and Refugee Policy as it concerns refugee matters. Huge amounts of research and data submitted by various international human rights groups, including the Amnesty International, Lawyers Committee for International Human Rights and Haitian support groups has blatantly been ignored by the staff *In fact, the Staff report reads as if it were written by a person or persons who knew absolutely nothing about either refugee law or about current problems with the implementation of the Refugee Act of 1980* We suggest that the staff stop talking about a refugee 'crisis' that does not exist The Cubans came here on the invitation of the White House. Haitian refugees have been trickling into this country for ten years. Their coming here is a drop in the bucket of undocumented migration and cannot be called a 'crisis'. There is no crisis at the present time although continued compromise of human rights positions abroad will certainly precipitate more refugees coming to the U.S. Our response should not be to set up 'camps' as suggested by the Commission staff where refugees will be isolated from legal help. The Commission should stop talking about 'camps' and begin talking about how to make our asylum & refugee laws fair and impartial, rather than ideologically based"

III. LEAGUE OF UNITED LATIN AMERICAN CITIZENS

The following press release was issued by LULAC on December 8, 1980:

"The Select Commission on Immigration and Refugee Policy

(SCRIP) met on December 5 and 7, 1980, and reached some final decisions on many critical issues which would, if enacted, impact harshly on the lives of millions of Hispanic-American citizens and other minorities, well into the future. The Commissioners, for the most part have accepted the recommendations staff circulated for their review ten days before the meeting. There is growing concern among Hispanic organizations that the direction the Select Commission has taken will only serve to increase problems in certain areas of immigration rather than begin to solve or minimize the problems.

One of the most evident actions taken by the Select Commission which reflects this position is the approval of employer sanctions which will serve to only erode civil rights and civil liberties of American society. In addition, *the Commissioners appeared to be more concerned with the political acceptability of their recommendations than discussing and attempting to solve problems on the merits surrounding the issues.* What has resulted are recommendations which ignore the findings voluminous research and testimony compiled during the past year and one-half.

The Hispanic community remains opposed to the concept of employer sanctions, temporary guest worker programs and any immigration policy which does not attempt to emphasize family reunification as it's primary goal. The Commission has decided to take a very dangerous road of enforcement as its primary approach to curbing the flow of undocumented workers to the U.S. This action has been taken despite various studies which indicate that increased enforcement along the border can only result in costly expenditures and could increase violence significantly while only having a minimal impact, if any [on the flow of undocumented migration.] It is truly unfortunate that the Commission has not examined other avenues to effectively deal with these matters. It has decided that attacks on the civil rights and civil liberties of the Hispanic community are perhaps more productive than seriously and objectively dealing with the immigration problem.

We do not oppose the enforcement of immigration law but we do oppose the mentality which blames the Hispanic in this world for the immigration matters which trouble this country. We are tired of serving as the scapegoat for the economic ills of the U.S. and the serious repercussions this attitude has brought upon our community. It is necessary that the immigration policy of this country be based on a realistic and human foundation rather than on a reactionary response and narrow perspective of the methods available to address the immigration issues confronting us"

IV. INTERNATIONAL COORDINATING COMMITTEE FOR THE FIRST INTERNATIONAL CONFERENCE FOR THE FULL RIGHTS OF UNDOCUMENTED WORKERS

The International Coordinating Committee sent the following message to the Select Commission on December 2, 1980:

"The First International Conference for the Full Rights of Undocumented Workers was held in Mexico City on April 28, 29, 1980. Representatives of major unions and organizations from

both the United States and Mexico attended the conference. Representatives from the following major Mexican unions attended the conference and have joined the International Coordinating Committee: Workers Congress, Confederation of Mexican Workers, Telephone Workers Union of the Republic of Mexico, the Electrical Workers Union and others. These powerful unions represent millions of workers in the Republic of Mexico. The International Conference endorsed resolutions calling for greater protections of undocumented workers in the United States, a strong commitment to family reunifications, economic improvements in those communities which primarily lose workers to the United States, etc. *These positions were largely adopted by Mexican President Jose Lopez Portillo after our delegates met with him in Mexico City on July 3, 1980.*

We totally reject the manner in which the Select Commission on Immigration and Refugee policy has gathered data and reached its conclusions. While the Commission held public hearings, witnesses were carefully selected by the Commission staff. Worse is the fact that interested and experienced organizations were provided no opportunity to participate in the process of analyzing the data collected by the Commission and the formulation of positions based on this data. In fact, a review of the Commission's work indicates that they have simply ignored the public input which they did receive. *At this point we are forced to conclude that the Select Commission has wasted the time of hundreds of witnesses and millions of dollars in taxpayer's money.*

The staff of the Select Commission has recommended that an employer sanctions law be implemented in conjunction with a national ID card. Such a law would theoretically penalize employers for hiring undocumented workers thereby drying up the availability of jobs and stopping undocumented migration. Such a law already exists for farmworkers in the federal Farm Labor Contractors Act. This law has been unenforced, has had no impact on the employment of undocumented migrants, but has resulted in numerous cases of job discrimination against black and Latino U.S. migrant workers

The Commission also fails to understand the complexities involved in interviewing every single worker in the United States to determine whether they are entitled to receive a national ID card and work in the U.S. This task will take years to accomplish, would cost more than one billion dollars according to many experts, and in the end will be such a massive program that it will be unenforceable. *If the Commission believes that undocumented workers may be displacing some American workers in marginal jobs, which is as much as the experts claim, they should take the money that would be spent on establishing a national ID card system and employer sanctions law and instead spend the money to train workers in marginal jobs and to enforce existing labor laws which go ignored.* A real commitment to the enforcement of labor laws would promote the rights and working conditions of all workers in the U.S.....

We support a just and humane immigration policy. One that recognizes the economic realities that will continue undocumented migration well into the future and seeks to protect undocumented workers rather than institutionalize their exploitation. Random deportations of foreign workers are a waste of taxpayers money as workers will return to the U.S again and again as long as their communities suffer high unemployment and U.S. business continues to have an appetite for cheap labor. The Select Commission fails to understand the international economics involved and instead treats the immigration question as a simple law-enforcement matter. We will work hard in the coming months to educate union members and the public on both sides of the border about the regressive and repressive positions of the Select Commission

[Editor's Note: Many other organizations, including the American Committee for the Protection of the Foreign Born, National Immigration Coalition, Committee on Chicano Rights, the National Lawyers' Guild and others sent messages of concern to the Commission after the Staff report was issued and after the December 6-7 meeting. Copies of these messages should be available through the Select Commission.]

... Right to Counsel

(Continued from page 14)

Where an unrepresented indigent alien would require counsel to present his position adequately to an immigration judge, *he must be provided with a lawyer at the Government's expense. Otherwise, 'fundamental fairness' would be violated.* See, *Aguilera-Enriquez v. INS*, 576 F.2d 565, 568-69 (6th Cir. 1975).

Most courts examine challenges to the absence of counsel due to indigency on a "case-by-case" basis, in order to determine whether "fundamental fairness" was violated by the absence of counsel to assist an indigent person in deportation proceedings. See, e.g., *Barthold v. INS*, 517 F. 2d 689, 690 (5th Cir. 1975); *Rose v. Woolwine*, 344 F 2d 993 (4th Cir. 1965); *U.S. ex rel. Castro-Louzan v. Zimmerman*, 94 F.Supp. 22 (E.D.Penn. 1950). The courts have called this a "grave" and "momentous" question. *Henriques v. INS*, 465 F. 2d 119, 121 (1972).

Maurice Roberts, one of the foremost authorities on immigration law in the United States today, has taken note of the "growing complexity and heightened technicality" of our deportation laws. *Maurice Roberts, supra*, at 91. Former General Counsel Charles Gordon has written that deportation hearings sometimes involve "complicated factual or legal questions."

Gordon, supra, at 877. While not required by statute, the Immigration Service assigns a "trial attorney" to represent the views of the Service at every deportation hearing which take place today. In the context of criminal trials, which often involve the same degree of complexity as deportation hearings, the Supreme Court has recognized that

Even the intelligent and educated layman has small and sometimes no skill in the science of law ... Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence or evidence otherwise inadmissible ... He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. See *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932).

Of all persons apprehended and required to leave the country by the Immigration Service each year, only approximately 6% ever appear in deportation hearings. Of the 28,371 aliens deported or required to depart the United States in Fiscal Year 1978 (not including approximately 900,000 persons removed under "safeguards"; that is, without appearing in deportation hearings), *only 426 were lawful permanent resident aliens.* See, *United*

(Continued on page 24)

IMMIGRATION LAW BULLETIN

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS
1550 WEST EIGHTH STREET • LOS ANGELES, CALIFORNIA 90017 • (213) 487-2531

Select Commission Issues Final Report

Minority Members Label Report “Repressive”, “Backward” and “A Sham”

The January issue of the *Immigration Law Bulletin* was exclusively dedicated to the work of the Select Commission on Immigration and Refugee Policy. On February 26, 1981, the Select Commission issued its Report of Conclusions and Recommendations to Congress and the new Administration. President Reagan refused to meet with the Commissioners and instead the report was presented to Vice-President Bush. The Select Commission has a mailing list of approximately 750 VIPs, but is only printing 250 copies of the report. It will therefore be difficult for community organizations to obtain copies of the Final Report. NCIR will make copies of the report available at our cost of reproduction and postage. If you would like to receive a copy, please telephone Patricia Vargas at NCIR.

Below we have excerpted portions of the many supplemental (minority) views which were filed by members of the Commission. *These supplemental views make clear the total failure of the Select Commission to gather and analyze available research and to synthesize these materials into coherent policy options.* As we stated in our January *Immigration Law Bulletin*, the Select Commission represents “a lost opportunity for progress ...” Community groups and church organizations which have reviewed the work and conclusions of the Select Commission have condemned them as “short-sighted”, “uninformed”, “without empirical foundation”, “racist”, etc. We believe, as stated by former HEW Secretary Patricia Harris, that the Commission members were robbed of the opportunity to seriously evaluate policy options due to the “incompetence” of the staff in preparing materials and research studies for consideration by the Commission members.

STATEMENT OF COMMISSIONER PATRICIA ROBERTS HARRIS

I strongly oppose any national identification system to deal with a minority of the inhabitants of this country, particularly the use of the social security number or card. Such use would encourage forgery and misuse of social security numbers, thereby endangering our recordkeeping system ...

STATEMENT OF COMMISSIONER CRUZ REYNOSO

The Commission's major recommendations, I respectfully submit, are not responsive to the needs of our Country. Many of the recommendations are important improvements in present law. *However, if I had the unfortunate choice of having to recommend all the Commission proposals (as a legislative packet), or none, I would recommend leaving the law as it is*

(Continued on page 4)

Select Commission *(Continued from page 1)*

today. (Emphasis added). While I entertain the strongest feelings that our national immigration statutes and practices are not working, I concluded that the recommendations, as a whole, will work less well.

1. My Overall Concern

Congress must strive to structure a cohesive and realistic immigration policy. The ultimate criteria must be whatever is in the best interest of our Country. That interest will be served domestically by continuing the humanitarian goal of family reunification and at the same time fortifying the economic growth of our Country. In the international sphere a policy which promotes peace and stability serves our needs.

International realities affect immigration. Developing countries, many of our neighbors in the Western Hemisphere, are undergoing unprecedented population growth, while the developed countries, including our own, are experiencing declining birth rates which result in projections of shortages in labor. Mexico, our immediate southern neighbor, by way of example, is expected to greatly increase its population (from 65 to over 100 million) by the end of the century. Meanwhile, continued economic factors—inflation, higher taxes, increased labor and material costs—are forcing American companies to relocate in developing countries and to join the growing number of multi-national corporations which know no national bounds...

2. Legalization (Amnesty)

My own estimate is that a program structured pursuant to our recommendations will draw as few as 2 percent of our own. The reasons are varied.

First, the Commission has stressed that tough enforcement of immigration laws must perhaps precede, but at any rate go hand-in-hand with, the legalization program. Thus if an undocumented person comes forward in the good faith belief that eligibility exists, but guesses wrong, deportation lies in the offing. No conclusion was reached by the Commission as to the grounds for exclusion in implementing legalization. The goals of legalization manifestly would be frustrated by the application of most grounds for exclusion found in the statute. Thus, most undocumented are working people, the type who have made this country great; yet, because they are not meted an unsympathetic interpretation of the law could be made such that they are deemed persons likely to become public charges. Further, *the Commission did not reach a conclusion on the period of United States residency required for legalization purposes.* (Emphasis added.) No such residence requirement can be lengthy, nor can it ignore the migratory nature of some undocumented if the legalization program is to succeed. In short, on the crucial issues we have failed to make recommendations.

Second, the Immigration and Naturalization Service (INS) will apparently be in charge of the program. The INS, right or wrong, is viewed by the undocumented and, importantly, by the representatives of religious and other organizations which aid the undocumented as "the enemy", a hopelessly anti-alien agency. Unless there is absolute confidence in the administrative mechanism, the program will fail. *There is no trust in the*

INS. (Emphasis added).

Third, the Commission report seems to disfavor the 50 percent of Mexican undocumented and favors the 50 percent non-Mexicans. The tone of its discussion is one of alarm respecting the Mexican undocumented immigrants. It offers voluntary departure as an option to amnesty and the "enforcement" programs stress border control. It approves current enforcement priorities. In fact, most of the entire enforcement budget goes to abate the flow of the 50 percent Mexican undocumented immigrants, and only a small portion to deal with the non-Mexican (much of it European) undocumented.

The effect of the Commission's proposals will be to drive the undocumented, particularly the Mexican undocumented immigrant, further underground. (Emphasis added.)

The goal should be to have every undocumented immigrant come forward. Those who are eligible should be documented. Those who are not, should be offered temporary status with the opportunity, after a few years, of qualifying for permanent residence ...

3. Political Asylum

Many undocumented aliens come from Latin America, fleeing dictatorial oppression and the chaos of civil war. Yet, our government has been reluctant to recognize their legitimate claim to asylum. Litigation, like testimony before our Commission, has pinpointed *the dual standards used by our Country which permits entry of many tens of thousands of Cubans, Russian Jews and others who are politically favored by our national administrations, but at the same time rejects Haitians and San Salvadoreans.* (Emphasis added). The former are considered documented, the latter undocumented. We, as a government, thus help create our own problems.

4. Labor Law Protections

The laws which protect United States workers should be vigorously enforced. One of the attractions of undocumented immigrants for employers is the cheapness and docility of the workers. This incentive would be markedly reduced if *all* workers had to be paid equally and treated with respect. A witness in our Los Angeles hearings, an employee of the State of California, testified that his office balanced strong enforcement of the law in the garment industry with the reality that the industry might move out or close down if enforcement were vigorous. That type of frankness is not often heard when undocumented immigrants are discussed. The reality, nonetheless, is that by actions of our government we countenance the very factors which encourage employer practices of hiring the undocumented.

5. INS Enforcement Efforts

Congress has failed to fund programs presently in place which would reduce the number of undocumented immigrants without intrusion into the lives of every American. For example, when foreign visitors arrive a paper (I-94) is given them by the United States authorities; another is turned in when the visitor leaves. The government has not monitored those documents to see who "forgot to leave the United States"—the reasons can be variously stated as "lack of money" or "priority at border control," but a program, already at hand, has not been utilized.

(Continued on page 12)

Select Commission *(Continued from page 11)*

I reject the notion that "sensor systems, light planes, helicopters, night-viewing devices, a mobile task force, and increased border personnel" will do the job. This sounds like a militarized zone. The best approach is to reduce the pressure to cross the border or "forget to leave."

6. Employer Sanctions

The final Commission response to the undocumented is the proposal that legislation make it illegal for employers to hire undocumented immigrants. My objection is several-fold: (1) Such legislation would create a large number of employer law-breakers. The recordkeeping and reporting requirements are extreme. (2) To minimize costly business disruption and to protect themselves from liability, employers will employ only "safe hires," those who appear to be citizens; the result will be that *those who appear "foreign" in color, language or customs will suffer discrimination*. It is they who will be called upon to display their badges of citizenship to be admitted to work. (3) Any system of universal identification, whether by card or presently existing documents, intrudes deeply into the American tradition. Unlike most European countries, we do not have a national police force or any other device which permits our national government to keep close tabs of each citizen or foreigner and their movements. The suggestions would be, in my view, a step towards the creation of such a system.

While employer sanctions and employee identification can be utilized to assist in the control of the undocumented, the cost of this nation's democratic traditions, the cost of discrimination against its minorities, the intrusion into the business sector, is too high a cost. We should not even consider such a step at this juncture in our history. The less intrusive steps, which we have not implemented, some of which I mention above, may be sufficient to reduce the number of undocumented to manageable proportions ...

7. Citizenship: English Language Requirement

The last concern I want to express deals with naturalization. It illustrates, I believe, the easy but erroneous, road this Commission has traveled. The Commission report quotes favorably from Webster's notion of language—that it is a unifier of national bonds—and recommends continued use of the English-language requirement for citizenship. The Commission, unknowingly, misinterprets the character of our national union, the reality of our history, and the diversity of our people. Americans are not now, and never have been, *one* people linguistically or ethnically. American Indians (natives) are not now, and never have been like Europeans. By the treaty which closed the Mexican American war our Country recognized its obligations to protect the property, liberty and religion of the new Americans. In short, America is a *political* union—not a cultural, linguistic, religious or racial union. It is acceptance of our constitutional ideals of democracy, equality and freedom which acts as the unifier for us as Americans ...

Resident aliens (lawful immigrants) pay taxes, obey the laws our legislature pass, and are called upon (by the military draft) to give their lives for our Country in time of war (whether they speak English or not). They have all the obligations even though they do not speak English, yet we deny them full partici-

pation in our democratic decision-making, casting a *vote*, without a knowledge of English ...

Every study I have read concludes that language requirements have been used to discriminate. Our early naturalization laws had no language requirement. We should do today as was done before the "nativism" (an early nice word to describe ethnic and racial prejudice) of the 19th Century set in; we should welcome the new arrivals with open arms, to all the obligations *and* the privileges of being full Americans.

The other requirements of naturalization—that applicants study the Constitution, be of good character and be in this Country five years—strike me as sound.

STATEMENT OF COMMISSIONER ROSE MATSUI OCHI

Immigration and refugee policy has become one of the most significant domestic and international issues confronting this nation and will remain so throughout the remainder of the century. As we seek to consider immigration policies in light of the national interest, it is important to take a lesson from history in order to avoid repeating the shameful mistakes of the past.

A review of the history of immigration to America reveals that each new group of migrants was subjected to cruel treatment and harsh injustices; and that during times of economic recession they were made scapegoats for the nation's socio-economic problems. The anti-alien sentiment manifested itself in discriminatory restrictive immigration laws and in arbitrary practices that disregarded constitutional protections. Despite the several revisions to the Act, intended to make the system fairer by abolishing racial and national origin restrictions, *the present laws with their numerical limitations and quotas have a disproportionate impact, i.e., a discriminatory effect on Asian and Latin American countries, particularly Mexico*. (Emphasis added). Paradoxically, although this nation embraces the principle of anti-discrimination and constitutional safeguards, in the area of immigration law enforcement and administration, there still exist blatant contradictions with the basic values of our democracy that are widely acknowledged and yet benignly ignored ...

When viewed in the context of this historical framework, *the Commission's Report of Conclusions and Recommendations will shed little new light on a subject riddled with much nonsense, myths and hypocrisy, and will represent a backward step in the evolution of progressive national policy...* (Emphasis added).

1. International Issues

To moderate migration pressures will require an examination of U.S. foreign policies which contribute to the "push." Specifically, *the study of the correlation between foreign aid and military intervention and migration to America of both refugees and immigrants should be undertaken*. (Emphasis added).

2. Illegal Aliens

Illegal immigration is a complex phenomenon which must be analyzed on two related but divergent levels: The reality and
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the perception people have about the phenomenon. The research on the subject does not provide a profile of the illegal population, but the accepted reality is, to a large extent, illegal immigration is a creature of the limitations of our current policies and oversubscribed quotas, and of the failure to retard the continuing demands of our secondary labor market for cheap laborers. Current laws have been criticized for causing illegal immigration because they are restrictive in not allowing access from certain countries, and in their failure to be tailored to meet migration pressures; because they are ineffectively administered which exacerbates the large backlogs and because they bring in nonimmigrant foreign laborers. Public perception of immigration closely mirrors the state of our economy. *During periods of unemployment, the undocumented worker becomes a scapegoat who is blamed for unemployment and is subjected to deportation. When the economy recovers, concern about immigration again fades into the background...* (Emphasis added).

The fact of the matter is Mexican undocumented workers are a boon to the U.S. economy because they typically take jobs which Americans will not accept, and their labor costs are much lower. (Emphasis added). It is not simply a coincidence that areas with the greatest number of undocumented workers have a correspondingly high economic productivity level ... Instead of temporary workers and new costly enforcement programs, hard-working unskilled immigrants should also be provided legal entry via our immigration goals with flexibility in the system to better accommodate varying migration pressures.

3. Border and Interior Enforcement

I am concerned that *the enforcement tenor of the report may create a climate to encourage practices which violate the civil rights of aliens and residents alike and which promote the use of abusive tactics and excessive force and violence in enforcement.* (Emphasis added). Current immigration enforcement programs have a disparate impact on "foreign looking" U.S. citizens and lawfully admitted resident aliens who possess ethnic characteristics similar to major immigration groups. Certain ethnic groups have disproportionately been the target of anti-alien activities. In the 19th Century the Asians bore the brunt of the attacks which today are focused on Mexicans. I have urged the need for the Commission to take a position against interior enforcement programs directed at individuals based solely on one's national origin ...

4. Economic Deterrents in the Workplace

I emphatically reject the Commission's employer sanction proposal. In addressing this question it is imperative that we not separate the principle of employer sanctions from a consideration of the means of objective verification and of the enforcement ramifications. *The Commission has failed to evaluate the cost of implementing an employer sanctions law through issuance of a "secure" ID card; the burden it places on employers; and the difficulty workers in the marginal sector of the secondary labor market, the very workers that this law is meant to protect, will have in establishing their eligibility for "secure" ID Cards.* (Emphasis added). The Commission ignored the evidence that nowhere have such laws been shown to be effective in stemming illegal immigration; the concern that it will spawn fraudulently established non-counterfeitable IDs; the

problem created by the unlikelihood that adequate resources will be allocated resulting in spotty enforcement; the low priority given by U.S. prosecutors of white collar crimes; the record of courts in sentencing in the area of economic crimes; the public cynicism that will drive the unscrupulous employer underground possibly exacerbating exploitation; and the probability of accelerating run-away industry to developing countries at the expense of native workers ...

5. Temporary Workers

I applaud the Commission for expressly rejecting a guest-worker program and for providing that the current H-2 program be streamlined, and cooperation to end dependence of any industry of H-2 workers be accomplished. I am uncomfortable that *these decisions may not bring an end to the exploitation of foreign workers if Congress holds a proxy for certain industries. I am afraid that a streamlined H-2 program may create a politically expedient "backdoor" for a substantial broadening of the scope of the program and creating an increase in the use of H-2 workers, with a lessened requirement for labor certification creating higher unemployment of domestic workers, and without protection of the rights of H-2 workers for lack of provision of standards, oversight and sanctions.* (Emphasis added). ...

6. Legalization

The Commission approved a liberal amnesty program in principle only. *The proposal failed to follow-through its promise of being generous, fair and fail-safe. It is a sham.* (Emphasis added). Out of an apparent concern over political palatability the amnesty program became so unattractive that it will likely get no takers. I urged that the proposal include flexibility in the determination of "continuous residency" because this requirement would tend to disqualify a substantial number of Mexicans ...

I believe, after once deciding the threshold question of allowing an adjustment of status of illegal aliens, it is deceptively unfair to set a trap for the unwary by providing deportation of those who are found ineligible. Many undocumented are simply undocumented ... A program to assure maximum participation should provide those who fail to qualify a temporary status with the opportunity to, after a few years, qualify for permanent resident having demonstrated to be responsible contributing members of society based on a good work record and payment of taxes ...

7. Refugees

While the 1980 Refugee Act took a major step toward seriously addressing how our asylum and refugee laws can be made more non-discriminatory, *ideological and geographic discrimination continues to pervade the implementation of the laws.* (Emphasis added).

8. Legal Issues

I am extremely disappointed that all the recommendations developed by the Commission's Legal Task Force included in

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the Appendix were not considered by the full body. The Commission did make some inroads into bringing immigration laws involving procedural rights from the Stone Age into the 20th Century. However, essentially the Commission dropped the ball on the INA revision package and treated certain legal issues like a "hot potato" ...

STATEMENT OF CHAIRMAN THEODORE HESBURGH

1. Family Reunification

While I favor the priority given to family reunification, I cannot agree with the dilution of the emphasis on the reunification of immediate families—spouses and unmarried children—reflected in the decision to continue a preference for brothers and sisters of U.S. citizens ... The inclusion of a preference for brothers and sisters of adult U.S. citizens creates a runaway demand for visas ... The situation is rapidly worsening. In 1978, there were fewer than a quarter of a million brothers and sisters with numbers waiting for visas. One year later, the number had more than doubled to over a half a million. The reason is simple. Once any person enters the country under any preference and becomes naturalized, the demand for admission of brothers and sisters increases geometrically.

I do not believe we should continue a preference in which there will be an ever-multiplying demand to immigrate totally disproportionate to the number of visas available, creating tremendous political pressures for periodic backlog clearance, and which, in the meantime, take scarce visas away from those trying to reunify their immediate families

[Editor's Note: Chairman Hesburgh incorrectly believes that visas for brothers and sisters "take scarce visas away from" immediate families. This does not happen. Regardless of how large the backlog is for visas for brothers and sisters, immediate relatives and family preferences still get the same number of visas.]

2. Employer Sanctions

I came to the conclusion early in our deliberations that it is wrong to exempt employers from hiring illegal aliens when it is unlawful for others to harbor them, especially when the main reason that illegal aliens come to the United States is to work. Once having concluded that an employer sanctions law is necessary, the essential question is how to make such a law work without having it discriminate against minority groups, disrupting the workplace or placing too great a burden on employers and eligible employees. The answer lies in some reliable method of employee identification which all of us who are eligible would have to produce when we applied for a new job ...

'My own preference is for an upgraded, counterfeit resistant social security card.

Since the only way an employer could incur a penalty would be if they failed to ask for and see such a card, all eligible employees—including the minorities who are often discriminated against not—would have better protection than ever before against unfair competition and against discrimination. I

am also confident that criteria can be established which would protect us all against the social security card being used to unfairly invade privacy.

An important element in having a reliable system which must be addressed has to do with improving the process by which eligible persons can obtain such a card. I believe that both the card and an improved, more secure process for obtaining it are well within the reach of American technology and organizational ability.

[Editor's Note: Chairman Hesburgh never explains what "criteria" can be established to protect invasions of privacy with the implementation of a national ID card; nor does he explain how to overcome the complexities in insuring that poor and minority persons won't be discriminated against in obtaining ID cards; nor does he explain why, contrary to the testimony of most witnesses, he believes minorities "would have better protection than ever ... against discrimination."]

STATEMENT OF COMMISSIONER ELIZABETH HOLTZMAN

1. Staff Research

At the onset I would note that I have serious reservations about the research on which the Commission's recommendations with respect to undocumented/illegal aliens was based... We still do not know with any certainty how many illegal aliens are in the United States, nor do we have reliable information on their impact on the economy, or whether they displace American workers and, if so, in what sectors ... *In short, I believe the Commission's decision-making process itself was flawed.* (Emphasis added). Although its conclusions may well be valid, the Commission's judgments on the most significant issue—undocumented illegal aliens—were made without the benefit of much essential information ...

2. Employer Sanctions

... I have little confidence, however, that in and of themselves sanctions will be effective, and I would note that the Commission was offered little in the way of information on the feasibility of implementing such sanctions despite the fact that they have been ineffective at best in states where they have been imposed.

On a practical level, I see little likelihood that adequate resources will be made available to assure that sanctions would be enforced to any appreciable extent ... Likewise, the Occupational Health and Safety Administration and the Wage and Hour Division at the Department of Labor, supposed guardians of employee working conditions and the minimum wage, are scandalously understaffed ...

On a more fundamental level, *I vigorously oppose a national identifier to be imposed with employer sanctions—whether it is a work permit system or a uniform identity card.* (Emphasis added). While for some inexplicable reason the issue of a national identity card was never directly voted upon, the Commission did recommend—by a narrow 8-7 majority—that "some more secure method of identification" beyond existing forms be utilized. I certainly cannot subscribe to this vague precept,

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particularly when some will no doubt interpret this recommendation as a call for a national identity card ...

3. Grounds for Exclusion

Finally, I am disturbed by the Commission's "recommendation" with respect to the atiquated and unworkable grounds of exclusion set forth in the Immigration and Nationality Act, a subject of particular importance to many Americans, on which we received extensive testimony during our public hearings, and about which this country has been justifiably criticized by our friends and allies abroad. Despite voting 13-3 at its December 7 meeting not to retain the current 33 grounds of exclusion, the Commission went no further, and, on January 6, decided (without my participation) simply to "recommend" that "Congress should reexamine the grounds for exclusion presently set forth in the INA." I consider this to be nothing less than an abdication of the Commission's mandate as set forth in P.L. 95-412, its enabling statute, which directed it to "conduct a comprehensive review of the provisions of the Immigration and Nationality Act and make legislative recommendations to simplify and clarify such provisions" ...

STATEMENT OF COMMISSIONER ALAN K. SIMPSON

1. Standard of Value: The National Interest

The process for developing an immigration and refugee policy for the United States of America should begin with a clear decision about the standard of value to be applied in choosing among alternative policies and courses of action ...

An elected or other federal official must not attempt to impose his own humanitarian or other moral values on the American people. Immigration policy should be based on what would actually promote the happiness of the American people, not as federal officials might wish they were or think they ought to be, but as they are now and are likely to be in the future ...

The impact of immigration on the national interest depends on the number and characteristics of immigrants and on how well they assimilate the values and way of life of the American people. (Emphasis added). Some of the potential impacts are economic and could be expressed in dollars. Others are not economic but may relate even more importantly to the well-being of the American people ...

Immigrants can still greatly benefit America, but only if they are limited to an appropriate number and selected within that number on the basis of traits which would truly benefit America. (Emphasis added) ...

2. Ethnic Patterns

I realize that I am about to enter into a very sensitive area and there is some risk that what I will say may be misunderstood ...

As previously stated, the Bouvier study found that, given a total annual immigration of 750,000, at least one-third of the U.S. population in the year 2080 will consist of post 1979

immigrants and their descendents. This finding has profound implications because current immigration flows to the United States are substantially different from past flows (which, of course, produced the present population) in two significant ways, ethnicity and language concentration ...

The present immigration flow differs from past flows in one other significant way. Immigration to the United States is now dominated to a high degree by persons speaking a single foreign language, Spanish, when illegal immigration is considered. The assimilation of the English language and other aspects of American culture by Spanish-speaking immigrants appears to be less rapid and complete than for other groups. A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. A study by the Select Commission staff indicates that immigrants from Latin America naturalize to a lesser degree than those from other regions ...

Under existing law and policies such patterns are likely to continue or be accentuated since the pressures for international migration are likely to increase over the coming decades, especially from regions which already dominate U.S. immigration flows.

3. Assimilation

Although the subject of the immediate economic impact of immigration receives great attention, assimilation to fundamental American public values and institutions may be of far more importance to the future of the United States. If immigration is continued at a high level and yet a substantial portion of the newcomers and their descendents do not assimilate, they may create in America some of the same social, political and economic problems which existed in the country which they have chosen to depart. Furthermore, as previously mentioned, a community with a large number of immigrants who do not assimilate will to some degree seem unfamiliar to longtime residents. Finally, if linguistic and cultural separation rise above a certain level, the unity and political stability of the nation will in time be seriously eroded ...

[Editor's Note: Other Commissioners also submitted "supplemental views" for the Final Report. We have reprinted here, in edited form, examples which we believe show continuing confusion on fundamental questions and the inability to reach a consensus.]