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## GLOSSARY OF TERMS AND ACRONYMS

AFSC-ILEMP.	American Friends Service Committee. Their Immigration Law Enforcement Monitoring Project is a coalition of groups which monitor human rights concerns in the US-Mexico border region, advocate for policy changes and undertake community outreach and education.
Alien . . .	A foreign national, present in the USA (eg “illegal alien,” “resident alien”)
Border Patrol . . .	The mobile, uniformed enforcement arm of the Immigration and Naturalization Service. Its mission is to maintain control of the international boundaries between ports of entry by detecting and preventing entry without inspection. It also interdicts narcotics and other contraband.
CAP . . .	Citizens Advisory Panel, established by the INS in 1994 to make recommendations on ways to prevent abuse and improve the agency’s complaint procedures. Its final report was issued at the end of 1997.
CBO . . .	Community-based organizations (a term used in the CAP report)
<i>Coyote</i> . . .	Person who guides or smuggles individuals or groups across the border from Mexico into the USA, often in remote areas, for a fee.
CRT . . .	Civil Rights Division within the DOJ, located in Washington, DC, responsible for prosecuting criminal civil rights violations.
DOJ . . .	US Department of Justice. INS is an agency within the DOJ.
FBI . . .	Federal Bureau of Investigation - undertakes criminal investigations and develops cases for potential prosecution in Federal court.
HRW . . .	Human Rights Watch, an international human rights organization based in New York and Washington, DC.
Illegal immigrant/alien	A non-US national who entered the USA without inspection, used fraudulent documents or overstayed their visa and is residing in the USA unlawfully.
INS . . .	US Immigration and Naturalization Service, an agency within the Department of Justice.
Juvenile / minor / child	A person under the age of 18.
OIA . . .	Office of Internal Audit, INS’ internal affairs office, created in 1992. It audits and reviews INS operations. It maintains a system database to record complaints received, pending investigations, and their outcome. It publishes an annual report which is publicly available.
OIG . . .	Office of the Inspector General, within the DOJ. Independent of the INS, it is the central clearinghouse for processing and investigating complaints made against DOJ employees (including INS). It maintains five field offices along the Southwest border. It develops cases for criminal prosecution, civil action and administrative action.
Operation Gatekeeper	Border operation, San Diego sector, since October 1994
Operation Hold the Line	Border operation, El Paso sector, since September 1993
Operation Rio Grande	Border operation, Brownsville, since August 1997
Resident alien . . .	A foreign national with legal permanent residency in the USA.
Undocumented migrant	Non-US national seeking employment in the USA, who crossed the international border without inspection, and lacks the requisite documentation to enter or reside in the USA.

# UNITED STATES OF AMERICA

## HUMAN RIGHTS CONCERNS IN THE BORDER REGION WITH MEXICO

### INTRODUCTION

This report describes the findings of Amnesty International's research into human rights concerns along the United States' southern border with Mexico, primarily recent allegations of ill-treatment and brutality by officers of the Immigration and Naturalization Service (INS), in particular the Border Patrol, the law enforcement branch of the INS. According to the US Justice Department in 1998, the INS now has more armed federal agents with arrest power than any other federal agency in the country.

In September 1997 an Amnesty International research mission visited the United States' southern border area with Mexico, from San Diego, California, to Brownsville, Texas, two thousand miles to the east. During a three-week fact-finding tour, its delegate spoke to human rights monitors, lawyers and immigrant advocacy groups, as well as the staff of several Border Patrol sectors, INS district offices and the Office of Inspector General.

The INS has had a long and troubled history in the US-Mexico border region, with many allegations of officer misconduct including unlawful lethal shootings, physical assaults and ill-treatment of detainees in custody. The INS took a major step forward in acknowledging the seriousness of the problem when it established a Citizens Advisory Panel (CAP) in 1994, and asked it to recommend ways to reduce the number of complaints of abuse made against INS employees, and ways to minimize or eliminate the causes for those complaints. Its final report was presented to the Attorney General on 30 September 1997. The CAP concentrated on two urgent issues: the INS complaint process - its lack of visibility, timeliness and effectiveness; and ways to improve the professionalism of the INS through improvements to employee training and with special emphasis on the Border Patrol.

The INS accepted most of the CAP's findings and issued an Action Plan in December 1997 which described how and when the agency would implement the recommendations. Amnesty International commends the INS for acknowledging the serious problems within the agency, and welcomes the steps now being taken to incorporate CAP recommendations for improvement. Amnesty International believes that, if fully implemented, the CAP recommendations would go a long way toward remedying the longstanding concerns raised over many years by other human rights monitoring groups.

There were indications that human rights violations persisted in the region during 1996, 1997 and early 1998. The purpose of this report is to document Amnesty International's concerns and place them on record, for the attention of the INS and US government. Amnesty International believes that its findings further demonstrate the seriousness of the human rights situation in the southern border region, and urges that the INS incorporate our findings and recommendations within its strategy for reform of the agency.

The allegations of ill-treatment Amnesty International collected include people struck with batons, fists and feet, often as punishment for attempting to run away from Border Patrol agents; denial of food, water and blankets for many hours while detained in Border Patrol stations and at Ports of Entry for INS processing; sexual abuse of men and women; denial of medical attention, and abusive, racially derogatory and unprofessional conduct towards the public sometimes resulting in the wrongful deportation of US citizens to Mexico. People who reported that they had been ill-treated included men, women and children, almost exclusively of Latin American descent. They included citizens and legal permanent residents of the USA, and members of Native American First Nations whose tribal lands span the US-Mexico border.

Many thousands of Mexicans (in particular) leave their homeland due to economic and social pressures and go in search of a better livelihood north of the border. Amnesty International does not take issue with the sovereign right of the United States to police its international borders in order to determine whether individuals have the legal right to enter the country. But it must do so in a manner which complies with its international human rights obligations.

This report examines the recent history of the US-Mexico border region; the INS' human rights record during the 1990s; the recommendations for reform made by the CAP and INS' Action Plan in response; recent allegations of human rights violations reported to Amnesty International and an examination of the fatal shooting of an 18-year-old US citizen in Texas by a member of a US army marine patrol while it was engaged in a covert surveillance operation in May 1997.

Amnesty International's examination of the US-Mexico border region forms part of its ongoing work in monitoring and investigating allegations of ill-treatment across the USA. Amnesty International is a worldwide, independent movement which works for the release of "prisoners of conscience;"<sup>1</sup> for fair and prompt trials for political prisoners, and for an end to "disappearances," torture and other cruel, inhuman or degrading treatment or punishment of prisoners everywhere in the world, in violation of international human rights standards.

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<sup>1</sup>Persons detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence.

## AMNESTY INTERNATIONAL'S MAIN CONCERNS

- There is credible evidence that persons detained by the INS have been subjected to cruel, inhuman or degrading treatment, including beatings, sexual assault, denial of medical attention, and denial of food, water and warmth for long periods. There were indications that human rights violations persisted in the region during 1997.
- The use of armed US military troops to assist the INS along the US-Mexico border increases the risk that human rights violations may occur. One such joint operation led to the shooting, in disputed circumstances, of an 18-year-old US citizen in Texas on 20 May 1997.
- Reported victims of human rights violations committed by US immigration officials have included US citizens and legal permanent residents of the United States, a number of whom have been detained, interrogated and deported to Mexico. They include women, children and Native Americans. People of Latin American descent have reportedly been ill-treated, detained, interrogated, searched and harassed on account of their ethnic origin.
- Unaccompanied juveniles in INS detention have experienced difficulty obtaining adequate legal advice and representation; despite being recognized internationally as an especially vulnerable group, detained children have no statutory right to a lawyer.
- During 1997 the complaints system, though better publicized than before, continued to lack public confidence. Its procedures are complex, multi-jurisdictional and have failed to remedy injustice in the past. There is a perception that INS officers act with impunity. Complaint forms in English or Spanish were not readily available to those who might need them in the Border Patrol holding areas visited by Amnesty International, despite INS assurances since 1994 that this concern had been remedied.
- The number of Border Patrol agents is increasing dramatically. But the border-region branches of the Office of the Inspector General (OIG), (which has an important independent role in the complaint process, and is responsible for initial investigation of complaints), have not seen a proportional increase in the number of their investigative staff.
- The INS' Action Plan, developed in response to the Citizens Advisory Panel's (CAP)'s final report, is an acknowledgement of the agency's serious problems and the urgency of addressing them. The CAP's recommendations and the INS Action Plan correctly emphasize the urgent need to reform the complaint process and to improve employee training, cultural sensitivity and INS/community relations. Identifying the problems is a first step. The CAP recommendations now need to be fully implemented. Amnesty International hopes that the CAP's replacement 'citizen advisory committees' will be independent review bodies, empowered to monitor investigations, record complaints, oversee INS operations and, where necessary, conduct their own investigations into matters of concern.

## THE US-MEXICO BORDER - RECENT HISTORY

The US-Mexico border is some two thousand miles long, running from San Diego, California, in the west, to Brownsville, Texas, in the east (see map on page 2). Many US border cities have sister-cities on the Mexican side: San Diego/Tijuana; Nogales, Arizona/Nogales, Sonora; El Paso/Ciudad Juarez; Laredo/Nuevo Laredo; Brownsville/ Matamoros. The populations either side of the line have much in common, including family ties. But the region has been a place of turbulence and friction this century because of the manner in which the US has sought to enforce immigration laws.

Until World War I, crossing the border was easy and people entering from Mexico could do so legally. When US economic growth created a need for workers, Mexican immigrants were welcomed. But during the Great Depression of the 1930s, hundreds of thousands of people of Mexican descent were “repatriated” to Mexico even though more than half were US citizens. During the Second World War, Mexican workers were again welcomed, to meet labour shortages. But in the 1950s, the Federal Government launched “Operation Wetback” to expel Mexicans from the United States. Once again, many US citizens were forced to leave their country of birth. More than a million people were expelled in 1954 alone; many were denied hearings and thus US citizens were denied their constitutional rights.<sup>2</sup>

In 1924 Congress created the Border Patrol as a component of the Immigration Bureau, “to patrol the land border and stop smuggling.” By 1950 most of the Border Patrol’s resources had shifted to the southern border to prevent illegal immigration. The Border Patrol has steadily expanded in recent years, and numbered more than 6,300 agents in 1997.<sup>3</sup> Additional resources and technology at the Patrol’s disposal include new lighting, fencing, ground sensors, mobile infra-red night scope cameras, more vehicles and computerized systems for processing persons who are apprehended. It has increasingly become involved in drug interdiction activities and, since November 1989, the US army has been formally involved with assisting the INS in the so-called “War on Drugs.”

In recent years, the INS has taken steps to seal the US-Mexico border in a number of areas which were historically popular crossing places for migrants. These special operations include “Operation Blockade” later renamed “Hold the Line” (September 1993) in Greater El Paso, Texas; “Operation Gatekeeper” (October 1994), south of San Diego, California, and “Operation Rio Grande” (August 1997) in Brownsville, Texas. The effect has been twofold. The first has been to reduce the number of people crossing the border without inspection in the targeted areas, and those who do cross are more easily apprehended. But would-be immigrants remain undeterred, and continue to congregate in their thousands on the Mexican side every day, preparing for their journey. Amnesty International was told that, on any given night in Tijuana, as many as 10,000 transient people are sleeping in the streets or in one of the few church-run refuges, waiting to cross the border into the USA.<sup>4</sup>

The second effect of the Border Patrol operations has been to force people to attempt their border crossing in outlying areas, across the desert, over the mountains, and through rural areas where the physical dangers are considerable. Such is their determination to cross the border that people take life-threatening risks - and many die on the journey. Between 1993 and 1996, it is estimated that at least 1,185 migrants died in the attempt to cross the border, and it is feared that the true number is far higher since many bodies are never found.

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<sup>2</sup>US Commission on Civil Rights, *Tarnished Golden Door: Civil Rights Issues in Immigration* (1980), p.11.

<sup>3</sup>As of mid-1996, the INS had the largest number of armed federal agents with arrest powers in the country (12,403), following a 31 percent increase in immigration officers, according to the Department of Justice. *Los Angeles Times* Wire Reports, 26 January 1998.

<sup>4</sup>Meeting with Raul Ramírez and José Luís Pérez Canchola, Casa del Apoyo al Migrante, Tijuana, BC, 9 September 1997.

Causes of death include drowning (in the Rio Grande or the many irrigation canals), traffic accidents, dehydration, heat stroke and hypothermia.<sup>5</sup>

On 5 August 1997, 12 migrants including three women and a small child tried to cross the border from Agua Prieta, Sonora, to Douglas, Arizona. A smuggler led the group into a storm drain - a four-foot diameter tunnel which is part of a linked drainage system spanning the two cities. They crawled along the tunnel for nine blocks, under the streets of Douglas, until they were hit by a wall of water from a flash flood. Seven of the twelve migrants, including one of the women, were swept away and drowned. The survivors climbed a shaft and clung to a ladder for two hours before emerging into the street. They were arrested by the Border Patrol.<sup>6</sup>

Bowie High School lies a few miles east of downtown El Paso, Texas, only yards from the international border with Mexico. It serves the community known as the Segundo Barrio, whose population is almost entirely of Hispanic descent. The Border Patrol has been a powerful presence in the community for generations; this is a place where some parents, fearing an accidental deportation, do not let their children leave home in the morning without their birth certificates.<sup>7</sup> Legal residents of the neighbourhood have been stopped, questioned, frisked, detained, insulted and physically ill-treated by Border Patrol agents, but seldom protested against their treatment, fearing reprisals and believing that complaints were futile. Students at Bowie, all US citizens, were similarly harassed on a regular basis.

Finally, in 1992, Bowie High School staff and students took action. After attempts to remedy their grievances directly with the Border Patrol failed, seven representative plaintiffs brought a class action suit on behalf of the Bowie community in federal court. Cases adopted as findings of fact by the judge<sup>8</sup> included the following:

- a 15-year old girl, Nieden Susie Diaz, was assaulted by a Border Patrol agent on her way home from school; the agent "for no apparent reason knocked Nieden down to the ground and kicked her about twenty times." The agent stood on her chest with one boot and kicked her with the other, causing deep leg and chest bruises.
- The school's football coach, Benjamin Murillo, was stopped and threatened by a Border Patrol agent who pointed a pistol at his head.
- A partially-sighted student, David Renteria, was threatened, grabbed, shoved face-first into a fence, and roughly frisked by a Border Patrol agent who ridiculed him for attempting to exercise his right to remain silent and continue walking.

US District Judge Lucius Bunton granted the Bowie student plaintiffs' requests for a restraining order. In his December 1992 ruling he found, among other things, that:

"The government's interest in enforcing immigration laws does not outweigh the protection of the rights of United States citizens and permanent residents to be free from unreasonable searches and seizures." "The El Paso Border Patrol has a regular, consistent, and prominent presence on the Bowie High School campus... "Bowie High School provides an oasis of safety and freedom for the students and staff who reside within the School District. The continued harassment of Bowie High School students and staff by the El Paso Border Patrol is both

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<sup>5</sup>Eschbach, Hagan, Rodriguez, Center for Immigration Research, University of Houston, "Deaths at the Border," Executive Summary, June 1997.

<sup>6</sup>Arizona Daily Star, reports of 7, 8, 12, 17 and 19 August 1997.

<sup>7</sup>Robert Tomsho, "Matter of Principle: High School in El Paso Gives the Border Patrol A Civil-Rights Lesson," The Wall Street Journal, 23 February 1993.

<sup>8</sup>*Murillo v. Musegades*, 809 F.Supp. 487 (W.D.Tex. 1992) Findings of Fact, pp.491-3.

an invasion of their civil rights and the oasis.”<sup>9</sup> “The procedures presently in place for reporting and investigating alleged abuses by the El Paso Border Patrol are ineffective. The procedures are complex and often the victim of abuse is discouraged from filing a complaint by the governmental offices, personnel and complaint structure.<sup>10</sup>

In 1993, the El Paso Border Patrol made a Settlement Agreement with the Bowie plaintiffs. This included undertakings by the Border Patrol to publicize the settlement, the complaint procedures and complaint forms in the media, in English and Spanish. A toll-free telephone number to receive complaints in English or Spanish was established and the number displayed on all Border Patrol vehicles.

Four Native American nations have tribal lands which span the US-Mexico border: the **Tohono O’odham**, the **Yaqui**, the **Cocopah** and the **Kickapoo**.<sup>11</sup> The **Tohono O’odham** nation has a population of some 22,000. The tribe is recognized by the US federal government. Their reservation lands comprise nearly 3 million acres in southern Arizona and their traditional tribal lands extend south into the Sonoran desert in Mexico. Annual festivities include July and October festivals in Sonora which are attended by tribal members from the USA. The **Yaqui** nation has reservation lands of about 1,000 acres in New Pascua, Southwest Tucson, and southern Arizona. The tribe obtained US federal recognition as a First Nations tribe in 1978. The **Cocopah** have reservation lands of 6,000 acres and a population of 4,000, half of whom reside in the Colorado River delta region of Mexico. The US part of the tribe is recognized by the US federal government. The **Kickapoo** nation is much smaller, with a 125-acre reservation in Maverick County, Texas. They number about 600 people. They consider the land south of the international border as their traditional hunting and ceremonial grounds.

The Treaty of Guadalupe-Hidalgo (1848), which ended the war between Mexico and the United States, recognized Native American tribes’ rights as sovereign nations to cross the new border without hindrance. However, human rights monitors in the Arizona region have documented instances in which Native American Indians who wish to cross the border to visit family and attend native ceremonies have been harassed and had problems complying with the documentation required by the INS.

In August 1997, Native tribal representatives, community leaders and human rights activists from the US Southwest and northern Mexico came together to create the Indigenous Alliance Without Borders (*Alianza Indígena Sin Fronteras*), to work against discrimination and harassment of Native people at the US-Mexico border. Participants discussed issues of mobility and other problems they had encountered. Indigenous people maintain that they do not wish to cross any border - the international border crosses them.

The INS should ensure that the rights of Native American Indians, whose tribal lands span the US-Mexico border, to cross the border without fear of harassment, intimidation or abuse, are respected. Amnesty International urges the US government to liaise with tribal leaders in order to resolve the problem of personal identification for border control purposes, such as the proposed creation of a tribal accreditation card which would be recognized at the border as an acceptable form of identification for tribal members.

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<sup>9</sup> Ibid, p. 495.

<sup>10</sup> Ibid., p. 496.

<sup>11</sup>The following brief description of the tribes comes from Bahti, Tom and Bahti, Mark, Southwestern Indian Tribes, KC Pubs., Inc., Revised 1997. And from Mike Flores, Arizona Border Rights Project.



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## RECENT INVESTIGATIONS OF THE INS' HUMAN RIGHTS RECORD

A number of organizations and agencies examined the human rights record of the INS in the 1990s. These include human rights monitors such as Human Rights Watch (HRW) and the American Friends Service Committee (AFSC); investigative journalists; four Advisory Committees to the US Commission on Civil Rights, and, most recently, the Citizens Advisory Panel (CAP) established by the INS itself.

1. In February 1992, the American Friends Service Committee (AFSC) published Sealing our Borders: The Human Toll.<sup>12</sup> This covered the period from May 1989 to May 1991 and concluded that significant and serious abuses had occurred in the enforcement of immigration law, including: psychological or verbal abuse (use of racial or ethnic insults, rude or abusive language, threats or coercion, and prolonged or aggressive interrogation techniques); physical abuse (shootings, beatings, sexual assault, injury by vehicles and high-speed chases), at least seven of which resulted in death; illegal or inappropriate searches (including questioning based solely on ethnic appearance, entry without warrant or consent, overzealous execution of search warrants, strip searching without proper motive, and illegal law-enforcement raids); violations of due process (failure to advise persons of legal rights or eligibility for statutory benefit, denial of access to counsel, and fabrication of evidence); illegal or inappropriate seizures of persons (unlawful temporary detention, false arrest, and illegal deportations); seizure or destruction of property; and violations of the rights of Native Americans to cross the border freely.
2. The Border Patrol was further criticized in a 1993 investigation by the Los Angeles Times<sup>13</sup> which found that the Border Patrol had hired agents with dubious pasts, including criminal records and checkered careers with police agencies and the military; and pressures to rush agents to the border exacerbated a flawed screening process. During the 1990s agents were prosecuted or disciplined for numerous offenses including unjustified shootings, sexual misconduct, beatings, stealing money from prisoners, drug trafficking, embezzlement, perjury and indecent exposure. Widespread illicit shooting by agents, and subsequent cover-ups, were a serious concern in the solitary stretches of Arizona desert where agents focused on interdicting drug smugglers. Fear of retaliation and a deficient complaint process discouraged victims and witnesses from reporting abuses. Internal investigations of wrongdoing and discipline of agents were slow and erratic; weak oversight permitted agents to remain on duty despite lengthy records of alleged misconduct.
3. Between May 1992 and April 1997, HRW published five reports on the subject of human rights abuses along the US-Mexico border, the last of which described the treatment of unaccompanied children detained by the INS.<sup>14</sup> These reports presented an extremely disturbing picture of an agency out of control. HRW reported dozens

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<sup>12</sup> Third Report of the Immigration Law Enforcement Monitoring Project (ILEMP), A Project of the Mexico-US Border Program, American Friends Service Committee (Philadelphia, February 1992).

<sup>13</sup>McDonnell, Patrick J. And Rotella, Sebastian, "When Agents Cross Over the Borderline: Law Enforcement: Charges of wrongdoing in Border Patrol have forced even loyalists to call for reforms." Los Angeles Times, 22, 23 and 24 April, 1993.

<sup>14</sup>Brutality Unchecked: Human Rights Abuses Along the US Border with Mexico, May 1992; Frontier Injustice: Human Rights Abuses Along the US Border with Mexico Persist Amid Climate of Impunity, May 1993; Crossing the Line: Human Rights Abuses Along the US Border With Mexico Persist Amid Climate of Impunity, April 1995; Human Rights Violations by INS Inspectors and Border Patrol Agents Continue; Attorney General Reno Urged to Address Abuse Problem, an open letter to Attorney General Janet Reno, 13 January 1997; Slipping Through the Cracks: Unaccompanied Children

of instances of people shot and killed or injured by the Border Patrol; violations of the INS' firearms policies on use of lethal force; sexual assaults, beatings and other ill-treatment of detainees; a code of silence by which officers refused to testify against colleagues accused of wrongdoing; and virtual impunity for agents, regardless of their actions. HRW was also extremely critical of the INS complaint procedures.

4. In May 1997, four State Advisory Committees to the United States Commission on Civil Rights (Arizona, California, New Mexico and Texas) published a report based on fact-finding meetings held in 1992 and 1993, and subsequent research. The principal findings were that a pattern of abusive treatment by Border Patrol officials might exist, and the sheer statistical numbers and severity of abuse complaints were "a cause of deep concern." Also that existing mechanisms for redress of alleged misconduct by Federal immigration officers were "inadequate, inaccessible and lack the confidence of the communities most directly affected." The Advisory Committees' report concluded, "It is...of critical importance that this agency rebuild its professional reputation based on respect for individual rights, including those of minorities and immigrants, with or without documentation."<sup>15</sup>

5. In 1994 a Citizens Advisory Panel (CAP) was established by the INS to respond to concerns of the kind described above. INS Commissioner Doris Meissner asked the panel to research the problems of abuse and misconduct, and recommend to the Attorney General solutions and suggestions on ways to eliminate legitimate causes for complaints, and to improve, where necessary, the complaint review and response procedures. The panel was also asked to make recommendations on community policing and training initiatives for law enforcement personnel in order to strengthen the relationship between the INS and the community. The panel comprised five Department of Justice officials, nine private citizens and one non-voting representative from the Government of Mexico. The panel presented its final report and recommendations to Attorney General Janet Reno on 30 September 1997. Two priority areas emerged: 1) the INS complaint process; and 2) the development of a culture of professionalism among INS staff through training for current and new employees, as well as supervisory initiatives. All the CAP recommendations are listed in Appendix II.

### **The INS Complaint Process**

International law obliges the USA to ensure that all detained persons may raise complaints of ill-treatment, that such complaints are investigated promptly and impartially, that abusers are punished, and that complainants are protected from retaliation or punishment.<sup>16</sup> International standards require, both that a complaint process exist, and that its existence be advertised. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides, at Principle 33 (1), that "**A detained or imprisoned person...shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of**

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Detained by the US Immigration and Naturalization Service, April 1997.

<sup>15</sup>Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities, Arizona, California, New Mexico and Texas Advisory Committees to the US Commission on Civil Rights, March 1997, p.82.

<sup>16</sup>International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in 1992. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT), ratified by the USA in 1994.

**the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.”**

Principle 13 states that **“Any person shall, at the moment of arrest and at the commencement of detention...be provided...with information on and an explanation of his rights and how to avail himself of such rights.”**

The INS falls short with regard to both of these requirements.

The INS complaint procedure is, the agency admits, complex:

- , All allegations of civil rights violations that come to the attention of INS are presented to the appropriate field office of the Office of Inspector General (OIG), Department of Justice (DOJ) and to the INS Office of Internal Audit (OIA) which opens a case file for tracking purposes. The OIG presents the matter to the DOJ Civil Rights Division (CRT), which determines whether or not investigation by the FBI is warranted.
- , If the CRT decides that an FBI investigation is appropriate, it directs that such investigation will be conducted. The FBI provides its investigative report to the CRT, which then either accepts or declines the case for criminal prosecution. If the CRT declines the case, it forwards the FBI investigative report and its analysis of the case to the OIA.
- , If the CRT decides that a Federal Bureau of Investigation (FBI) investigation is not warranted, it refers the matter to the OIG. Usually within several days, the OIG then chooses one of the following alternatives: (1) to initiate an investigation; (2) to refer the matter to the OIA “for appropriate investigation, inquiry, or managerial oversight,” with a requirement that the INS provide a report of the results; or (3) to refer the matter to the OIA for information.

The CAP, in reviewing the INS complaint process (pages 6-16 of its report), found it “not visible to the community it serves” and “a very cumbersome process.” The Panel identified “certain organizational and procedural impediments” in the current procedures, making it difficult for complainants to follow their complaint to resolution and adversely affecting INS’ ability to administer its disciplinary process. “The three organizations involved - CRT, OIG and OIA- have different missions and priorities, which makes a successful outcome difficult to achieve from the INS’ perspective.”

The CAP report highlighted many problems identified by others in earlier critiques of the INS’ complaint mechanisms. These included the complexity of the process and delays caused when complaints are referred to the OIG and CRT for possible criminal action: “When civil rights cases are declined for prosecution after lengthy investigation, the INS is unable to initiate timely disciplinary action where such action is warranted.” Overlapping jurisdictions and subjective decision-making in the prosecution and investigation of complaints may detract from the INS’ ability to pursue discipline in a timely manner. “Additionally, because there may be seven offices involved in the complaint resolution process, it is often difficult...to follow the complaint and to ascertain whether and where it will be resolved.” Most cases ultimately return to the local level for disciplinary action, but because management discretion varies widely “the Panel is concerned that there may be inconsistencies in the application of disciplinary action.”

The CAP was concerned that complaints of abuse and misconduct continued to be reported in the press and by immigrant constituent groups, but may not have been formally addressed or resolved by the complaint process.<sup>17</sup> Fewer than one percent of complaints were made using the INS official complaint form. “In order for

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<sup>17</sup>John Chase, Director of the INS Office of Internal Audit, reported that in 1997 about 1,800 complaints were made against the INS, including 230 serious allegations of physical abuse. However, these statistics refer to official written complaints, whereas many more victims of abuse complain verbally or informally. (“INS will Do More to Help Immigrants Understand Their Rights,” AP, 23

the complaint process to succeed, people who have a complaint must be aware of the process, able to access it, familiar with its procedures, and confident that the process will achieve a fair and reasoned outcome. The Panel does not believe that these conditions exist at the present time.” The CAP expressed serious concern regarding the display and retention of the INS information posters and complaint forms, and reiterated the importance of making the complaint process visible and comprehensible to those who may need to access it. It recommended that the posters and complaint forms be readily accessible to detainees and the general public.

In 1996, 99 percent of the civil rights violations complaints received by the CRT were declined for prosecution.<sup>18</sup> This did not mean that no wrong-doing occurred. Rather, such decisions illustrated that the evidentiary standard required to prove a civil rights violation is difficult to meet.<sup>19</sup> The Panel was very concerned that these serious cases may result in no action at all: “There is no current mechanism...outside of personal initiative, through which follow-up action is assured. As a result, the potential exists for individuals to go unsanctioned for very serious abuses.”

The CAP stressed the importance of using information received by the INS regarding both substantiated and unsubstantiated complaints against its employees “as a tool to provide INS managers with information on patterns observed...and to serve as an early warning system to managers in identifying employees who may require additional training and increased supervision in performing their duties.” The Panel urged that any employee accused of aggravated assault, rape or shooting should be removed from public contact work immediately, pending investigation. “Such an action communicates a message to the people in the INS and within the community, that the INS views this kind of misconduct, even if it is alleged, as a serious issue.”

### **Amnesty International’s findings:**

Despite assurances from the INS since 1994 that bi-lingual posters and complaint forms would be displayed in plain view in every INS processing, holding and public access area, the practice in some Border Patrol stations does not appear to be in line with agency policy. During its fact-finding visit to the border in September 1997, Amnesty International visited three Border Patrol stations, with short-term holding areas for persons apprehended as illegal immigrants. In each station a complaint form was requested.

In two of the Border Patrol stations visited (Calexico and Harlingen), Amnesty International was told they did not keep such forms, but would either take a complaint orally or assist a complainant in documenting his or her complaint. In the third station, Chula Vista, California, a form was reluctantly produced from another office building outside the holding area; it was in English only, typed on plain, non-letterhead paper. On enquiry as to how this would be completed by a person who knew no English, the response was that an agent would “help” the

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December 1997)

<sup>18</sup>The OIG’s Semiannual Report to Congress, covering the period 1 October 1996 to 31 March 1997, cites three cases of INS personnel investigated and punished for wrongdoing. The INS “terminated” (ie, dismissed from employment) six other employees during this reporting period for unspecified misconduct, describing this as “a significant increase in the number and gravity of administrative actions taken by INS in civil rights related cases.”

<sup>19</sup>The Criminal Section of the CRT must be convinced that there is sufficient evidence to prove beyond a reasonable doubt that an INS officer violated the complainant’s civil rights, and that s/he did so intentionally. The CAP commented, “...it is fair to assume that most complaints involving INS employees do not meet that standard.”

complainant. This finding was discouraging in the extreme, given the assurances of the INS that "Complaint forms...in both English and Spanish, are to be available...and will be provided immediately upon request."<sup>20</sup>

### **INS Professionalism and Training**

Regarding professionalism, the CAP found the INS to be at a critical point in its history, facing unprecedented growth and unprecedented demand for immigration services. The INS has embarked on the most ambitious hiring and training initiative ever, increasing its staff of Border Patrol agents by an additional 1,000 officers per year for Fiscal Years 1997 to 2001. "The INS faces many challenges that will strain its recruitment, hiring, training and assimilation capabilities." The CAP stressed the importance of insisting upon high standards of conduct: "[P]rofessionalism is a broader issue than simply providing employees with training; it is a fundamental issue of the culture of the organization, and the core attitudes of the employees who carry out the INS mission."

The CAP's main concerns in this area lay with the training and professionalism of the first-line supervisors of these new Border Patrol officers. "Because of the rapid growth of the Border Patrol, some new first-line supervisors may only have a few months of supervisory experience to separate them from their new staff members...The Panel strongly believes that first-line supervisor training is the critical element in addressing and solving the problems faced by INS where they exist... The first-line supervisor represents the values of the organization and interprets the culture of the organization to its newest members."

The CAP urged that community-based organizations become involved in the training of its agents and officers, in the interests of acculturating new agents to the community in which they will work. It also urged the INS to look into the possibilities of establishing a Field Training Officer program for the Border Patrol (an intense apprenticeship program for new recruits on a 1:1 ratio with a supervising officer).

The CAP also recommended that all current INS employees receive additional training in customer service, cultural awareness, prevention of bias, civil rights, misconduct standards, the range of penalties and sanctions and INS complaint procedures. The Panel strongly encouraged the INS to develop systematic refresher and in-service training at regular intervals of two to three years for all employees, and adopt a "lifelong learning" concept of staff development.

### **INS ACTION PLAN IN RESPONSE TO THE CAP REPORT**

The INS developed an Action Plan in response to the CAP report, and made it public on 23 December 1997. The INS undertook to carry out most of the recommendations made by the CAP<sup>21</sup> and set target dates for achieving certain goals. These included commitments to:

- Proceed to create a successor citizens advisory committee and other mechanisms for community consultation to involve organizations broadly in educating the public about INS policies and procedures, to determine the impacts of those policies and procedures, and to increase the knowledge of INS officers about the communities in which they work.

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<sup>20</sup> Letter and enclosed comments from Doris Meissner, INS Commissioner, to Philip Montez, Western Regional Director, US Commission on Civil Rights, 7 February 1996, appended to Federal Immigration Law Enforcement in the Southwest, op. cit., p.91.

<sup>21</sup>"A few recommendations require additional analyses before appropriate action can be developed. In these cases, assignments to conduct these analyses have been included in the Plan as action steps." INS Action Plan, December 1997, p.1

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- Prepare written materials in a form appropriate for public release, that describe INS policies, powers, and standards on areas such as use of firearms, use of force, vehicular pursuits, searches, site inspections and powers to arrest, interrogate and detain.
  - Order all INS offices to visually inspect and confirm in writing that they are in compliance with instructions on display of the Spanish-English poster and availability of the complaint forms.
  - Develop straightforward written materials describing the INS complaint process and containing the complaint form for dissemination to community organizations.
  - Study and develop policies and procedures on how substantiated complaints can and should be considered in promotions.
  - Develop a draft protocol for a non-punitive mechanism for identifying both individual employees and systemic vulnerabilities (eg, training deficiencies) which need attention. The protocol will be referred to a joint union-management group for review and comment and the development of implementing guidelines.
  - Develop a new INS Performance Management System; a task force will research and recommend standardized performance evaluation benchmarks for all employees in public contact positions and all supervisors/managers in their management chain.
  - Distribute the newly developed “Supervisor’s Handbook to Discipline” to all INS supervisors and managers, and to first-line supervisors in training.
  - Introduce INS field staff to community leaders and organizations in their locality and provide broader opportunities to understand the cultural issues and experiences that may affect individual and community reactions to law enforcement figures.
  - Plans for in-service training, basic supervision training within six weeks of entrance on duty as a new supervisor, and exploring other technologies and methodologies to provide first-line supervisor training at the earliest possible opportunity.
  - Evaluate the San Diego Sector’s local Field Training Officer program, as well as those of state and local law enforcement agencies. A determination will then be made as to the suitability of such a program for the INS.

Amnesty International believes that the CAP recommendations, if fully implemented, would go a long way toward remedying many of the longstanding concerns raised over the years regarding the INS’ complaint process and professionalism. We welcome the INS’ willingness to acknowledge its organizational shortcomings, and the steps it plans to take through its Action Plan to reform itself. However, the Action Plan leaves many questions unanswered.

The CAP stressed that it “believes there is merit in continued citizen involvement in an advisory capacity to the INS,” as well as to the OIA, DOJ/OIG and CRT “to oversee the coordination of roles, missions and other issues that relate to the INS complaint process.” (pages i and iii). It therefore recommended establishing **a permanent Citizens Advisory Committee to the INS** and a separate **permanent Citizens Advisory Committee to Department of Justice component organizations involved in the complaint process**.

The INS has undertaken in its Action Plan “to proceed to create a successor citizens’ advisory committee” and this move is welcomed. However, it remains unclear who will serve on the committee; how members will be appointed, and what powers they will have.

In recent years there have been many calls on the INS to establish an independent citizens review board to oversee the complaint procedure. While not replacing the established INS internal complaint procedure, or the Office of Internal Audit (OIA), such a review board would provide a valuable citizens’ perspective into how the INS is performing, and promote public confidence that a viable means for redressing grievances exists. Numerous

police departments throughout the USA are subject to independent civilian oversight. The most common form of oversight is an appointed citizens board or commission, supported by a professional staff.<sup>22</sup>

The CAP also called for the creation of a separate permanent citizens advisory committee to the OIA, DOJ and component agencies to oversee “the coordination of roles, missions and other issues that relate to the INS’ complaint process.” It falls to Attorney General Janet Reno to put this particular recommendation into effect, and Amnesty International urges the US government to take this step as a matter of urgency.

Both review bodies should be empowered to monitor investigations, record the incidence of complaints and, where necessary conduct their own investigations into alleged complaints. It is imperative that the cumbersome, confusing and complex complaint procedure be simplified and streamlined, and that jurisdictional responsibilities among the DOJ component offices be clarified.

Amnesty International remains concerned that many people who report being ill-treated by INS officers feel too intimidated to file a formal complaint. During its September 1997 visit to the border region, Amnesty International was repeatedly told that undocumented migrants, in particular, who allege ill-treatment by the INS (most frequently the Border Patrol), do not normally file formal complaints, fearing reprisals, lengthy detention pending investigation or believing that complaints are futile. It may be unrealistic to expect people to file complaints to the very agency that has abused them. Creating public confidence in the complaint process will be a considerable challenge in light of the INS’ recent history. In the meantime, community based organizations and other groups in frequent contact with migrants should be provided with supplies of the standard complaint form, together with information on how to file complaints.

Until such time as the complaint process gains the confidence of those most likely to need it (who are, by definition, a population that is vulnerable, disempowered and fearful of US authority), Amnesty International urges the OIA to include in its statistical analyses of complaints received, the reports of immigrant advocacy groups, the Mexican Consulate and local media. Although these will be in the form of unsubstantiated allegations, Amnesty International believes they may provide valuable indicators of patterns of abuse and locations where additional employee training efforts may be needed.

Amnesty International endorses the CAP recommendations regarding training of INS employees, and welcomes the suggestion to involve community-based organizations in such training. We also welcome the suggested improvements to the training of Border Patrol recruits (a Field Training Officer Program), and first-line supervisors.

Amnesty International urges that INS training for employees should also include instruction on international human rights standards, in particular the provisions of the International Covenant on Civil and Political Rights and the Convention against Torture, both of which the USA has ratified and is bound by. In addition, INS employees should be made familiar with the United Nations Code of Conduct for Law Enforcement Officers, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. A selection of relevant international human rights standards is appended to this report.

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<sup>22</sup>Werner Petterson, “Civilian Oversight of Policing,” in Principles of Good Policing: Avoiding Violence Between Police and Citizens, US Department of Justice, Community Relations Service, US Government Printing Office, Washington, DC, March 1993, pp. 125-6

**Border Patrol Agent Arrests Man Outside Nogales Port of Entry, Arizona, USA**  
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## REPORTS OF HUMAN RIGHTS VIOLATIONS ALONG THE US-MEXICO BORDER COLLECTED BY AMNESTY INTERNATIONAL

The allegations of improper treatment collected by Amnesty International in 1997 span the spectrum of circumstances in which the Border Patrol and INS officers come into contact with the public. Reports of cruel, inhuman or degrading treatment were collected along the length of the 2,000-mile border and present a disturbing picture of unprofessional conduct. Amnesty International is aware that many of the cases it collected were not pursued as official complaints against the INS, though some were. Often the complainants were deported as undocumented migrants and wished to remain anonymous for fear of reprisals. In a few cases, individuals were allegedly threatened by INS officers and dissuaded from filing official complaints.

The incidence of shootings by the Border Patrol declined during the 1990s. However, Amnesty International received a report that, on 1 February 1998, a Border Patrol agent in San Ysidro, California, shot and injured a man (the first reported Border Patrol shooting since 1994). The Border Patrol stopped a taxi travelling north, on suspicion that it was transporting illegal immigrants. The five occupants fled and were pursued by agents. According to the Border Patrol authorities, one man was apprehended and shot in the stomach after he tried to take the agent's gun during a struggle.<sup>23</sup> The man's injury was said not to be life-threatening. The agent was removed from duty pending investigation of the case by the US Attorney's office. No further details were available at the time of finalizing this report.

**“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”**  
*Article 7, International Covenant on Civil and Political Rights.*

**“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”** *Article 10.1, International Covenant on Civil and Political Rights.*

On 14 February 1997, Daniel Rodríguez Biúrquiz crossed illegally with a group of migrants at a spot known as Nido de Águilas, in East San Diego County. He said they were quickly apprehended by the Border Patrol and, when he tried to run away, they beat him with their batons. Later, he was separated from the rest of the group and deported at Calexico, allegedly without being processed, photographed or finger-printed. Mr. Biúrquiz believes this was done because of his visible injuries (broken nose, heavy bruising to his face, body and legs). A complaint was made through the Mexican Consulate by the Casa de Apoyo al Migrante in Tijuana.<sup>24</sup>

On 18 June 1996, Sergio Ponce Rodríguez crossed into the USA with 11 other undocumented migrants, near Tecate, California. A Border Patrol agent yelled for him to stop and he says he complied, but the agent began beating him. Rodríguez fell to the ground and says he was kicked seven or eight times in the head, face and back. He was later deported.<sup>25</sup>

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<sup>23</sup>“Border Agent Shoots Man During Struggle,” *San Diego Union-Tribune*, 2 February 1998.

<sup>24</sup>Cornejo, Jorge, and Figueroa, Carlos, “*Hieren y deportan a escondidas a un indocumentado en California*,” *La Jornada*, 17 February 1997.

<sup>25</sup>“Violations of Human and Civil Rights on the US-Mexico Border,” AFSC-ILEMP US Mexico Border Program, San Diego, September 1997 (hereafter, AFSC-ILEMP, September 1997)

Juan García<sup>26</sup> attempted to cross illegally into the USA from Ciudad Juarez on 28 March 1997, accompanied by two Guatemalan women. They crossed the river, but had not yet crossed the American Canal when they saw two Border Patrol vehicles about 10 metres away. García and the women lay face-down on the ground behind some knee-high dry brush. After about half an hour, one of the trucks started up and drove directly at their hiding place at considerable speed. García said he was convinced the driver knew they were there. García saw two agents in the vehicle, which headed straight for him. The left front and rear tires passed over his body, breaking his hip. The driver reportedly accelerated, and the vehicle kept going and did not return. García screamed in pain and the agents in the second vehicle came over, administered first aid and called an ambulance to take him to hospital where he was admitted for three days.

Cristóbal Sánchez,<sup>27</sup> aged 19 from El Salvador, was detained by the Border Patrol near the Highway 77 checkpoint at Raymondville north of Harlingen, east Texas, on 3 July 1997. On the urging of the smuggler who had led the group, Sánchez tried to run away, but was quickly recaptured. He reports that one officer put a pistol to his head, then shot at the ground. Sánchez was handcuffed, thrown to the ground and says he was kicked repeatedly by two officers. When he complained that they had hurt him, he was told to shut up, and that “this is nothing.” Later, during questioning by another INS official, Sánchez told him that he had been beaten, but says he was advised by the official “that it would be better that I didn’t say anything.”

On 12 May 1996, Jesús Hector Gaspar Segura crossed illegally into the USA at Nido de Águilas in East San Diego County. He was accompanied by a 23-year-old woman and a 15-year-old boy. They were apprehended by the Border Patrol when they tried to board a bus. Segura said one Border Patrol agent slapped the woman twice in the face; hit Segura with a long black baton several times on the back, punched the young boy in the stomach and slapped his face. He used foul and insulting language to them and would not allow them to see his name tag. The Border Patrol agent warned them not to say anything about being hit. They were deported back into Mexico at midnight that night.<sup>28</sup>

**“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.” Principle 6. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.**

Pedro García,<sup>29</sup> was detained by the Border Patrol at Otay, California, and transported to the Chula Vista Border Patrol station with 11 others on 16 May 1997. He said that a Border Patrol agent made him stand against a wall, legs apart. García thought he was going to be searched, but instead the agent hit him twice in the ribs with his closed fist and twisted his arm up hard behind his back, saying in Spanish, “Do you want me to break your arm?” García cried out in pain. He thinks he may have angered the agent by not immediately sitting down in the holding cell when told to do so.

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<sup>26</sup>Not his real name. Interviewed by the El Paso Border Rights Coalition, 4 April 1997.

<sup>27</sup>Not his real name. Interviewed by Valley Coalition for Justice, Texas, 7 July 1997.

<sup>28</sup>AFSC-ILEMP, September 1997.

<sup>29</sup>Not his real name. Affidavit taken by Casa de Apoyo al Migrante, Tijuana, 16 May 1997.

Andrés Hurtado,<sup>30</sup> aged 32 from El Salvador, described how he and others were apprehended by a Border Patrol agent at Falfurrias checkpoint, east Texas, in the early hours of 24 April 1997. Hurtado says that he was caught in the brush and thrown to the ground, and stuck by cactus spines. The agent hand-cuffed him very tightly and aggressively pulled him to his feet, then transported the group to the Border Patrol Station. Hurtado says he and others were repeatedly insulted by the agent during that night in detention, with verbal abuse such as, “Get up you mother fuckers, you Goddamn wetbacks, dumb asses!” (*Levántense hijos de su pinche madre, pinches mojadados, cabrones!*). Twice, the agent reportedly entered the small holding room containing about 70 detainees and kicked people, swore at them, and pulled them up by their handcuffs, hurting their wrists. “Since we were all sleeping the kicks we received were in our feet, legs and backs. He kicked us very hard. He kicked us to make us wake up.”

In July 1996, a federal judge in Brownsville, Texas, sentenced an ex-INS detention officer to five years probation following his guilty-plea to five charges of sexually assaulting young male Central American detainees at Port Isabel Service Processing Center, an INS long-term detention facility in Los Fresnos, east Texas. As many as 11 detainees complained in February 1996 that they had been taken aside by the officer, a Recreation Director, and sexually assaulted, then given shoes, clothing and other items.<sup>31</sup>

**“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.” Principle 24, United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.**

According to Border Patrol policies, injured detainees are supposed to be given medical assistance and transported to the closest hospital. However, in several cases collected by Amnesty International, injured detainees not only had their medical needs ignored, but were expeditiously returned to Mexico.

According to a sworn affidavit given by a nurse on duty in the emergency room at Douglas Hospital, Arizona, a 26-year-old Mexican woman was brought into the hospital with her little boy aged four and her one-year-old daughter, on 5 April 1997. The woman said she had fallen into a hole while being chased by the Border Patrol. She told the nurse that she had been left in the desert by the Border Patrol, who called the Douglas fire department to transport her and her two children to the hospital.

The Mexican woman could not walk and X-rays showed she had a broken leg requiring orthopaedic attention and a cast. But before she could receive any treatment, “four men were getting ready to lift the woman off the X-ray table. They said she was being discharged.” The nurse remonstrated with them: the Mexican woman was in acute pain, her knee was grossly distended and she could not walk. However, the four men carried the woman out to a taxi; she had no splint, cast or other immobilizing device on her leg. The nurse asked the taxi driver to take the woman to the house of a friend of hers, and gave him money for the fare, but the injured woman never arrived. Instead, “the driver took her to the international line and essentially dumped her there with the two children.”

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<sup>30</sup>Not his real name. Affidavit dated 24 April 1997, given to Valley Coalition for Justice, Harlingen, Texas.

<sup>31</sup>Guillermo Martínez Álvarez, “Sentencian a ex agente del Servicio de Inmigración y Naturalización,” *El Mañana*, 17 July 1996. Interviews with victims, documented by Valley Coalition for Justice, Harlingen, 2 May 1996.

According to the nurse's affidavit, this was not the first time she had seen the Border Patrol release injured migrants back into Mexico without medical attention; and her nursing supervisor had allegedly spoken to the Border Patrol about the practice but received the reply that the Border Patrol "can do what they want."

In another case, a migrant woman fell on her stomach while being chased by the Border Patrol on 22 August 1997. She was pregnant, and immediately experienced severe abdominal pains and vaginal bleeding. Her complaints of pain and bleeding, and the probability that she was about to miscarry, were apparently ignored by the El Centro Border Patrol station agents with whom she was in contact during her two-hour detention. When she was deported at Mexicali, a Mexican immigration officer summoned an ambulance and she was taken to hospital.<sup>32</sup>

On 21 July 1996, Jorge Soriano Bautista and a friend crossed illegally into the USA near San Ysidro, California at about 1:00am. A Border Patrol vehicle approached, and they set off running. The vehicle gave chase and allegedly hit Bautista in the back, throwing him to the ground, breaking his arm and causing him to lose consciousness. When he regained consciousness he was lying in the back of the Border Patrol vehicle. An agent tried to twist Bautista's arms behind his back to handcuff him. Bautista reported that he felt his right arm "snap" and begin to swell, and he lost consciousness again. When he regained consciousness for the second time, the Border Patrol vehicle was heading back towards the border fence. He reported that the agents pushed him back under the fence into Mexico, despite his broken arm. His arm was set in a cast in Tijuana general hospital and an official complaint was filed with an OIG agent at San Ysidro Port of Entry on 5 August 1996. The outcome of any investigation is not known.<sup>33</sup>

On 16 January 1996, Ramón González García crossed illegally into the USA near San Ysidro, California. He says that he was surprised by a Border Patrol agent, handcuffed and thrown face down on the ground. The agent allegedly pulled him up by the handcuffs and at the same time stamped on his ankle with his entire weight. García heard his ankle "crack" and felt extreme pain. The agent allegedly turned him over to the Mexican authorities (Grupo Beta) instead of formally arresting him. An official complaint was made to the US Attorney's office in San Diego. The results of their investigation are not known.<sup>34</sup>

**"Any person shall, at the moment of arrest and at the commencement of detention...be provided...with information on and an explanation of his rights and how to avail himself of such rights." Principle 13**  
**"A detained person shall be entitled to have the assistance of a legal counsel." Principle 17. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.**

Amnesty International received a report that some 60 undocumented workers were detained by the INS during a workplace raid on a factory in Caldwell, Idaho, on 8 April 1997, and taken to a military base nearby for interview. Although the INS officials spoke Spanish, the INS forms provided to the men and women for signature were in English, which few of them understood. The workers later stated that none was told that they had the right to speak to an attorney before answering questions; none was told that they had the right not to answer questions; none was told they had the right to make a telephone call; indeed, most requested to use the phone, but were

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<sup>32</sup>Claudia E. Smith, Attorney at Law, letter to Gustavo de la Viña, INS Western Regional Director, 26 August 1997.

<sup>33</sup>AFSC-ILEMP, September 1997.

<sup>34</sup>Ibid.

refused permission. Out of 31 workers later interviewed, only 10 reported that they understood that they were entitled to a hearing before an immigration judge, and all reported that the INS agents discouraged them from exercising their right, by saying that an immigration judge could do nothing more for them. All were told, erroneously, that they would not be released unless they paid a bond of at least \$1,500.

The workers reported that they feared for their physical safety during their detention by the INS at the military base. One agent allegedly showed his pistol, patted it and warned the workers not to “try anything” because soldiers at the base had been authorized to fire their weapons. All workers reported that they felt pressured to sign and accept voluntary departure from the INS, even though the majority were in fact eligible to receive up to four months’ notice of voluntary departure because they had resided in the US for more than two years.

Most of the workers reportedly requested the opportunity to return home to collect personal belongings, and requested the pay owed to them by their employer, but the INS denied all such requests. The workers were transported to Mexicali, Mexico, in their work clothes, leaving behind family members, personal property, bank accounts and vehicles. Each was charged \$82 for their transportation costs. Their conditions of confinement during their 26-hour bus journey to the southern border are further discussed below.

The above incident, if confirmed, would appear to be in breach both of international standards and of INS policy, as required under the *Lopez v. INS* settlement agreement.<sup>35</sup> This affords detained immigrants the opportunity to make telephone calls and/or contact an attorney prior to being processed for deportation proceedings. As the majority of the workers had lived for more than two years in the USA, they had the right to an immigration hearing. Several were eligible for release from custody on conditional parole or bond.<sup>36</sup>

**“Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.” *Rules 20 (1) and (2), United Nations Standard Minimum Rules for the Treatment of Prisoners.***

There were numerous reports during 1997 of migrants who attempted to cross from Mexico to the USA across the desert areas to the east of San Diego, being denied water when apprehended by the Border Patrol, despite being in an advanced state of dehydration and heat exhaustion in some cases. During the intense heat of the 1997 summer months, there were many reports that detainees, including women and children of all ages, were not given water until they reached the detention centre. There, they sometimes had to queue at drinking fountains located next to the (often stinking) toilets. Water pressure was sometimes low, and some migrants said they could not drink the quantity of water they needed to rehydrate.<sup>37</sup>

According to one report, on 25 June 1997 a group of 13 migrants (eight men and five women) crossed the border around Calexico, California and were in the desert for 11 hours before they were arrested by the Border Patrol. A couple of them had collapsed from heat exhaustion and had to be supported by their companions. The Border Patrol vehicle on which they were transported to the El Centro station reportedly carried no water except for the agents’ own supply, and this was not made available to the group, despite their requests that at least

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<sup>35</sup>*Lopez v. Immigration and Naturalization Service*, Case No. CV 78-1912-WMB (C.D.Cal. June 4, 1992). This was a nationwide class action lawsuit.

<sup>36</sup> Jack V. Bournazian, Attorney at Law, “Report of “Forced” Departure of Undocumented Workers of Kit Manufacturing Company, Caldwell, Idaho” and case studies, April 1997.

<sup>37</sup>“Risk of Desert Deaths Rises as More Illegal Crossers Avoid Checkpoint,” *Los Angeles Times*, 15 June 1997.

the women be given water. When they were deported at Mexicali some six hours after being arrested they were still thirsty and some complained of heat-stress symptoms such as cramps and dizziness.<sup>38</sup>

In early August 1997, following repeated complaints, the INS Western Regional Director, Gustavo De La Viña, gave assurances that all Border Patrol Vehicles would be required to carry canisters of water in the El Centro and Arizona sectors. Nevertheless, reports continued to be received regularly through February 1998 of migrants being denied water when apprehended.

There were also complaints of individuals being held by the Border Patrol for many hours prior to deportation, without food. Cases collected by attorney Claudia Smith and others during 1997 and early 1998 included allegations that individuals had been held for up to 24 hours, and in one case, 48 hours, with little or no food being provided to them.<sup>39</sup> A 16-year-old boy, deported at Mexicali on 18 October 1997 reported that he was held at the El Centro Border Patrol station for eleven and a half hours without food of any kind. He had crossed the border on foot in the Algodones area and, by the time he was deported, had allegedly gone without food for more than 24 hours.<sup>40</sup> Undocumented workers and their families, who were detained in a raid in Caldwell, Idaho on 8 April 1997, were reportedly fed only two sandwiches in 35 hours during their journey by bus to the US-Mexico border, where they were deported on 9 April.<sup>41</sup> In November 1997, attorney Claudia Smith was told by migrants deported at Mexicali that they had been detained in Border Patrol custody for up to 12 hours “without being fed so much as a snack.”<sup>42</sup> A half-dozen detainees she interviewed at the Calexico deportation gate on 11 February 1998 said they had been denied food by the Border Patrol for almost 20 hours following their apprehension on 26 January.

**“...All sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions...”** *Rule 10.* **“Every prisoner shall...be provided with...separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.”** *Rule 19. United Nations Standard Minimum Rules for the Treatment of Prisoners.*

A further issue of concern is a frequently-voiced complaint that the holding cells at some Border Patrol stations are uncomfortably cold because air-conditioning units are turned up too high. In the winter months, detainees may be wet and chilled from their journey, and in summer they may be thinly clad in light cotton clothing. There were many reports during 1997 of detainees suffering hours of detention in very cold cells, without being offered blankets.

A woman detained at the San Ysidro, California, Port of Entry on 6 September 1997 reported that she had spent the night in a Border Patrol holding cell and was not removed until next morning, 17 hours after she had been apprehended. The holding cell was cold; she was given a “very dirty” blanket, but was still cold because she

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<sup>38</sup>Claudia Smith, letters to INS Commissioner Doris Meissner, 7 July 1997, and to INS Western Regional Director Gustavo de la Viña, 1 August 1997.

<sup>39</sup>AFSC-ILEMP, September 1997. Claudia Smith, letter to Johnny Williams, INS Western Regional Director, 13 February 1998.

<sup>40</sup>Interviewed by Claudia Smith at Mexicali deportation gate, 18 October 1997.

<sup>41</sup>Jack V. Bournazian, “Report: The “Forced” Departure of the Undocumented Workers of Kit Manufacturing Company, Caldwell, Idaho,” April 1997.

<sup>42</sup>Claudia E. Smith, letter to Gustavo de la Viña, INS Western Regional Director, 26 December 1997.

had to sleep on the bare floor.<sup>43</sup> Migrants deported at Mexicali on 28 November 1997 said they had not been offered blankets at the El Centro Border Patrol station despite the particularly cold weather; (“temperatures at or below freezing in places where the detainees cross...detainees were dressed in thin or wet clothing and had been exposed to cold temperatures for several hours before they were apprehended”); and uncomfortably low temperatures in the holding cells at the station.<sup>44</sup>

**“Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.” Rule 33, United Nations Standard Minimum Rules for the Treatment of Prisoners.**

There were reports of men and women, detained during workplace raids, and transported by air or bus to the US-Mexico border in chains. This was despite the fact that they had accepted “voluntary departure” and were not high security prisoners or criminal aliens.

Amnesty International received a report that women detained following a raid at their workplace in Portland, Oregon, were restrained in chains during a flight on 2 May 1997 from Portland to El Centro, California.<sup>45</sup> Five other women were reportedly restrained with handcuffs, waist chains and leg irons for about 12 hours during their transportation by air from Seattle, Washington to El Paso, Texas on 29 August 1997.<sup>46</sup>

Some 60 undocumented workers were detained by the INS following a workplace raid in Caldwell, Idaho on 8 April 1997. It is reported that the men were chained and shackled during a 26-hour bus ride from Boise to the California-Mexico border, despite having accepted “voluntary departure” from the USA and posing a low security risk. All were deported at Mexicali in the evening of 9 April. According to the workers, they remained chained together in groups of two or more for their entire journey, even when they needed to use the very small toilet on the buses.<sup>47</sup>

INS practice regarding use of restraints appears not to be uniform across the country. Whereas the INS’ Central Region (which includes Idaho) has used chains and shackles to transport low security risk detainees (see above), Western Region policy regarding the restraint of detainees during transportation on flights between Las Vegas and San Diego is to restrain adult females “identified by INS as criminal aliens” with waist chains only “unless behavioural problems prescribe the use of leg irons also.” Adult male “criminal aliens” “will be restrained by waist chains and leg irons.”<sup>48</sup>

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<sup>43</sup>Claudia Smith, letter to Kim Porter, Deputy Assistant Director, INS Detention and Deportation, 12 September 1997.

<sup>44</sup>Claudia Smith, letter to Johnny Williams, Chief Border Patrol Agent for San Diego, 26 December 1997.

<sup>45</sup>Claudia Smith, letter to Gustavo de la Viña, INS Western Regional Director, 1 Aug. 1997.

<sup>46</sup>Claudia Smith, letter to Gustavo de la Viña, INS Western Regional Director, 19 Sept. 1997.

<sup>47</sup>Jack V. Bournazian, “Report: The “Forced” Departure of the Undocumented Workers of Kit Manufacturing Company, Caldwell, Idaho; Torre-Jiménez, Lilian, “*Denuncian uso de grilletes para deportaciones*,” *La Opinión*, 22 April 1997.

<sup>48</sup>“Restraint Policy for Las Vegas-San Diego Flights,” Memorandum to All Transportation Enforcement Branch Personnel from Thomas E Little, Jr., Chief, Justice Prisoner and Alien Transportation System, Air Operations Division, United States Marshals Service, US Dept. Of Justice, 6 February 1996.

INS policy and practice is contrary to international standards prohibiting the use of chains or irons as restraints. Chains, shackles and leg irons are inherently degrading and should not be used. Amnesty International urges the INS to review its policies in this area, and promulgate guidelines that conform with international human rights standards.



**The International Border, Nogales, Arizona, USA**  
**© Jeffry Scott**

## JUVENILES AND THE INS

The phenomenon of unaccompanied children, some as young as nine or ten, making their way to the USA, is a quiet but alarming tragedy. Each year, thousands of children enter the USA on their own, illegally. They come seeking escape from abusive homes or extreme poverty; some are fleeing persecution at home; others are sent to find family members already established in the USA. The majority of unaccompanied children detained by the INS will ultimately be deported to their home countries; and little is known about what happens to them after that. The INS is required to seek assurances through consulate diplomatic channels that deported children will be reunited with families or placed with appropriate child welfare agencies. Amnesty International was told that an INS officer accompanies juvenile deportees by plane on their return to countries beyond Mexico.<sup>49</sup> However, in most cases, children return to the identical conditions that induced them to leave their home countries in the first place, and their eventual fate is likely to be an uncertain one.

Unaccompanied minors held in INS detention on 14 January 1998	
Total number held:	378
Country of Origin	Number by Age Group
Guatemala . . . 87	10 and under . . . 19
El Salvador . . 66	11 - 12 . . . . . 15
Honduras. . . . 52	13 - 14 . . . . . 41
China . . . . . 50	15 . . . . . 62
India . . . . . 37	16 . . . . . 86
Mexico . . . . . 33	17 . . . . . 155
Sri Lanka . . . 17	
Others . . . . . 36	

The INS has recently created a new database which enables it to maintain comprehensive and updated statistics on the number of unaccompanied minors it detains, and the eventual disposition of their cases. The above table provides a “snapshot” of who was being held by the INS on 14 January 1998.<sup>50</sup>

Amnesty International was told that the INS has developed its juvenile care program substantially in recent years and conducted employee-training for over 15,000 staff regarding the treatment and care of juveniles in light of the requirements of the Flores ruling (see below). It has juvenile coordinators in its three Regions and at District level.

Amnesty International was concerned at reports that some children were ill-treated at the time of their apprehension by the Border Patrol. It was also concerned at the fact that unaccompanied children detained by

<sup>49</sup>Meeting with Cecilio Ruiz, Assistant District Director for Detention and Deportation, INS Harlingen District, 24 September 1997. However, attorney Claudia Smith observed an unaccompanied boy of about 12 deported by the Border Patrol at Otay, California, without being formally turned over to Mexican authorities on 17 January 1998. Under the Flores v. Reno court settlement, the INS should not send minors off on their own, but “ must assure itself that someone will care for those minors.”

<sup>50</sup>Source: John Pogash, INS Juvenile Coordinator, Detention and Deportations Division, Washington, DC., 21 January 1998.

the INS have no right to legal representation, despite being an extremely vulnerable group in urgent need of such assistance. The length of detention, and conditions of detention in INS juvenile facilities have been criticized by HRW, and Amnesty International urges, a) that detention be kept to a minimum, and b) that all places of detention be subjected to regular independent monitoring by qualified inspectors to ensure compliance with national and international standards.

### **1. Cruel, Inhuman or Degrading Treatment or Punishment**

**“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”**  
**“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”**  
*Articles 37 (a) and (c), United Nations Convention on the Rights of the Child.*

**“Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding...”** **“Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements.”**  
*Rules 33 and 37, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.*

Crossing the border into the USA is no guarantee that a young person will be safe from cruel, inhuman or degrading treatment. Amnesty International has received reports of a number of boys aged between 14 and 17, detained along the Texas and New Mexico border areas in the autumn of 1997, who were beaten, punched, kicked and verbally insulted.<sup>51</sup>

Guillermo,<sup>52</sup> aged 17 from Honduras, said he was arrested by the Border Patrol north of Laredo, Texas, in November 1997. He had tried to hide in a haystack, and a Border Patrol agent kicked him in the stomach and told him to “Get up, son of a bitch!” (*Levantate, hijo de puta!*). Guillermo was unable to get up because of the pain in his stomach and the agent grabbed him and pulled him to his feet. Guillermo says he was detained at the Laredo Border Patrol station for 24 hours with nothing to eat or drink but water. He had to sleep on the floor with no blanket and was cold. He was later transferred to the INS juvenile detention facility in El Paso. He continued to suffer from stomach pains for several weeks.

Carlos,<sup>53</sup> aged 14 from El Salvador, said he was arrested near El Paso, Texas, in October 1997. He was taken to the Border Patrol station where he gave a false name and claimed to be Mexican. The agents allegedly laughed at him and made him cry. At one point he was left alone in a room with an agent who threatened to hit him with a belt. Finally he gave them his real name. He was detained at 4am and held at the station for six and a half hours with nothing to eat but one chocolate and some milk. He was then transferred to the juvenile detention facility.

Miguel,<sup>54</sup> aged 15 from El Salvador, said he was arrested near El Paso by the Border Patrol in September 1997. He says he was upset and frightened by the agents. One officer threw him against a wall, threatened him

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<sup>51</sup>The source for the following four cases are interviews with the victims, documented by the Border Rights Coalition, El Paso, Texas.

<sup>52</sup>Not his real name.

<sup>53</sup>Not his real name.

<sup>54</sup>Not his real name.

with his gun and punched him in the face. Miguel said the blow to his face was very painful. There were no witnesses and he did not seek medical attention. He tried to sleep but was very cold on the bare concrete slab, and was refused a blanket when he requested one. When he complained he was told he wasn't "at home" so he should not expect to sleep.

An eleven-year-old boy, deported at Calexico, California, on 26 January 1998 with his father and uncle, reported that they had been apprehended at midnight, and detained overnight in a holding room at the Niland Border Patrol station. They said that neither the boy nor the men were given anything to eat during their eleven-and-a-half hour detention, and there was no water in the room (neither a washbasin nor a drinking fountain). The boy was not offered a blanket.<sup>55</sup>

Amnesty International also received a disturbing report of two juveniles apprehended by the INS in late 1997 who said they were turned over, temporarily, to Mexican officials who interrogated and, in one case, physically ill-treated them. David,<sup>56</sup> a 17-year-old from El Salvador, said he was arrested in New Mexico in September 1997. He claimed to be Mexican, but the Border Patrol agents evidently did not believe him. He says they yelled and threatened him, and one stomped on his foot. David says they then handed him over to the Mexican authorities (it is unclear whether these were police or immigration authorities), who held him for three days, allegedly without food or water, and hit him. When he admitted he was Salvadoran they returned him to the INS, who transferred him to a juvenile detention facility.<sup>57</sup>

Amnesty International is deeply disturbed by these allegations of ill-treatment which, if confirmed, would constitute serious misconduct on the part of the Border Patrol, in violation of INS policy, US national law and international human rights standards. The organization is also concerned at the report that children were passed over to Mexican authorities for questioning regarding their country of origin, and at the ill-treatment they allegedly received at the hands of Mexican authorities. If an unaccompanied child is believed to be from a country south of Mexico, there are far better ways of establishing this than to pass him or her over to Mexican officials for questioning. Such practice is improper and not in the child's best interests.

## 2. Legal Representation of Unaccompanied Minors

**“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...” Article 37 (d), *United Nations Convention on the Rights of the Child*.**

Unaccompanied minors who cross the border illegally stand a somewhat better chance of being permitted to stay in the USA than adults do - but only if they are fortunate enough to find a lawyer to represent them. If the children have family members already legally residing in the USA they can petition to remain in the country under their guardianship. A child may make a political asylum claim if s/he can show a “well-founded fear of persecution” in his or her home country. There is also a “special immigrant juvenile” qualification for children who are declared “dependent of a juvenile court;” “deemed eligible for long-term foster care,” and a court rules that it is not in the child's best interest to be returned to the home country.

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<sup>55</sup>Interviewed by Claudia Smith, 26 January 1998. Letter to Johnny Williams, INS Western Regional Director, 13 February 1998.

<sup>56</sup>Not his real name.

<sup>57</sup>The US government has a long-standing diplomatic agreement with the Mexican government that children who are arrested by the INS and who claim Mexican nationality are surrendered to the Mexican consulate, never to Mexican law enforcement officials. Mexican consulate officials are responsible for repatriating the children and attempting to reunite them with their families in Mexico.

However, very few lawyers are available to provide free representation to undocumented minors in INS custody, despite the fact that litigation may well be successful in preventing their deportation. In 1997 there were, for instance, only three lawyers providing free assistance to asylum-seekers (including children) throughout New Mexico and West Texas.<sup>58</sup> In the whole of Los Angeles, there were reported to be only about half a dozen attorneys available to represent indigent juvenile detainees.<sup>59</sup> In Arizona, efforts have been made to supply *pro bono* (free) legal representation to children at their initial court hearings, though the lawyer will not meet the child until just before the hearing, allowing only minimal opportunity to prepare the case.<sup>60</sup> This situation clearly is not ideal.

After many months during which lawyers groups were not permitted access to the Arizona detention facility, Amnesty International was told in February 1998 that children were once more being interviewed and receiving legal presentations describing their rights and explaining the legal process (though limited to only two hours per week). The facility lies in an extremely remote location, making it both expensive and time-consuming for lawyers or family members to visit on a regular basis. The children are reportedly limited to making only two telephone calls per week, which restricts their ability to maintain adequate contact with family, lawyers or others who might help them prepare their legal case.

Children detained by the INS have no clearly established right in US law to a lawyer. But there are a number of strong arguments (and a strong constitutional basis) for asserting that the US government has an obligation to provide counsel at government expense for indigent detained children facing deportation or exclusion proceedings.<sup>61</sup> Two federal courts have commented directly on the issue of whether indigent aliens in deportation proceedings have a right to counsel at government expense, and have noted that when an alien's rights would be substantially impaired in the absence of counsel, the government may be constitutionally required to pay for legal representation.<sup>62</sup> In a third case, *Perez-Funez v. INS*, (1985), a federal trial court in California found that the INS had violated the due process rights of unaccompanied minors by forcing them to accept voluntary departure from the US without their effective knowledge or consent. The court noted the near impossibility for children to understand the legal proceedings they are part of. Unaccompanied children in INS custody "encounter a stressful situation in which they are forced to make critical decisions. Their interrogators are foreign and authoritarian. The

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<sup>58</sup>Natalia Walters, Catholic Legal Immigration Network, Inc., 14 November 1997.

<sup>59</sup>HRW, Slipping Through the Cracks: Unaccompanied Children Detained by the US Immigration and Naturalization Service, April 1997, p. 35.

<sup>60</sup>Conversation with Gloria Goldman, immigration attorney, 23 January 1998.

<sup>61</sup>The Fifth and Fourteenth Amendments to the US Constitution prohibit the federal and state governments from denying liberty to any person without due process of law. Based on these guarantees, the Supreme Court held in *Gideon v. Wainwright*, (1963), that the government must provide free counsel for indigent criminal defendants. In *In re Gault*, (1967), the court went further and held that due process requires the government to provide lawyers for indigent children in juvenile delinquency proceedings, even though these are civil rather than criminal proceedings. Like juvenile delinquency proceedings, deportation and exclusion proceedings are civil in nature, not criminal. Several courts have noted that the consequences of a deportation are as grave as the consequences of many criminal proceedings, and a liberty interest is similarly at stake. (HRW, op.cit., pp. 20-22).

<sup>62</sup>*Escobar-Ruiz v. INS*, (1986) and *Aguilera-Enriquez v. INS* (1975).

environment is new and the culture completely different. The law is complex...In short, it is obvious to the Court that the situation faced by unaccompanied minors is inherently coercive.”<sup>63</sup>

Amnesty International strongly believes that unaccompanied children who remain in INS detention while their immigration status is being resolved should receive government appointed lawyers if they are too poor to pay for an attorney themselves. The right of a detained person to legal representation is enshrined in international human rights standards, including the International Covenant on Civil and Political Rights, which the USA has ratified and is bound by. Amnesty International therefore urges the US government to recognize that it has a duty to assist this group, taking into account their special vulnerability and needs, their youth, frequent lack of English skills and the complexity of the legal proceedings against them.

### 3. Length of Detention

**“Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.”** *Note 7.6, United Nations High Commissioner for Refugees, Note on Policies and Procedures in Dealing With Unaccompanied Children Seeking Asylum.*

**“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”** *Article 37, United Nations Convention on the Rights of the Child.*

**“When preventive detention is...used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.”** *Rule 17, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.*

On first being apprehended, an unaccompanied minor will normally be detained by the INS for a period of time. The INS has instituted a national policy generally favouring the release of unaccompanied minors, as a result of its settlement agreement in *Flores v. Reno*.<sup>64</sup> This provides that the INS will generally release minors to specified individuals or community programs (a parent, legal guardian or close family relative, or to an unrelated adult designated by the child’s parents), pending their immigration hearings. The INS has broad discretion over the release of unaccompanied minors, and practice appears to vary somewhat from one INS District to another. Amnesty International was told that, on average, a child is detained in INS custody for 30 days, though this average figure reduces to 12 - 14 days if Chinese children are considered separately. For various reasons, Chinese children tend to be held longest, pending INS inquiries and home studies. Exceptionally, according to the INS, a child may be detained for up to a year.<sup>65</sup>

Detention, with its discipline, routines and boredom, is difficult to endure for certain children, particularly those who have lived on the street and led unstructured lives, or for children suffering from psychological problems since, generally, few special services are available to help them. Amnesty International was told of the vicious circle that can develop when a child in INS detention becomes impatient with waiting and begins to misbehave.

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<sup>63</sup>*Perez-Funez v. INS*, 619 F. Supp. 656, 662 (C.D. Cal. 1985).

<sup>64</sup>*Flores v. Reno*, 113 S Ct. 1429 (1993), Stipulated Settlement Agreement, 17 January 1997 (Case No. CV 85-4544-RJK)

<sup>65</sup>Conversation with John Pogash, INS Juvenile Coordinator, 21 January 1998.

Once the child is tagged as a "trouble-maker," they face transfer to juvenile delinquency facilities where they mingle with children who have violent histories and criminal records.<sup>66</sup>

Amnesty International urges the INS to continue to take all possible steps to reduce to a minimum the length of time unaccompanied children spend in INS custody following their apprehension, and to expedite the release of Chinese children from detention, while paying all due regard to considerations of the children's well-being and safety.

#### 4. Conditions of Detention

**"State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." Article 3.3, United Nations Convention on the Rights of the Child.**

Pending release, the INS is required under the terms of the Flores settlement agreement to house detained minors in the least restrictive setting appropriate to the individual's age and special needs. During its fact-finding visit in September 1997 Amnesty International visited the International Emergency Shelter in Los Fresnos, Texas. This is a private, non-secure children's home operating under contract to the INS, which provides temporary shelter care for about 1,000 children per year. It appeared well-run and a caring environment, offering educational, counselling, recreational and legal programs. Its low number of runaways (14 in Fiscal Year 1997) endorses Amnesty International's belief that most unaccompanied minors do not require secure detention if the facilities in which they are held meet their needs adequately.

HRW was very critical of the conditions it found during 1996 visits to juvenile detention facilities in Los Angeles County, California, used by the INS, and a private, secure facility in Arizona. In Los Angeles County, some 20 to 30 children in INS detention were held in three juvenile detention facilities designed for young offenders, even though the INS-detained juveniles had no criminal charges against them and were being held on account of their immigration status only. HRW reported that commingling had occurred, with children sometimes placed in adult detention centers "or kept overnight with unrelated adults in the holding cells." The Los Angeles facilities resembled prisons, and those detained there wear uniforms.<sup>67</sup> In the Arizona detention centre, a privately-run secure facility in a remote town between Tucson and Phoenix, children were detained within a locked building and grounds surrounded by a high fence. HRW reported that the children lived in crowded conditions, with little free time, and only one hour's outdoor activity daily.<sup>68</sup>

Amnesty International was not able to visit these facilities and is therefore not in a position to comment on HRW's findings. However, inquiries made in January 1998 indicated that conditions in the Arizona facility appear to have improved with the appointment of a new director, additional multi-lingual staff and counselling services for the children.

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<sup>66</sup>Meeting with Lynne Coyle, Lawyers Committee for Human Rights under Law of Texas, 22 September 1997.

<sup>67</sup>HRW, op.cit., pp. 47-50.

<sup>68</sup>HRW, op. cit., p. 4, and pp. 51-54.

Amnesty International nevertheless reiterates the importance of subjecting all places of detention to regular independent monitoring by qualified and experienced inspectors appointed by a competent authority, to ensure that institutions are administered in accordance with existing laws and regulations.<sup>69</sup>

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<sup>69</sup>United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 29.1.



## WOMEN DETAINED BY THE INS

**“Many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees. They may also be disadvantaged and marginalized by a general lack of knowledge and recognition of their human rights as well as by the obstacles they meet in gaining access to information and recourse mechanisms in cases of violation of their rights.”<sup>70</sup>**

Women try to cross the border into the USA illegally for a number of reasons including fear of persecution in their home country, severe financial need, inability to obtain the requisite papers (passport or border crossing card), and in order to reunite with family members already established in the USA. One of the reasons why women cross the border illegally is to short-cut the 10-year waiting period they otherwise face for a visa to join husbands who are lawfully in the USA under special workers’ programs. In addition to the lengthy delay in permitting families to reunify, the process is expensive. An immigrant woman must find a sponsor who earns 125 percent over the poverty line, and more than that if their child is also immigrating. If an immigrant woman’s husband earns the minimum wage (about \$10,500) he may not be able to sponsor her application to immigrate.

The realities that face undocumented migrant women in the USA can be harsh in the extreme: a life of marginalization in low-wage, exploitative jobs, working long hours without even the most basic benefits, living in sub-standard accommodation and in constant fear of discovery and deportation. INS raids on factories may result in mothers being deported to Mexico leaving young children behind in a daycare nursery. Homes may be invaded and searched without notice, and family members deported if they are unable to produce appropriate identification. Fear of deportation makes this an extremely vulnerable group, prone to human rights abuses, intimidation and exploitation.

Women who attempt to cross into the USA illegally face many perils. The INS’ enhanced security operations in San Diego, El Paso and Brownsville have channelled migrants to more dangerous, remote areas of desert and mountain ranges, where they are at risk, among other things, of dehydration, hypothermia, drowning or abandonment by their guide if they fail to keep pace with the group. Women are at particular risk of being physically assaulted, raped, robbed or murdered on their journey.

Migrant women who are caught attempting to cross the border illegally may sign a “Voluntary Departure” form and are normally deported back to Mexico within a few hours. During 1997 concerns were expressed to the INS authorities in California at the practice of releasing women, alone or in small groups, into Mexico after dark. Towns on the Mexican side of the border are fraught with dangers for women alone at night, particularly if they do not know the area. Migrant shelters, if any, may be full or difficult to locate; buses do not run at night, and taxis are expensive; gangs roam the streets and put women at considerable risk of assault and robbery. Following reiterated requests, the INS (Western Region) agreed in May 1997 not to deport women on their own into Mexico at night. Nevertheless, this practice continued to be reported through January 1998.<sup>71</sup>

Amnesty International urges the INS to institute a national policy not to deport women, alone or in groups, into Mexico at night, in recognition of their vulnerability and the dangers they face. Steps must be taken to ensure that such a policy converts into rules that will be adhered to consistently in practice by INS field officers.

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<sup>70</sup>Platform for Action Statement, para I.225, Fourth World Conference on Women, adopted at Beijing, September 1995.

<sup>71</sup>Claudia Smith, California Rural Legal Assistance Foundation, 24 January 1998.

To avoid the gruelling physical difficulties of the desert and mountain crossing points, many women, particularly those who are pregnant, older, in weak health or with young children, attempt to enter the USA at Ports of Entry using false documents, or by claiming to be US citizens. Under recently enacted immigration rules,<sup>72</sup> claiming citizenship falsely has become a felony offence subject to greatly increased penalties, and may bar an individual from the USA for life. Whereas formerly such women were deported back to Mexico on the spot, under the new legislation they are denied voluntary departure, detained and put in exclusion proceedings. They face felony charges if they are caught again in the USA within a year of their deportation.

Amnesty International received reports that, during 1997, women detained on charges of using false documents were insulted by INS inspectors, subjected to painful and degrading vaginal searches, and were held for many hours at the San Ysidro Port of Entry without food; there were also reports that unrelated women were forced to sleep two or more to a double bed in motel accommodation being used by the INS as a temporary short-term holding facility.<sup>73</sup>

Amnesty International urges the INS to take all necessary steps to ensure that those it detains are treated with humanity and respect for the inherent dignity of the human person, in accordance with international human rights standards; also to ensure that its conditions of detention do not amount to “cruel, inhuman or degrading treatment.”

**“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”**  
*Article 7, International Covenant on Civil and Political Rights.*

Two Guatemalan women filed a formal complaint against the INS alleging that they were sexually assaulted by a Border Patrol agent near El Paso, Texas, on 7 March 1996. According to their lawyer and published reports, Luz López and Norma Contreras, both aged 23, were arrested after they waded across the Rio Grande river in the Ysleta Border Patrol District, east of El Paso. The Border Patrol agent handcuffed and detained them in his vehicle.

According to the women’s complaint, he lifted up Contreras’ dress, pushed her legs open, pulled aside her underwear and stuck his fingers into her vagina. The other woman, López, was told to undo the buttons on her jumpsuit and the agent put his hands inside her top and felt her breasts. The two women said they stared at each other, paralysed by terror. “We feared the worst,” said López. “We didn’t know where he was going to take us...Just the sight of him with a badge and a gun was enough to intimidate anyone.” The agent then left them in the vehicle while he went to speak to the lone driver of another Border Patrol vehicle. Both men returned and, in full view of the second agent, the arresting agent assaulted both women again. López and Contreras say they were then taken to the Border Patrol office where the same agent sexually assaulted both women a third time in a detention cell and in a bathroom. Their ordeal reportedly lasted several hours. Afterwards, the agent gave the women one dollar each and released them into the USA.

The women lodged a formal complaint, which was investigated by the Justice Department’s Civil Rights Division. According to HRW, the women were interviewed by a male OIG investigator, who reportedly accused them of lying and threatened to prosecute them if they were. As HRW noted, “It is unfortunate that at no time during the course of the investigation were the women interviewed by female OIG personnel, who might have facilitated the recounting of an alleged sexual assault.”<sup>74</sup> According to the women’s lawyer, their official

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<sup>72</sup>Illegal Immigration Reform and Immigrant Responsibility Act of 1996, most of which took effect on 1 April 1997.

<sup>73</sup>Claudia E. Smith, California Rural Legal Assistance Foundation, Oceanside, California.

<sup>74</sup>HRW, Summary of Concerns, 16 January 1997, p.6.

complaint was “dropped” by the Department of Justice without any obvious resolution. A lawsuit was filed against the Border Patrol and remained pending at the time of writing this report. Two years on, Luz López and Norma Contreras still await a resolution of the matter.<sup>75</sup>

The women rejoined their families in San Bernadino, California, but returned to El Paso to cooperate with the investigation, and were able to identify the two Border Patrol agents from photographs (Amnesty International understands that the agents in question were removed from field work pending investigation of the matter). The women received sexual abuse counselling, but both were severely traumatized, and Norma Contreras attempted to commit suicide later that year.

On 23 January 1997, a 16-year-old Guatemalan girl was detained with a group of migrants by the Border Patrol near Corpus Christi, Texas, and taken to a Border Patrol station. In the early hours of the morning, on the pretext of searching her for contraband, a male Border Patrol agent allegedly took her to a separate cell and fondled her breasts under her shirt and brassiere, and put his hand down the front of her pants. Afterwards, she later told another girl in the group what had happened, and the other girl said she had been touched in the same way.

The Guatemalan girl was placed with a foster family. According to the Valley Coalition for Justice,<sup>76</sup> they interviewed her and on 28 January 1997 she prepared an affidavit describing what the Border Patrol officer had done to her. A few days later she told the Coalition she did not wish to pursue the complaint (which had not yet been formally filed), if it meant a prolonged stay in foster care. The Coalition spoke to an official in the INS Harlingen office who allegedly said he did not want the girl released until the incident could be investigated. On 6 February the girl reiterated to the Coalition that she did not want to file a formal complaint. The Coalition again spoke with the INS official in the Harlingen District office, who reportedly stated that he was going to talk to the child to see if she would agree in writing not to file a complaint. On 18 February the girl asked the Coalition to return her original signed affidavit. She reportedly told the Coalition that she would be released upon giving the affidavit to the INS official in Harlingen. She gave the affidavit to the official and was subsequently released.

The Valley Coalition for Justice in Harlingen then lodged a complaint with the OIG against both the Border Patrol agent and the INS official. It remained unclear whether the INS official had forwarded the girl’s complaint to the appropriate authorities or to the Chief Border Patrol Agent for the Harlingen sector, as is required under INS policy. The matter was still under investigation at the time of writing. Amnesty International is concerned at the allegation that inducements may have been made to persuade the young girl not to lodge a formal complaint, and that an INS official, on being made aware of a complaint allegation, may not have forwarded it to the appropriate authorities.

At the time of writing, Amnesty International had requested but had not received details of INS policy regarding body searches. Amnesty International believes that allowing male Border Patrol agents to perform intimate body searches of female detainees is a practice which amounts to “cruel, inhuman or degrading treatment” (in violation of Article 7 of the ICCPR) and that, if confirmed, the above incident may also have been in violation of Article 17,<sup>77</sup> which states, “No one shall be subjected to arbitrary or unlawful interference with his privacy...” The Human Rights Committee, which interprets the ICCPR, has stated with regard to Article 17:

“So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.

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<sup>75</sup>Communication with James J. Scherer, Attorney at Law, 14 January 1998.

<sup>76</sup>Valley Coalition for Justice, communication with Wayne D. Beaman, Special Agent in Charge, OIG (McAllen field office), 5 March 1997.

<sup>77</sup>The USA ratified the ICCPR in 1992, and entered no reservation to Article 17.

Persons being subjected to body searches by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.”<sup>78</sup>

On 15 March 1997, María González<sup>79</sup> aged 61, a legal permanent resident of the USA, was driving her three great-grandchildren from Ciudad Juárez, Mexico, into El Paso, Texas, across the downtown bridge. Also in the car was her brother, a US citizen, who suffers from diabetes and schizophrenia. At the inspection booth Mrs. Gonzalez showed her green card, and a Border Crossing Card for her great granddaughter, Cecilia (the other two children, both boys, aged three and one and a half, are US citizens). The female INS inspector appears to have misheard what Mrs. González said, because she accused her of falsely claiming that Cecilia was a US citizen. They were ordered to go to secondary inspection, to leave the vehicle and call someone who could bring the children’s birth certificates. Mrs. González called her daughter, who promptly brought the documents to the Port of Entry.

Mrs. González was told to sign a form written in English, which she could not understand. Her daughter moved to translate it for her, but this seemed to anger the INS inspector who tore the form out of the daughter’s hands and allegedly yelled at her that it was none of her business. The agent then announced that the van was to be confiscated; Mrs. González remonstrated, but the agent allegedly replied that she was an official of the federal government and could do whatever she liked. She reportedly threatened Mrs. González that her passport and van would be taken and she would be denied permission to enter the USA. Mrs. González’ daughter was forced to leave the area at that point, despite repeated requests that she be allowed to stay to look after the three children.

Mrs. González was becoming increasingly angry and upset, and began to feel ill. She had a history of high blood pressure and heart disease. She told the agent she felt unwell and needed medicines from her van. Ignoring her request, they again tried to make her sign the form and she refused. Mrs. González then fainted and required an ambulance to take her to hospital where she needed urgent medical attention for extremely high blood pressure.

The van was impounded and removed, with Mrs. González’ diabetic and schizophrenic brother still inside. He was later found wandering in downtown El Paso, very agitated and thirsty, with a dangerously high blood sugar level requiring insulin and oral medication. The children were all sent back to Ciudad Juárez. It later cost \$70 to have the van returned to them.

**“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.” *Principle 16 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.***

Amnesty International was told that the INS has sometimes failed to inform detained women’s families of their whereabouts, and women detainees have experienced difficulty in obtaining access to telephones in order to contact their family.<sup>80</sup> Women arrested in the California area are frequently flown to an INS facility in Las Vegas,

<sup>78</sup>General Comment 16 to Article 17 of the ICCPR, “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” UN Document HRI/GEN/Rev.1, 29 July 1994.

<sup>79</sup>Not her real name. Interviews with complainant and her daughter by El Paso Border Rights Coalition, 27 March 1997.

<sup>80</sup>Meetings with Roberto Martinez, Director, AFSC, San Diego, 8 September 1997 and Claudia Smith, California Rural Legal Assistance Foundation, 9 September 1997.

Nevada, and may remain there for weeks or months pending a hearing. Husbands and wives, initially detained together in parts of California, have reportedly been separated and deported at different border gates with no information about one another's whereabouts.<sup>81</sup> This was despite INS (San Diego sector) guidelines that "family groups are to be housed and dispositioned [sic] as a unit absent extraordinary circumstances."<sup>82</sup>

Amnesty International requests the INS to ensure that all detainees be permitted adequate telephone access in order to inform family of their whereabouts, on every occasion that they are transferred to a new place of detention. In the interests of safety and humanity, couples and family groups should be detained, held and deported together.

**"At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality."** *United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 22 (1).*

**"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."** *Principle 24, United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

In the Port Isabel Service Processing Center, an INS long-term detention facility in east Texas, more than 100 women are normally held pending court hearings. Although the Center has its own medical facilities, Amnesty International was told they do not offer psychological counselling or psychiatric help. Women who may be suffering emotional trauma as a result of terrifying ordeals on their journey, and separation from their families, are largely left to fend for themselves. Amnesty International urges that professional psychological assistance should be provided in all INS long-term detention facilities, in accordance with international human rights standards.

On 14 February 1997, a 22-year-old Honduran woman and her husband were placed in INS detention at the Port Isabel Service Processing Center, Los Fresnos, Texas. They reported they were separated upon arrival and in the following three weeks were only allowed to communicate with one another once. On this one occasion, the wife, who was four months pregnant, told her husband that she was not doing well. The husband reports that he spoke to his wife's deportation officer, to alert the INS that his wife was pregnant and needed to be released. But the deportation officer reportedly refused to believe that they were married and told the husband that the matter was none of his business.

After 18 days in detention, the woman lost the baby. It is against INS policy to detain pregnant women, but when the Valley Coalition for Justice inquired about the case, the INS deportation officers said they had not had time to write up the paperwork to allow the woman to be released on her own recognizance.<sup>83</sup> Amnesty International is concerned that this case, if confirmed, would indicate a failure by the INS to respond to a health concern, either by providing medical care within the facility or by releasing the woman into the community.

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<sup>81</sup>Claudia E. Smith, letter to Johnny Williams, Chief Patrol Agent, San Diego, 27 March 1997.

<sup>82</sup>Memorandum from Johnny N. Williams, Chief Patrol Agent, San Diego, 26 January 1995.

<sup>83</sup>Source: Valley Coalition for Justice, Harlingen, Texas, interview with complainants, 6 March 1997.

Amnesty International recommends that all detainees in INS custody should be given the opportunity to have a medical examination promptly after being taken into custody. Adequate pre-natal and post-natal care and treatment must be provided for women and their infants. Given the traumatic journeys many migrants endure, women and children in particular should be offered psychiatric care or psychological counselling. Any female detainee who alleges she has been raped or sexually abused must be given an immediate medical examination, preferably by a female doctor. Intimate body searches of detainees should be performed only by an officer of the same sex.

**Repairing the border fence, Southern Arizona**  
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## THE MILITARIZATION OF THE US-MEXICO BORDER AND THE SHOOTING OF ESEQUIEL HERNANDEZ, 20 MAY 1997

Esequiel Hernandez, a US citizen, was shot dead by a military patrol in Redford, a tiny, remote farming community on the Texas-Mexico border, 180 miles southeast of El Paso. On 20 May 1997, in the early evening, Esequiel Hernandez, who had just turned 18 years old, took his goats to the river as he always did after school. He carried his grandfather's .22 rifle to defend his herd against wild dogs, and himself against rattlesnakes. He was unaware, as was every other resident of Redford, that a US military surveillance unit had been camped out in the nearby desert brush for several days, on the look-out for suspected drug-smugglers from Mexico. The military patrol comprised four non-commissioned Marine corporals, aged between 19 and 22. They were wearing "Ghillie suits" - a heavy camouflage outfit of brown and green burlap strips, their skin was darkened and they were armed with M-16 automatic rifles.

Accounts of the shooting differ. According to Marine Corporal Clemente Banuelos, who fired the fatal shot, the patrol believed Hernandez had seen them and fired his rifle twice in their direction. They followed him at a distance and, when he again raised his rifle in their direction they felt they were in danger and Corporal Banuelos fired a single shot from his M-16, causing Esequiel Hernandez massive internal injuries, from which he bled to death.

The Marines' version is challenged by Redford residents and by state investigators including the Texas Rangers. Those who knew him are adamant that Esequiel Hernandez would not knowingly have fired on a human being, and very likely did not realize that the camouflaged Marines were human beings. This view was later endorsed by a federal grand jury, which stated its belief that Esequiel Hernandez (who routinely carried his World War I vintage rifle while tending his family's goats) never intended to fire at anybody.<sup>84</sup> The Texas Rangers expressed doubt over the Marines' version of events, judging from the entry site of the fatal bullet (Hernandez' right side), which could indicate that he was turning away from the patrol rather than aiming in their direction. Investigators were also disturbed that the Marines reportedly made no attempt to revive him, and delayed some 20 minutes before summoning medical help.<sup>85</sup>

On 14 August 1997, a federal grand jury voted not to indict Corporal Banuelos with the murder of Esequiel Hernandez. There was speculation that the jury may have been swayed by three of its members who had strong ties to the Border Patrol: a local Border Patrol supervisor, on duty the night of the shooting, the wife of a Border Patrol agent, and a retired Border Patrol agent.<sup>86</sup> A federal civil rights investigation into the shooting was completed in February 1998 with a Justice Department announcement that Corporal Banuelos would not be charged with a Federal civil rights violation. A House of Representatives Congressional investigation was ordered by Rep. Lamar Smith (R-San Antonio), Chair of the House Immigration Subcommittee, to examine "what went wrong" in Redford, by looking into issues such as whether Border Patrol agents were adequately trained to supervise the marine patrol.<sup>87</sup>

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<sup>84</sup>Sam Howe Verhovek, "Border Town is Angered After Marine Is Cleared," New York Times, 16 August 1997.

<sup>85</sup>Sam Howe Verhovek, "After Marine on Patrol Kills a Teen-Ager, a Texas Border Town Wonders Why," New York Times, 29 June 1997.

<sup>86</sup>Douglas Holt, "Border inquiry falls to other investigators," Dallas Morning News, 18 September 1997.

<sup>87</sup>Judy Wiessler, "House panel plans probe of South Texas border killing," Houston Chronicle, 17 July 1997. New York Times News Briefs, 27 February 1998.



In the aftermath of the shooting, the Pentagon ordered the indefinite suspension of military drug patrols along the US-Mexico border and said it would reassess the policy of using the army to assist domestic law enforcement. In mid-January 1998 the Defense Department said it will recommend permanently cancelling armed military patrols along the border, but unarmed military troops would continue to assist the Border Patrol in the region, in non-combat projects such as repairing and building walls, fences and roads, and other support roles such as intelligence-gathering, document analysis, aerial reconnaissance and record-keeping.

## Background <sup>88</sup>

The recent history of the US military's involvement along the US-Mexico border dates back to 1981 when President Ronald Reagan's administration loosened and began to circumvent the historic Posse Comitatus Act of 1879 which had formerly prohibited the use of the military for domestic law-enforcement.<sup>89</sup> Military personnel were now permitted for the first time to assist civilian law enforcement agencies and were enlisted in the so-called "War on Drugs" along the US-Mexico border.

In 1986, President George Bush's administration launched "Operation Alliance" to "foster inter-agency cooperation and interdict the flow of drugs, weapons, aliens, currency and other contraband across the Southwest border." The 1989 Defense Authorization Act further expanded and formalized the military's role in drug law enforcement. The 1991 Defense Authorization Act broadened military drug enforcement powers still further, authorizing the military to carry out aerial and ground reconnaissance in the border region.

Joint Task Force-6 (JTF-6) was established by the US Department of Defense in 1989, with its headquarters at Fort Bliss, El Paso, Texas. This agency coordinated military and civilian law enforcement operations, including drug surveillance operations, along the US-Mexico border. It is estimated that in 1996 the Pentagon spent about \$800 million to help enforce the drug trafficking laws alone.

Amnesty International calls on the US government to ensure that the circumstances surrounding the shooting of Esequiel Hernandez receive a thorough, independent investigation, which complies with the standards set out in the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Amnesty International urges that preventive measures be taken to ensure that unlawful or avoidable killings do not occur, and welcomes the announcement by the US Defense Department that it will recommend cancelling armed military patrols along the US-Mexico border. Amnesty International remains concerned that the deployment of troops for law enforcement purposes could contribute to human rights violations. Military troops who are deployed to assist in domestic law enforcement operations must abide by the rules and standards of law enforcement officers, including the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see Appendix I).

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<sup>88</sup>For a full description of the militarization of the border, see Dunn, Timothy, The Militarization of the US-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home. Center for Mexican American Studies, University of Texas at Austin, 1996.

<sup>89</sup>The Posse Comitatus statute of 1879 made it a felony to use any part of the Army or Air Force as a posse comitatus (ie, deputized by civilian law enforcement officials to assist in putting down any type of civil disorder or to otherwise carry out the law), except where expressly authorized by the Constitution or an act of Congress. The Defense Authorization Act of 1982 loosened these restrictions by adding a new chapter to US law, entitled "Military Cooperation with Civilian Law Enforcement Officials." (See Dunn, *op.cit.*, pp. 106-8)

**This page: Esequiel Hernandez' grave, Redford, Texas.  
© Amelie Goodwin**

**This page: The camouflage “Ghillie Suit”**  
**© James H. Evans 1997**

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## RECOMMENDATIONS

### Independent citizen review of INS:

- , Amnesty International urges the US government to establish a Citizens' Advisory Committee to Department of Justice component organizations involved in the INS complaint process, as recommended in the CAP report.
- , Amnesty International recommends that the new Citizens Advisory Committees to the INS and to the DOJ be given powers to collect and review complaints and other information, monitor the timeliness and effectiveness of the complaint process and, where necessary, conduct their own investigations regarding INS policies and practices.
- , The INS should send a clear, public message to all its employees that cruel, inhuman or degrading treatment or punishment and unjustified use of force and firearms will not be tolerated, and are in violation of INS policies as well as international human rights standards. It should be made clear that standards will be strictly enforced, and misconduct will be promptly and consistently disciplined.

### Complaints process:

- , Until such time as the complaint process gains the confidence of those most likely to need it, Amnesty International urges the OIA to include in its statistical analyses of complaints received, the reports of immigrant advocacy groups, the Mexican Consulate and local media. We believe they may provide valuable indicators of patterns of abuse and locations where additional employee training efforts may be needed.
- , The complaints procedure should be transparent to ensure public accountability and confidence in the process. The Office of Internal Audit's annual report should be actively promoted as a publicly available document (eg on the INS' Internet website). Its statistical breakdown of complaints filed should be made readily understandable, indicating the type of complaint, location, job title of person implicated, and outcome. The outcome of criminal, disciplinary and administrative investigations should be made public promptly after completion of an investigation.
- , Standardized, bi-lingual complaint forms should be prominently displayed in all Border Patrol stations, in locations accessible to detainees. The INS/OIA should regularly monitor compliance at field level with directives from Headquarters in this regard. Posters and other information advertising the complaint process should be displayed in a wide range of public places (eg libraries and post offices) in addition to INS and Border Patrol buildings. Supplies of the complaint form should be available to community-based organizations and other interested groups.
- , It is imperative that detainees are promptly informed of their rights and are not discouraged, threatened or prevented from exercising their right to file a complaint. Women must not be deterred from reporting rape and sexual abuse by threats of legal action against them, other harassment or reprisals.

### INS/Border Patrol officer training:

- , Training should emphasize ethics, civil rights and international human rights standards, particularly on the prohibition of torture and ill-treatment, and international standards regulating the use of force and firearms included in the Code of Conduct for Law Enforcement officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Proper training of supervisors is critical to the discipline and performance of patrol officers and inspectors in their daily contact with the public. Emphasis must be put on anticipating problems among officers before they become manifest in improper behaviour, identifying training needs of officers and providing professional support in a consistent and fair manner.

**Conditions of detention:**

The INS should take all appropriate actions to ensure that their short-term and long-term detention facilities provide humane and decent accommodation, in accordance with international standards, with regard to such matters as adequate supplies of drinking water; maintaining a comfortable cell temperature and providing blankets; offering nutritious food at regular intervals, and access to telephones.

All places of INS detention should be subject to regular, independent monitoring by qualified and experienced experts, appointed by a competent authority, to ensure that the facilities are administered in accordance with existing laws and regulations.

Amnesty International urges the INS to ensure that its policy regarding the use of restraints adheres at all times to international human rights standards.

**Unaccompanied juveniles in detention:**

The US government should ensure that the INS complies fully with all international human rights standards regarding the rights of detained children: UN Convention on the Rights of the Child; UN Rules for the Protection of Juveniles Deprived of their Liberty, and the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”). Particular attention needs to be paid to their right to legal representation. Amnesty International urges that unaccompanied minors held in detention by the INS who cannot afford to hire a lawyer, should be provided with free legal representation at government expense.

Juveniles held in INS detention should be treated with all due attention to their needs as an especially vulnerable group. Unaccompanied children awaiting determination of their immigration status should be detained no longer than is absolutely necessary for arrangements to be made for their release to family, legal guardians or local child welfare agencies.

**Women in the custody of the INS:**

All detainees in INS custody should be given the opportunity to have a medical examination promptly after being taken into custody. Adequate pre-natal and post-natal care and treatment must be provided for women and their infants. Given the traumatic journeys many migrants endure, women and children in particular should be offered psychiatric care or psychological counselling. Any female detainee who alleges she has been raped or sexually abused must be given an immediate medical examination, preferably by a female doctor.

Intimate body searches of detainees should be performed only by an officer of the same sex as the detainee.

The INS must ensure that women who are to be returned to Mexico are not deported alone or in all-female groups after nightfall. Border Patrol stations, and those responsible for the actual deportations must be made aware of INS policies in this regard.

**US military:**

, Amnesty International calls on the US government to ensure that the circumstances surrounding the shooting of Esequiel Hernandez receive a thorough, independent investigation, and to take preventive measures to ensure that unlawful or avoidable killings do not occur. Military troops who are deployed to assist in domestic law enforcement operations must abide by law enforcement standards, including the United Nations Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

**Native American Indians:**

, The INS should ensure that the rights of Native American Indians whose tribal lands span the US-Mexico border, to cross the border without fear of harassment, intimidation and abuse are respected. Amnesty International urges the US government to liaise with tribal leaders in order to resolve the problem of personal identification for border control purposes, such as the proposed creation of a tribal accreditation card which would be recognized at the border as an acceptable form of identification for tribal members.

## APPENDIX I - SELECTED INTERNATIONAL STANDARDS

*Articles of the International Covenant on Civil and Political Rights  
(ratified by the US Government on 8 June 1992)*

*Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

*Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

*Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

*Article 12*

4. No one shall be arbitrarily deprived of the right to enter his own country.

*Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home...

*Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*The United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by the US government in October 1994)*

This provides, among other things, that education and information regarding the prohibition against torture or other cruel, inhuman or degrading treatment or punishment shall be fully included in the training of law enforcement personnel and others (Articles 10 and 16). It also provides that each State Party shall ensure there is a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed in any territory under its jurisdiction (Articles 12 and 16).

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*  
 Adopted by General Assembly resolution 43/173 of 9 December 1988

*Principle 1*

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

*Principle 6*

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

*Principle 29*

In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.

*Standards on police codes of conduct and use of force*

Relevant articles under the *UN Code of Conduct for Law Enforcement Officials*, adopted by the UN General Assembly in 1979

Article 2: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

More detailed guidelines are set out in the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990. These provide in part:

4. "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

5. "Whenever use of force and firearms is unavoidable, law enforcement officials shall:

- a. Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- b. Minimize damage and injury and respect and preserve human life;
- c. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment."

*The UN Convention on the Rights of the Child (1989)*

*Article 37*

State Parties shall ensure that:

a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;



- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.
- d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

*The UN Convention on the Elimination of All Forms of Racial Discrimination (proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963)*

*Article 1*

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

*Article 2*

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups or persons or institutions on the ground of race, colour or ethnic origin.
2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

*Article 7*

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms, through independent national tribunals competent to deal with such matters.

*Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the UN Economic and Social Council, 24 May 1989, endorsed by the UN General Assembly, 15 December 1989 in resolution 44/162)*

*Principle 1*

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences...

*Principle 2*

In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

*Principle 9*

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances...

*Principle 10*

The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have...authority to oblige officials allegedly involved...to appear and testify. The same shall apply to any witness...

*Principle 17*

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.

*Principle 18*

Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.

*Principle 19*

Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts.

*Principle 20*

The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

## **APPENDIX II - RECOMMENDATIONS OF THE CITIZENS' ADVISORY PANEL (CAP) TO THE IMMIGRATION AND NATURALIZATION SERVICE (INS)**

**30 September 1997**

### **1. General Operating Procedures:**

- , The Panel recommends the institutionalization of a **permanent citizens advisory committee to the Immigration and Naturalization Service.**
- , The Panel recommends a **permanent citizens advisory committee to the INS Office of Internal Audit and the DOJ Office of the Inspector General and Civil Rights Division** be appointed to oversee the coordination of roles, missions and other issues that relate to the INS complaint process.
- , The Panel required the INS **Office of Internal Audit** to issue an **annual report** of its operations and activities to the public under the Commissioner's signature. The Panel reserved for itself or its successor body the right to review the annual report and to provide comments on it to the Commissioner and the Attorney General.
- , The Panel recommends that the Commissioner issue an **annual report** on all aspects of **Border Patrol/INS community involvement** in the United States.

### **2. The Complaint Process: Procedural and Organizational Issues:**

- , The Panel reaffirms its concerns and continues to recommend that the **Spanish-English posters and complaint forms be readily accessible** in areas that are available to detainees and the general public.

The Panel strongly urges the INS to consider the **integration of knowledgeable community-based organizations (CBO) into official INS training** at appropriate stages. The Panel also believes that INS would benefit by having CBO instructors among its official training curriculum resources.

The Panel urges the Attorney General to direct the INS to prepare **materials that explain the regulations for use of firearms, use of force, vehicular pursuits, searches, site inspections and powers to arrest, interrogate and detain**. These materials should be distributed to the community.

The Panel recommends that INS develop **general guidelines for the application of discipline across the agency**. Because management discretion varies widely, the Panel believes that general guidelines should be imposed to ensure fairness and equity.

The Panel recommends the Attorney General develop and impose **reasonable deadlines** for the Civil Rights Division's and Assistant United States Attorneys' decisions **to initiate prosecution**.

The Panel encourages the Civil Rights Division and Assistant United States Attorneys to **consider the alternative of state or local prosecution**.

In the interest of timely administrative action, the Panel strongly urges the Department of Justice to reach a timely decision on the recommended change to the current policy which prohibits concurrent criminal and administrative investigations.

The Panel recommends that **substantiated complaints** and their dispositions be **included in all selection packages for promotions, transfers and relevant personnel actions**.

The Panel recommends that **unsubstantiated complaints** in the INS Office of Internal Audit case management system be **used as a management tool** to identify trends in abuse and flag employees who may need additional training and/or supervision. The Panel further recommends the INS establish the receipt of **three unsubstantiated complaints of any nature as the threshold notification level** from the INS Office of Internal Audit case management system to the employee's immediate supervisor.

The Panel recommends the Attorney General direct the INS to develop and implement a **critical element** which addresses the reporting, review/investigation, and resolution of complaints and/or allegations. This critical element must be **included in the performance standards of employees from first-line supervisors to the senior executive staff of the Service**.

The Panel recommends that INS develop a protocol for **assignment of an employee who is accused of a civil rights violation** involving aggravated assault, rape or shooting **to a non-public contact position**, until the allegation is resolved.

### **3. Building INS Professionalism**

The Panel restates its belief that **training must remain a top priority** in this period of rapid growth at INS. Therefore, the Panel recommends that the INS continue its training efforts for new and current employees, with specific emphasis on: customer service; cultural awareness; prevention of bias; civil and constitutional rights; the range of penalties and sanctions; and INS complaint procedures.

The Panel recommends that the INS take every action necessary, including (but not limited to) distributed learning, modular curricula, video tapes, local and regional workshops, teleconferencing, and other innovative instructional approaches to export **first-line supervisor training** to all field locations that are scheduled to receive new academy graduates under INS hiring initiatives.

The Panel recommends that all new first-line supervisors receive basic supervisor training prior to assuming supervisory responsibility and that such training be systematically enhanced at regularly scheduled intervals of two to three years.

, The Panel recommends that the Attorney General direct INS to visit and study current Field Training Officer programs of state and local law enforcement agencies; and fully **fund a Field Training Officer Development Program** for implementation within INS if these programs are deemed suitable and relevant to the needs of the INS.

, The Panel encourages INS to develop and provide: **systematic in-service training** at regular intervals; and **external training opportunities**.