

Aldape, State Habeas Pleasings
(942-1042) (v. 4)

~~CLOSED~~

IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

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VIA FEDERAL EXPRESS

Thomas F. Lowe, Clerk
Texas Court of Criminal Appeals
Fourteenth and Lavaca
Price Daniel Building, Rm. 201
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Re: Cause No. 359805; Ex parte Ricardo Aldape Guerra

Dear Mr. Lowe:

I have enclosed an original and twelve copies of this supplemental letter to Ricardo Aldape Guerra's First Amended Application for Writ of Habeas Corpus. A copy of this document and all the attachments is being sent to opposing counsel today by messenger.

1. Thomas Gibbs Gee has joined Stan Schneider as of counsel in this case.
2. Guerra has attached hereto a Table of Authorities (marked "Attachment 1") with citations and page number references.
3. In the rush to complete the First Amended Application for Writ of Habeas Corpus (hereafter "Amended Application") so that it could be filed a few days before the September 24, 1992 execution date and give the prosecutor adequate time to review it and decide how much time she would need to prepare a response, Guerra made a number of errors, virtually all of which were non-substantive. In the attached Errata Sheet (marked "Attachment 2"), Guerra has listed these corrections, most of which fall into the following categories:
 - a. an indication of whether italicized words within a quote appeared in the original or were added;

- b. correction of typographical errors in citations (e.g., page numbers, case names, dates, etc.); and
- c. correction of page numbers for supra and infra references.

In addition, Guerra found numerous cases for which the citation should have indicated a denial of either *certiorari* or a writ of error. These cases are not listed in the Errata Sheet but are properly cited in the Table of Authorities.

The only substantive change was the deletion of footnote 84 (on page 133 in Point VI), which stated that a recently-enacted state statute limiting the use of victim impact statements, Tex. Code Crim. Proc. Ann. art. 56.03 (Vernon Supp. 1992), precluded jury consideration of victim impact testimony under all circumstances. Guerra has since discovered that this is incorrect and that the Texas Victim Impact Statute does not prevent a jury from hearing victim impact testimony at the punishment phase of the trial. See Hilbig v. McDonald, No. 04-92-00223-CV, 1992 WL 207721, (Tex. App.--San Antonio, July 2, 1992, no pet.). Moreover, it is clear that victim impact testimony can be used at the punishment phase of a non-capital trial, see, e.g., Stavinoha v. State, 808 S.W.2d 76, 79 (Tex. Crim. App. 1991) (en banc) (per curiam); Miller-El v. State, 782 S.W.2d 892, 895-96 (Tex. Crim. App. 1990), and apparently at the punishment phase of a capital trial, Stavinoha, 808 S.W. 2d at 79 (dicta). This does not, however, affect Guerra's argument on this issue, which is that victim impact testimony during the *guilt* phase is prejudicial and should not be permitted.

4. In Point IV of the Amended Application, Guerra argued that the hostile environment surrounding his trial and the prosecutors' conduct in exacerbating that environment violated his constitutional rights by inflaming Houstonians and fostering ethnic prejudice towards undocumented Mexican nationals. Amended Application at 110-25. In support of this argument, Guerra described a number of widely-publicized events that affected and reflected public attitudes in Houston, Texas, during the months preceding Guerra's trial in 1982. Id. at 114-20. Guerra has found several additional relevant, well-publicized events.

First, two weeks into 1982, an article entitled "High Court Backs California Job Ban Against Aliens" described a decision by the U.S. Supreme Court upholding a California law banning aliens from a variety of state jobs. The dissenters characterized the law as "narrow-minded and hostile toward foreigners." Supp. App. 1-2¹ (F1590-91) (Houston Post, Jan. 13, 1982, at A2).

¹ The Supplemental Appendix cited in this letter is attached hereto and marked "Attachment 3."

Second, an article entitled "Aliens Taking Away Jobs, Economist Says" described a widely-publicized study by a Rice University economist estimating that more than one million unemployed American workers were being displaced on construction projects in the U.S. by undocumented workers and that these positions could have provided jobs to every unemployed male and minority youth, aged 16-24, in the United States. Supp. App. 3 (F1592) (Houston Post, Jan. 23, 1982, at 5A).

Third, in April 1982, the U.S. Immigration and Naturalization Service received week-long publicity while it engaged in a nationwide crackdown on undocumented workers holding higher-paying jobs that could be given to unemployed American citizens. Articles each day, with headlines listing the number of "illegal aliens" arrested the day before, described the "much-publicized roundup," which resulted in the arrest of 1,112 undocumented workers in Houston alone (more than ten times the normal number), 982 of which were Mexican nationals, and most of the rest were Salvadorians. E.g., Supp. App. 4-9 (F1611-15, 1618) (Houston Post, Apr. 28, 1982, at 1A; id. Apr. 29, 1982, at 4A; id. May 1, 1982, at 24A). According to the local INS Director of Investigations, "the vast majority of the illegal alien population in Houston is Mexican." Supp. App. 9 (F1618) (Houston Post, May 1, 1982, at 24A).

Fourth, in May 1982 a Houston newspaper, in an article entitled "HUD Policy Lets Illegals Draw Housing Subsidies While Citizens Must Wait," reported that "illegal aliens" were able to obtain housing subsidies in Houston and other southern cities while U.S. citizens had to wait "months or years" for those subsidies because the federal government prohibited verification of the applicants' citizenship status. Supp. App. 10 (F1636) (Houston Post, May 23, 1982, at 1B). Similarly, in June 1982 the General Accounting Office reported that Congress could save \$180 million in 10 years by repealing a Social Security provision allowing "illegal aliens and other questionable cases" to collect survivor benefits under certain circumstances. Supp. App. 11 (F1647) (Houston Post, June 2, 1982, at 5A).

Fifth, in the wake of the U.S. Supreme Court decision that the State of Texas must provide a free public education for the children of "illegal aliens," state education leaders estimated that the decision would cost Texas taxpayers an additional \$62.5 million per year immediately and that the cost would increase about \$12.5 million per year as the number of such children in the public schools grew. Supp. App. 12 (F1679) (Houston Post, June 25, 1982, at 14A).

Sixth, in July 1982 experts predicted that Mexico's worst recession in 40 years would probably increase the number of Mexican nationals moving illegally to the U.S. in search of jobs, that the number of undocumented Mexican immigrants in the U.S. ranged from 1.5 million to as high as 16 million, and that the number might increase by as much as 1 million each year. Supp. App. 13 (F1683) (Houston Post, July 13, 1982, at 4A). This

prediction proved accurate after the Mexican peso was devalued by 50 percent, as Texas saw a record increase in the number of undocumented Mexican immigrants arrested along the Texas-Mexico border. Supp. App. 14-15 (F1692, 1702) (Houston Post, Aug. 17, 1982 at 2C; id. Aug. 27, 1982, at 14A).

5. In Point III of his Amended Application (at pp. 96-97), Guerra cited as one example of prosecutorial misconduct the prosecutors' unfounded accusation that a key defense witness, Jose Heredia, testified while under the influence of drugs or alcohol. After filing the Amended Application, Guerra learned, and will demonstrate at an evidentiary hearing, that there was at least one reason why Mr. Heredia may have appeared unusual during his testimony, although he gave no indication of having consumed alcohol or a controlled substance. The official court interpreter was replaced by a new person a few days after trial testimony began. Guerra will show that this new interpreter was selected by the prosecution over the objection of Guerra's lawyers, see S.F. vol. 22 at 344-47, 354-58, 374, and that the new interpreter did an unprofessionally poor job of interpreting in ways that were prejudicial to Guerra, including the use of a jocular and exaggerated demeanor during Mr. Heredia's testimony in a manner that detracted from his testimony and seemed calculated to damage his credibility.

6. In Point III (at page 68) and again in Point V (at pages 126-31) of the Amended Application, Guerra argued that the prosecutors improperly appealed to ethnic prejudice by urging jurors to consider Guerra's status as an illegal alien when assessing punishment. To demonstrate this improper appeal to ethnic prejudice, Guerra pointed to the *voir dire* questioning by the prosecutor of three jurors. Amended Application at 127 n.77. Guerra has discovered a fourth juror who was told that Guerra's "illegal alien" status was "evidence you [the jury] want to consider for whatever weight you want to give it in answering these [punishment] questions as to what type of person he is" S.F. vol. 17 at 2925 (Busby).

Very truly yours,


Scott J. Atlas

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Enclosures

cc: Ms. Kari Sckerl - by messenger
Ms. Monica Washington,
U.S. Court of Appeals
for the Fifth Circuit
Mr. Ricardo Aldape Guerra

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

Ex Parte RICARDO ALDAPE GUERRA,

Applicant.

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Case No. _____
(Harris County
Cause No. 359805)

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FIRST AMENDED
APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA CURRENTLY
HAS NO SCHEDULED EXECUTION DATE

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ATTACHMENT 1

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IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

Ex Parte RICARDO ALDAPE GUERRA,

Applicant.

§
§
§
§
§
§

Case No. _____
(Harris County
Cause No. 359805)

ERRATA SHEET TO
FIRST AMENDED
APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA CURRENTLY
HAS NO SCHEDULED EXECUTION DATE

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ATTACHMENT 2

ERRATA SHEET

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"... *illegal alien* crimes," "Guerra Got Justice," and "No Sympathy for Cop Killers."

pp. 127-28, infra

pp. 131, 290-93, infra

... particularly in the context of a hostile environment awards "illegal aliens"

pp. 113-21, supra

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CORRECTION

". . . *illegal alien* crimes," "Guerra Got Justice," and "No Sympathy for Cop Killers" (emphasis added).

pp. 126-27, infra

p. 130, infra; see also pp. 287-93 infra

... particularly in the context of a hostile environment towards "illegal aliens"

pp. 114-21, supra

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IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

Ex Parte RICARDO ALDAPE GUERRA,

Applicant.

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Case No. _____
(Harris County
Cause No. 359805)

SUPPLEMENTAL APPENDIX TO
FIRST AMENDED
APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA CURRENTLY
HAS NO SCHEDULED EXECUTION DATE

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ATTACHMENT 3

weapons indicating the Red Brigades kidnapers of U.S. Brig. Gen. James Dozier planned a major attack.

"We are on a 24-hour security alert," said a NATO official. "Measures that have been taken are perhaps the tightest we've seen here."

Police sources also said documents seized in weekend raids show the Red

The sources said among the weapons seized from terrorist suspects were Soviet-made anti-tank rockets, grenade launchers and shells powerful enough to penetrate thick steel plates.

In addition to placing sandbags and doubling armed guards at the command entrances, Italian policemen have been posted along the roads leading to the

after police received a tip Dozier's kidnapers might try to move him to another hideout, police said.

In another development, police investigating Dozier's kidnapping captured two more Red Brigades suspects Tuesday on information provided by three members of the leftist terrorist gang arrested last weekend.

HOUSTON POST

JAN 13, 1982 A-2

2

High court backs California

Post News Services

WASHINGTON — A split Supreme Court Tuesday upheld a law that allows a state to sue a federal agency, including the Federal Reserve, for "defying" a court order. Four dissenting justices said the decision "defies common sense."

And in halting a challenge to the government's gift of land to a private college in Pennsylvania, the court made it

tougher for citizens to file suits to block government actions.

The court, in a 5-4 ruling, upheld a California statute that requires applicants for about 70 state jobs to be U.S. citizens. The dissenters said the law shows the state to be narrow-minded and hostile toward foreigners.

The ruling reversed a lower court decision that the law was unconstitutional. Three justices said the law was unconstitutional.

were denied jobs as deputy probation officers in Los Angeles originally filed the suit.

The court majority found it was within the state's powers of self-government to exclude non-citizens from certain jobs involving police powers.

In a 16-page dissent, Justice Harry Blackmun said the ruling "rewrites the court's precedent, ignores history, defies

Haig in Egypt striving to refuel peace efforts

Post News Services

ALLEX, Egypt — Secretary of State Alexander Haig arrived in the stalled Palestinian autonomy negotiations, opened talks with Egyptian government leaders Tuesday to try to restore the lost

whether to name a high-level U.S. envoy to the autonomy talks and "it is not ruled out" that Haig himself might take a more active part in the talks about self rule for Palestinians in the occupied West Bank and Gaza Strip.

On his arrival in Cairo for a two-day visit that will



F001590

SUPP. APP.

up Luzzati's son-
re him to another
nt. police inves-
pping captured
suspects Tues-
vided by three
terrorist gang as

by a Newark, N.J., policeman, an offi-
cial said Tuesday.

But William Bradford Reynolds, as-
sistant attorney general for civil
rights, said he turned down a request

the group marched 225 miles in nine
days from Newark to the Justice De-
partment building on Pennsylvania
Avenue.

A member of the Newark chapter of
the Guardian Angels, Frank Melvin,

The Guardian Angels, however, say
Melvin was attempting to identify him-
self as a member of the anti-crime
group when he was struck down by a
shot fired at street level.

formia job ban against aliens

puty probation
originally filed

and it was with-
self-government
om certain jobs

common sense, and reinstates the dead-
ening mantle of state parochialism in
public employment."

The land decision continues a Su-
preme Court trend tightening the re-
quirements that groups and individuals
must meet to fight official actions in
court.

The court ruled that a group devoted
to the constitutionally mandated separa-
tion of church and state has no legal

standing — or sufficient stake in the out-
come of the case — to press its claims.

By 5-4, the court said the group,
Americans United for Separation of
Church and State, lacked standing either
as taxpayers or as firm advocates of
church-state separation to challenge the
government's decision to give land to
the Valley Forge Christian College for
use as a campus.

In another decision delivered Tue-
day, the court, in a technical case in-
volving wage hikes for federal worker
voted 9-0 to strike down a ruling that
would have cost the government at least
\$22 million in back pay.

The court unanimously agreed to
limit the amount of the pay raises fed-
eral employees can expect when the
switch from blue-collar to white-collar
jobs.



3 rebels killed, Haitians report

PORT DE PAIX, Haiti (AP) — Three
men who were captured when a small
invasion force landed on Haiti's Tortuga
Island have "succumbed to their wounds
and died," the national television report-
ed Tuesday night.

desolate offshore island after stopping at
two points on Haiti's northern coast. He
said he did not know whether anyone
went ashore during the earlier stops.
The invaders presumably are follow-
ers of Bernard Sansaricq, a Haitian

F001591

HOUSTON POST JAN 23, 1985 AS

Aliens taking away jobs, economist says

By FRED KING
Post Reporter
More than one million unemployed
on construction projects in the United States, a Rice University economist estimated Friday.

The specialist in U.S. and Latin American labor economics said the percentage probably is higher in residential construction.
Projecting the survey results nationally while allowing for differing economic conditions, Huddle estimated 2.97 million Spanish-speaking immigrants are working on construction projects in this country, with an annual payroll of at least \$1 billion.



Donald L. Huddle, who headed a several-month-long study of 2,000 construction workers in the Houston Area last year, said the researchers found "an astounding high one-third of all workers in segments of commercial construction

Huddle said the study would not have found immigrants from Mexico, for example, but some from other countries were discovered.

Huddle said he has concluded the immigrants to U.S. citizens requires immediate action with the most effective measure is heavy fines on employers for hiring immigrants.

"To make the program effective and comprehensive will require some type of forgery-proof national identity or employment card. I believe that with proper safeguards an identity card need not be a cumbersome over-the-counter document," Huddle said.

President Reagan's proposed "Guest

The prosecutor said he believed the check," he said.

Worker Program," which might bring in as many as 50,000 legal foreign workers, Huddle said.

... We find that all male youths and minority youths, aged 16-24, could, in principle, have been removed from the rolls of the unemployed as of the time of our study and that adds up to more than one million U.S. workers who have been displaced," he said.

Those unemployed citizens may be drawing unemployment compensation, welfare checks, food stamps, or even be placed in federally financed make-work projects," he said.

Huddle said the researchers found illegal aliens were being paid \$4 to \$9.50 per hour while the minimum wage was \$3.35 an hour. "These wages debunk the

commonly held notion that illegal aliens are taking only those jobs that American workers don't want because they are so lowly paid," he said.

Huddle said he and the researchers, his senior economics students some of whom speak Spanish, identified workers as illegal aliens by talking to job foremen and other workers, then interviewing some of the co-workers of those believed to be illegal aliens.

He said the identifications by foremen and co-workers "seemed to be very accurate" and the study did not find any evidence of Hispanic citizens being classified as illegal aliens.

CHOOSE FROM HUNDREDS OF CLOCKS



TRIPLE CHIME WEST GERMAN

FULL 80" TALL





Argentina's Costa Mendez rests head in hand at OAS meeting

HOUSTON PDST APR 28, 1982 A-1

(5)

— AP photo

255 more ~~illegal~~ aliens arrested

By DIANE FREEMAN
Post Reporter

Immigration officials arrested 255 more illegal aliens in Houston Tuesday in a crackdown that officials hope will result in making more jobs available to U.S. citizens.

That brings to 462 the number of illegal aliens arrested in the Houston area in the past two days, Immigration & Naturalization Service officials said.

Vincent Henderson, INS director of investigations, said 55 illegal aliens were apprehended Tuesday at Krest Mark Industries, 14029 Alameda Road, an aluminum fabrication plant. Another 59 were arrested at area construction sites, he said.

INS officials and U.S. Border Patrol agents made the arrests as part of the nationwide

INS-sponsored Project Jobs, a week-long operation that began Monday. It targets higher-paying jobs held by illegal aliens that could be given to unemployed Americans, Henderson said.

The average pay of the illegal aliens arrested Monday was about \$5 an hour and some made as much as \$12 an hour, he said. The average pay scale of the aliens arrested Tuesday had not been determined Tuesday night.

The illegal aliens worked jobs as construction workers, cement workers, railroad workers, sandblasters and pipe inspectors, Henderson said.

Of the 255 arrested Tuesday, 225 were from Mexico, 29 were from El Salvador and one was from Honduras, Henderson said.

INS officials are notifying state employment agencies and community service organizations of the vacated jobs so that American citizens

drawing unemployment benefits can apply for those jobs.

Henderson said the INS is alerting the Texas Employment Commission each time a large arrest of illegal aliens is made at one location.

When the operation concludes at the end of the week, the INS will furnish TEC and other job placement agencies a more complete list, he said.

The week-long Project Jobs employs a task force of 25 officers to make the arrests here compared to the two or three investigators normally assigned to the routine raids, called area control investigations, Henderson said.

On Monday 207 illegal aliens were arrested here, and of those 186 chose to return voluntarily to their home countries, Henderson said.

They were placed on charter buses Monday and sent home, officials said. Others remained

The Houston Post

Good morning!

Ashby	1C	Editorials	2C
Ask Us	5C	Emory	5E
Astrocant	13A	Editorials	7C
Bridge	5C	Graham	5C
		Janbo	5C

F001611

Swat at fly triggered rampage, Koreans say



rests head in hand at OAS meeting

— AP photo

illegal aliens arrested here

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WASHINGTON — Secretary of State Alexander Haig made a last-ditch diplomatic effort Tuesday to head off war in the Falkland Islands by dispatching a new set of peace proposals for Argentina, according to administration sources.

One source said he requested an urgent reply, but had not received one by early Tuesday evening.

country's delegation in Washington calling Haig's proposals "unacceptable to the government."

Meanwhile, supporting Argentina the Falkland Islands crisis, foreign ministers of the Organization of American States approved a resolution early Wednesday recognizing Argentine sovereignty over the islands.

In custody at the INS detention facility at Port Isabel.

All 207 illegal aliens arrested Monday entered the United States illegally and not one was a student or visitor who had overstayed his permit, he said.

That's "rather unusual," Henderson said. Normally, large arrests of illegal aliens result in the apprehension of a few people who entered the country legally but overstayed their permits, he said.

He said he was "not elated" with Monday's figures but noted that probably some aliens who are illegally in the country did not show up for work Monday because it was raining when the operation began at 5 a.m.

Advance publicity about the crackdown also may have kept them from going to work, Henderson said.

Please see 255 more/page 15A

*it at fly triggered
page, Koreans say*

SUPP. APP.



South Korea (UPI) — Woo aslept in his home in Ulsong, a farming village 170 miles southeast of Seoul. His wife swatted a fly on his

*Jet crash
reported*

PERTINENT

ceived when he drove his white Lincoln Continental convertible — which is adorned with two large American flags — to a downtown Mexican market on Sunday to buy a taco.

The candidate was cited for an improper turn, expired license plate (which reads "EMBS") and no proof of auto liability insurance.

other friends that he planned to head for Oregon and Yakima next.

Burns won the jackpot — a record for a slot machine in Las Vegas — April 3 at the Circus Circus Hotel and Casino.

He said at the time that he had been playing one machine when he

But he had no intention of leaving Nevada immediately.

He said the Circus Circus in Reno went to the slots there, and then I went back to Las Vegas and back and forth," he said.

"I spent that \$300,000 trying to

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really
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255 more illegal aliens ar

From Page 1

derson said.

The operation began in Houston with the arrests of 130 illegal aliens at Trees Inc., a tree-cutting business at 7020 Stuebner-Airline Road.

Rudy Reyes, vice president of Trees Inc., said five job applicants referred by TEC showed up Tuesday for the jobs vacated by the aliens who were arrested.

Another 30 to 35 people, the normal number of daily job applicants, also showed up Tuesday, he said. They were not referred by the

state employment agency, he said.

Reyes said everyone who applied for work was told to come back Wednesday but he doesn't expect all of them to appear.

"It's not an easy job, not a high-paying job," he said. The entry level wage for an inexperienced tree worker is \$4 an hour, Reyes said.

Reyes said his company has been listed with TEC and other employment agencies "for years and years" but they have difficulty finding workers.

Climbing trees is "hard work for \$4 an hour," he said.

He accused the INS of targeting his compa-

ny so the service would receive favorably by making a large number of a Hispanics who work there. While INS said 130 illegal aliens were apprehended Reyes said that figure was exaggerated because the company's manpower was 55 workers later Monday.

Henderson said final figures to be after the project is completed will show far more than 55 illegal aliens were for Trees Inc.

Officers of Krest Mark Industries can be reached for comment.

Though Project Job is scheduled Friday, Henderson said the INS here

F001613

Clements announces resignation of budget director

Post Austin Bureau

sign as of June 1.

AUSTIN Gov. Bill Clements announced Tuesday "with very great regret" that his director of budget and planning, Paul T. Wrotenbery, will re-

Wrotenbery plans to establish a high-technology-based corporation serving the financial services industry and headquartered in Texas, the governor's office said.

Clements said that at his request Wrotenbery will serve as chairman of a new Governor's Advisory Council on Texas State Government Management Efficiency.

Wrotenbery has led the government management efficiency efforts in the

Clements governor director executive

His son was not

indicated to them that he had no intention of leaving Nevada immediately. They bought him an airplane ticket and he planned to leave the next day. Jackpot — a machine in Las Vegas and played the slots there, and then I went back to Las Vegas and back and forth," he said. "I spent that \$300,000 trying to

dren. He said he would give his children \$25,000 each. "If I were younger, I suppose I'd have bought a farm," he said after his win. "Other than that, there's never been any material things I've really craved. I like hunting and fishing, and I'll probably do more of that now."

elgnty over the islands. Britain has insisted that Argentina seized the islands illegally April 2 that Britain retains legal sovereignty has demanded British administration and a recognition of full British sovereignty for at least a short period after complete Argentine withdrawal. It would be willing to negotiate the island long-term future.

legal aliens arrested here

Dr

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Henderson said final figures to be tallied after the project is completed will show that far more than 55 illegal aliens were working for Trees Inc.

Officers of Krest Mark Industries could not be reached for comment.

Though Project Job is scheduled to end Friday, Henderson said the INS here will con-

tinue the program with decreased manpower. No action will be taken against employers, he said.

Throughout the country 400 agents were involved, and Immigration and Naturalization Service officials said initial reports indicated as many as 1,000 aliens had been caught in nine cities the first day.

In San Francisco 61 people were arrested at several sites on Monday. Most were laborers working primarily at agricultural jobs that paid between \$3.75 and \$7 per hour.

In New York City metropolitan area, 111 suspects were picked up on Tuesday, officials said, bringing the two-day total there to 302.

SUPP. APP.

F001614

nation of budget director Wrotenbery

ublish a high-ton serving try and head-governor's office

Clements said that at his request Wrotenbery will serve as chairman of a new Governor's Advisory Council on Texas State Government Management Efficiency.

Wrotenbery has led the government

Clements administration. He joined the governor's staff as budget and planning director in 1979 after serving as an executive in several industrial firms.

His successor on the governor's staff

Timbertan Moccasin

PEK new con armed lashed a The lic debt clauses Revolut tional c The Vice Ch task of concent Deng C ral tion's military government

HEARING OUT OF FOCUS

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Brussels airport closed by blaze

INS arrests another 253 illegal aliens

BRUSSELS, Belgium (AP)—The Brussels airport closed for six hours Wednesday after smoke from a small fire spread through the air conditioning system into halls, offices and the control tower, airport spokesman Jean-Paul Smeyt said.

Knapik said no one was injured in the fire and that flights to Brussels were rerouted to Amsterdam, Paris and other Western European cities.

T18 - T18
Immigration officials Wednesday arrested 233 more illegal aliens in Houston, bringing to 715 the number apprehended here since Monday in a week-long crackdown to make more jobs available to American citizens. E3

3 Of those arrested Wednesday, all but 17 were from Mexico, said Vincent Henderson, U.S. Immigration and Naturalization Service director of investigations.

He said 188 were apprehended at Mid West American, 7281 Fairview, a steel fabricating company. Officials there could not be reached for comment.

Other arrests were made at construction sites around town, Henderson said.

THE INS-AND U.S. Border Patrol agents made the arrests as part of Project John, a nationwide operation that focuses on higher-paying jobs held by illegal aliens that could be given to unemployed American citizens.

Most of the jobs held by the aliens who have been arrested pay an average of 35 an hour, Henderson said.

Joel Terry, Houston district director of Texas Employment Commission, said the agency has referred 16 job applicants to one of the employers where arrests of ~~immigrants~~ were made this week. More referrals will be made as the job applicants are screened, he said.

HE SAID THE DCS IS alerting TEC of the job vacancies after arrests are made and the employment agency then contacts the employer.

One of the employers concerned notified TEC before the employment agency was alerted that arrests had been made there, Terry said.

Some of the companies where arrests have been made use TEC's services regularly, he said. (5)

A representative of a Hispanic community group condemned the INS operations Wednesday and said the federal government is using immigrants as scapegoats to blame for the economic crisis.

ALFREDO MENDOZA, a spokesman for **Al Frente de Lucha**, made the statement at a noon news conference outside the Federal Building. He refused to say how many members belong to his organization.

Elsewhere; Immigration agents staged raids on three Fort Worth businesses Wednesday and rounded up about 140 undocumented aliens, officials said.

Wednesday's haul brings to about 600 the number of illegal aliens scooped up this week in that area, according to Travis Stewart in the Dallas office of the Immigration and Naturalization Service.

photo
WORLD

Cam Sp

FO01615

SUPP. APP. 02

Project Jobs snare 1,112 in 5-day sweep

Lynn Ashby/page 1C

By JIM SIMMON
Post Reporter

Project Jobs, the federal government's much-publicized roundup of illegal aliens, came to a close in Houston Friday afternoon with the arrest of the last of 1,112 undocumented workers netted here in a five-day sweep.

Agents of the Immigration and Naturalization Service, who made the arrests in Houston and eight other large cities, pronounced the operation a success.

BUT THE MASS ARRESTS have aroused the ire of some labor and Hispanic leaders. Critics charged the raids were a publicity ploy to divert public attention from rising unemployment and blame Mexican nationals, who accounted for most of those arrested, for a lack of job opportunities for U.S. citizens.

INS agents, who arrested 177 illegal aliens in Houston Friday, said they plan to return to businesses where arrests were made to ensure the firms do not rehire illegal aliens.

Project Jobs, so named because it was aimed at businesses that employ large numbers of illegal aliens in jobs that INS officials said might otherwise be filled by U.S. citizens, marked the first time the INS has informed employment agencies of job vacancies created by the large-scale arrests of illegal aliens.

Vincent Henderson, INS director of investigations in Houston, said those arrested Friday included 71 workers at East West Pipe Threaders Inc., 7431 Sheldon Road, the largest single haul of the day.

In a normal month, the Houston INS office arrests between 300 and 500 illegal aliens in its 30-county district, Henderson said.

OF THE NUMBER ARRESTED in Houston, 982 were Mexicans and the rest were mostly El Salvadorans, along with a smattering of other nationalities, Henderson said.

Henderson dismissed criticism that the operation involved selective enforcement against Mexican aliens, saying it was to be expected that most of those arrested were Mexican since "the vast majority of the illegal alien population in Houston is Mexican."

By mid-afternoon Friday, the Texas Employment Commission had referred 52 job seekers to businesses that lost workers in the raids, but only three of the referrals had been hired, said Laverne Thomas, assistant manager of the TEC's main Houston office.

Thomas said, however, that some of the businesses contacted by the TEC reported they had received numerous applications from walk-in job hunters who learned of the openings through the heavy media attention the INS raids have received.

THOMAS SAID SALARIES FOR most of the openings referred to the TEC ranged from \$4 to \$4.50 an hour. Most of the jobs involved manual labor, she said.

Henderson acknowledged that the majority of arrested aliens were being paid between \$4 and \$5 an hour, but said only six or seven were making less than \$3.25 an hour, which is 10 cents below the minimum wage.

He said businesses hit in the Project Jobs raids were selected because the INS had arrested workers at those job sites in the past, with some of the companies yielding up to 150 illegal aliens a year to the INS.

BURBANK, Calif. (AP) — A body of a 4-year-old boy missing since Wednesday was found Friday in a suit case in a closet at his family's apartment, police said.

Detectives said James Corrigan body was discovered as his mother was



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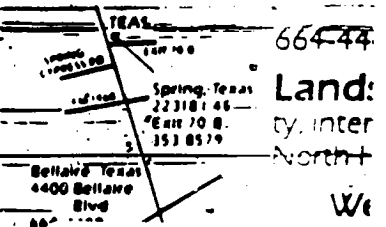
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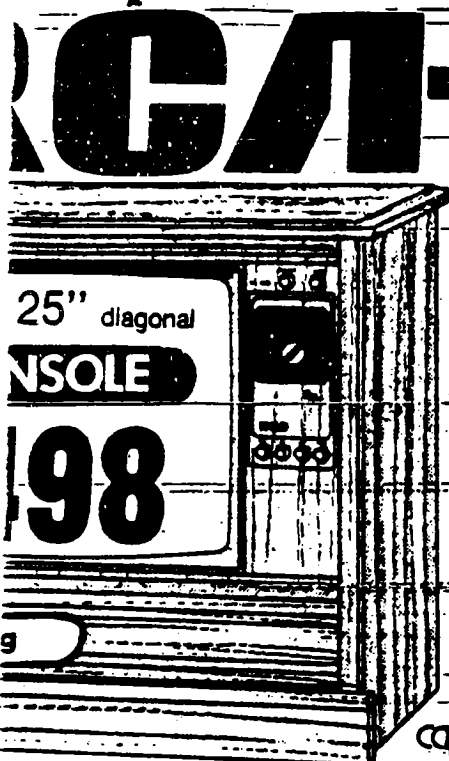
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SUPP. APP.

F001618



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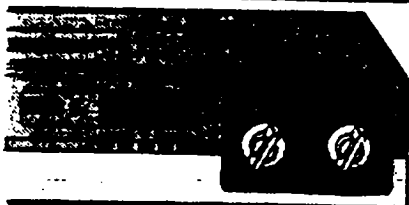
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Red prices, optional with dealers

draw housing subsidies while citizens must wait

By LEIGH KERMANCE
Post-Reporter

"I have a Spanish surname. And I would be indignant as hell if someone asked me if I was an American citizen after having been shot at in Vietnam."

— Rogelio Santos, U.S. Department of Housing and Urban Development supervisor

Illegal aliens are able to draw housing subsidies in Houston and other Sun Belt cities while American citizens wait months or years for similar assistance because the federal government will not allow verification of citizenship status of applicants, federal and local housing officials say.

But a proposed change in federal housing policy may reverse a U.S. Department of Housing and Urban Development directive issued during the Carter administration that forbade public housing authorities from verifying if applicants for federal housing subsidies were legal residents.

HUD officials said the verification procedure could violate civil rights laws.

HUD officials in Houston said they have received complaints about the Houston Housing Authority's attempts to block subsidies for illegal aliens, and ordered HHA to stop efforts to verify legal residency.

"It's frustrating — the whole point is: you cannot require them to submit documentation," said Ernest P. Fuentes, director of HHA's rent subsidy program. "We just ask applicants if they are a citizen or legal resident. We are limited to that."

HUD's policy on verification has drawn criticism from the General Accounting Office, the investigative arm of Congress, from housing authority directors and from private citizens who believe subsidies should be limited to citizens.

Congress responded to the criticism when it passed the 1981 federal budget, which stipulated that subsidies be limited to certain classes of aliens who provided documentation that they were legal residents.

"The new administration is moving swiftly so that only the true-blue American citizens get housing," said Rogelio Santos, deputy supervisor for housing management in HUD's Houston office. "As they say, 'It plays well in Peoria.'"

"BUT YOU CANNOT EXPECT HOUSING officials to serve as immigration agents," Santos said. "No one has the resources. The new rules will get good public play, but they won't solve a thing."

The proposed new rules were published earlier this month in the Federal Register. HUD will accept public comment on the proposed policy change until June 2, but probably will not adopt new regulations until early fall.

Several housing authority directors in Texas and California said the proposed policy change is long overdue. An informal survey of area housing authorities showed interpretation of HUD's verification directive has varied widely.

In Corpus Christi, housing authority officials ignored HUD's objection to their policy of asking for documentation of legal residency, said executive director Ruth Mary Price.

"There is an old Chinese proverb: Man who said it cannot be done should not interrupt man who is doing it," she said.

"We thought it was ridiculous that with one hand the taxpayer is paying up the bill to pick up illegal and cart them back home and on the other hand, paying to provide them with a standard place to live while citizens waited in line," Price said.

Galveston housing officials also ask applicants to certify they are U.S. citizens or legal residents. If they are not a citizen, they are asked to provide documentation of legal residency.

"AS AN AMERICAN, MY FIRST INTEREST is with American citizens," said Claud H. Bolton Jr., Galveston Housing Authority executive director. "If I knew I had some illegals living in projects, I would report them to the proper officials."

But Laredo, El Paso, San Antonio and Los Angeles housing authority directors said that, at HUD's insistence, they no longer ask questions about citizenship status.

HUD officials ordered the Los Angeles Housing Authority to remove a question on the application for subsidy asking if the head of the household was a legal U.S. resident despite the objections of executive director Homer Smith.

"I do not think it is a right to live in public housing; it is a privilege," Smith said. "I think any reasonable person should realize that it's a government subsidy and should be provided to residents of this country first."

"I do not think it is any more onerous to ask about citizenship status than to ask an applicant if they are working or are receiving welfare," Smith said.

But some Hispanic leaders said the new policy would open the door to invasion of the privacy of Mexican-Americans and would be virtually impossible to enforce.

"It is very absurd and asinine," said Johnny Mata, deputy state director of the League of United Latin American Citizens. "It is a burden that will impose a lot of hardship and embarrassment on the Hispanic community."

"We already are experiencing many problems handling the number of discrimination complaints coming into our office," Mata said.

Salvador F. Canchola, executive director for the El Paso Housing Authority, said he does not expect the new policy to cause significant changes. Illegal aliens will continue to live in subsidized housing because they will use forged documents, he said.

"FROM OUR PERSPECTIVE, WE'VE got more important things to do than worry about that," Canchola said. "We cannot do INS (U.S. Immigration and Naturalization Service's) work for them."

Housing officials should not expect much enforcement assistance from INS because the service's current policy prohibits document checks at projects, said Vincent P. Henderson, assistant district director for INS Houston office.

Besides, he said, "With the number of people I have, we are spread awfully thin just going to job sites."

Abraham Rodriguez Jr., executive director of the Laredo Housing Authority, asked: "Is this going to be another role for housing authorities: checking violations of immigration laws? I would imagine there are lots of illegals living in projects here."

Apolonio Flores, executive director of the San Antonio Housing Authority, said he also is concerned about the policy change. "I foresee some lawsuits."

"People will say, 'I look brown and therefore I have to prove citizenship whereas the blond, blue-eyed guy doesn't have to do a thing.'"



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By RICK BOLTON
Post Reporter

Some motorists ignore it stares them in the face

Fire lane signs — the measure — are being centers throughout County.

The lawbreaking no threat to the safety of tomers, authorities say.

One can hardly miss white fire lane signs in / ping centers, yet a th Houston-area centers for the law at every center.

SHOPPING CENTER fire department official delivery vehicle drivers the 20-foot wide fire lane

"People are too dar Loos, a Houston Fire specter. "If you and I open to them, they'd p front door."

When questioned, son customers said they onl the fire lane a few min customer's vehicle had for 30 minutes.

One woman said she car at Memorial City cause she needed to pic after having had foot su was waiting to pick up the Eastway Plaza.

Another woman said : an Eastway Plaza store she was afraid someon elsewhere in the parking

Others claimed they : signs, which state: "Fire

MALL MANAGERS : fighters are not sympar They issue polite warnin traffic citations and hav

TDC must face up to qn

6/2/82

The Houston Post/Wed., June 2, 1982/ 5A

Reverses order, allows CAT scan evidence

Defense lawyers contend the abnormal creases on Hinckley's brain are similar to those found in many persons suffering from schizophrenia — a disease in which a person suffers delusions, lacks emotional expression and falls victim to his impulses.

The doctor said Hinckley's brain appeared to have "less tissue than one usually sees," that the ventricles that hold fluid in his brain were enlarged, and that the folds on the brain's surface, called sulci, were "very prominent."

"I think it's very unusual," she said. "It means this brain is different than most people of his age. It means the

tissues between the folds are smaller."

Consistency of the two scans, she said, indicates "permanent changes have occurred" in Hinckley's brain.

Under cross-examination by Assistant U.S. Attorney Roger Adelman, however, she acknowledged Hinckley's ventricles are within normal limits, and that several other radiologists reading the same CAT scans concluded the surface creases were normal or slightly widened.

The doctor said CAT scans have been in use in the United States only since 1973 or 1974, and there is no proven link between CAT scan results and human behavior.

The prosecutor asked LeMay whether the scan results could be linked to Hinckley's behavior on the day of the shooting.

"No," she replied.

Prosecutors objected strenuously to introduction of the CAT scans on grounds it would confuse the jury, and Adelman further opposed showing the jury the slides on grounds the image would unfairly remain on the jurors' "minds' eye."

CAT scan is short for Computer Assisted Tomography, an advanced X-ray technique for photographing a cross-section of the brain.

Dr. Daniel Weinberger of the National Institutes of Mental Health, the world's leading expert on CAT scans, is scheduled to testify Wednesday as a defense expert on the issue.

At an all-day hearing last week, after which Parker sided with the government, Weinberger testified outside the jury's presence that a study of 250 patients found 10 percent to 15 percent of schizophrenics had similar brain abnormalities. He said the abnormality showed up in less than 2 to 3 percent of the normal population.

nation

is completing his first term write-in opposition.

ocrats also nominated former money Anaya as their gubernatorial candidate while former state Sen. John Republican race. The Democratic sing, cannot succeed himself

state Sen. Mike O'Connor won ination for governor and will against the Republican incumbent who was unopposed in the

in 2,106 of 2,120 precincts re-ear-old dean of the Senate, te Sen. Charles Pittman had no station owner Colon John-

side, with 2,081 precincts in, the GOP worker and an attor-lar ahead of Highway Com-ardson, 45, a recent convert .531 votes.

Questionable benefits cited

GAO eyes Social Security savings

WASHINGTON (UPI) — Congress could save \$180 million through 1990 by dropping a Social Security provision that allows aliens and other questionable cases to collect benefits, the General Accounting Office said Tuesday.

The GAO report urged Congress to drop the "currently insured" provision, which applies to less than 0.5 percent of workers who die each year. The provision allows survivor benefits for their children and those caring for them.

It serves some workers "under circumstances apparently never envisioned by Congress," GAO said, listing as "questionable" cases aliens, some self-employed people filing retroactively, government "double dipper" and others with only brief work histories.

Dropping the provision for future recipi-

ents would save \$180 million through 1990 for the cash-short Social Security trust funds, the report estimated.

The provision, a looser alternative to the "fully insured" provision under which most workers become eligible, was enacted as "backstop protection" in the program's early days but is no longer needed, GAO said.

Workers can become "currently insured" by being employed in covered jobs for six quarters during the 13-quarter period ending in death. In 1977, 3,708 out of the 1.3 million workers who died became eligible under the provision.

To become fully insured, workers must have one quarter of coverage for each year after 1950 or age 21 and before the year of death or age 62. The maximum required in 1981 was 30 quarters, or 7½ years.

The report said currently insured survivors

would collect more per tax dollar than fully insured survivors, and recover their taxes much faster.

Because it emphasizes the period just before death, the provision "fosters another inequity — some workers pay more Social Security taxes and work as long or longer than the currently insured but do not qualify for benefits," GAO said.

It cited the case of a 32-year-old alien who worked in the United States for six quarters, just long enough to obtain currently insured status. Upon his death, his wife filed for \$280 in monthly benefits for herself and three children from a previous marriage. The youngest child was 7 years old.

GAO said an original monthly award rate of \$280 could receive more than \$3,000 per year for paying Social Security taxes of \$800.

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2 JUN

HOUSTON POST JUNE 25, 1981 A-14

46

State to ask Washington to foot bill for educating illegal alien children

F001679

By PHILIP WEST
Chief, Post Austin Bureau

AUSTIN — Top state officials decided Thursday to start a concerted effort to have the federal government pay the whole cost of educating illegal alien children in the public schools.

Acting in response to a June 15 decision by the U.S. Supreme Court voiding a 1975 Texas law that denied free education to children of illegal aliens, the state leaders set the cost of schooling for an estimated 25,000 such children at \$62.5 million a year.

The Texas Education Agency, which he that estimate, projected the num-

ber of such children in the public schools would grow at the rate of about 5,000 a year. That would add about \$12.5 million a year, at today's prices, to the \$62.5 million present cost.

Education Commissioner Raymon Bynum said the alien children are high-cost students needing bilingual, compensatory and other programs not provided most students, and the estimate of 25,000 students was conservative.

Gov. Bill Clements met with Lt. Gov. Bill Hobby, a representative of Attorney General Mark White, Chairman Joe Kelly Butler of the State Board of Education, Bynum, and staff aides to map strategy to win federal impact aid

because of the Supreme Court decision. "There's no reason why they (the federal government) shouldn't pay for this," said Clements.

He and Hobby said the cost to the state was entirely the consequence of failure of federal immigration policy, over which the states have no control.

Clements said the state would abide by the court decision, but officials in the meeting were "all disappointed in a manner of speaking," by the ruling. Hobby pointed out that the result is not new, but a return to the situation before the state outlawed free education for undocumented children in 1975.

The leaders said Texas has a legitimate case to make for the federal aid.

They decided to send a letter to members of the Texas congressional delegation and Reagan administration officials asking them to work for such aid. Clements said he would work in the national and southern governors' associations to marshal the support of other governors for such legislation, and support would be sought from U.S. senators in other states.

Hobby said he expected border state senators to take the same position calling for federal aid.

Jury sentences man to life term in beating death

A man was sentenced to life in prison by a jury Thursday for beating another man to death while the victim's 16-year-old son beat helplessly on the attacker.

Kenneth James Brown, 21, of the 2200 block of Francis was found guilty of murder and sentenced by a jury in the court of state District Judge Joseph Guarino.

Guarino stacked Brown's life sentence on a 60-year prison sentence Brown received in January for a July 1981 aggravated robbery. Brown will not be able to

get credit on both sentences simultaneously but will have to serve the prison terms one after another.

Assistant District Attorney Ned Morris said Brown and two friends were riding in the Meyerland area July 23, 1981, when police tried to pull them over for littering. He said Brown was involved in a high-speed chase that ended when his car, which turned out to be stolen, crashed at Richmond and Audley.

Morris said Brown apparently broke into the home of musician William Ar-

thur Holman, 40, in the 3300 block of Bernard to steal keys to a car.

Evidence showed Brown started rummaging through drawers and awakened Holman's 16-year-old son. Brown beat the boy with an iron bar and later turned his wrath on the father. testimony showed.

Morris said Brown kicked and beat Holman while the son used a barbell pole to try to get the attacker away. He said the son required hospitalization after the ordeal and the father died in

the hospital that night.

Brown's attorney Joe Cannon argued there was only tentative identification of Brown as the attacker. He said a pistol belonging to Holman that police found in Brown's home was purchased on the street by Brown's girlfriend and was not taken by Brown from the Holman apartment.

During the punishment phase of the trial Brown said he is sorry Holman was killed, but he said he did not do it.

whether to continue to operate the 11,000-mile system, now running at about 15 percent capacity with engineers closing picket lines.

A total shutdown would lay off 225,000 employees.

British Rail said it operated about 1,100 passenger trains and 90 freight trains Monday, and said 700 of about 25,000 engineers had reported for duty. The railroad normally operates about 15,300 passenger trains and 1,300 freight trains on weekdays.

"We have got to face the situation that we cannot go on indefinitely running a poor service," said Cliff Rose, British Rail's industrial-relations director. "We will seriously have to consider a clean-down."

British Rail, which has been losing the equivalent of about \$15.3 million a day since the strike started July 4, has said that it is also considering dismissal of all striking members of the Associated Society of Locomotive Engineers and Firemen.

Union leader Ray Buckton has

100 branch and district meetings were held over the last three days and that members showed solid support for the strike.

In many meetings, the lads were unanimous," the spokesman said. "The worst reports we have got show that only two or three hands went up against the strike at some meetings."

The union increased picketing Monday at depots across the country.

Financially strapped British Rail claims the flexible rosters, which were introduced in 21 depots the day the strike began, are cost-effective. The schedule varies work shifts from between seven and nine hours.

Union members, who have worked an eight-hour day since 1913, claim the new schedule will lead to layoffs.

Buckton has warned that the strike will go on until British Rail withdraws the flexible rosters.

British Rail Chairman Sir Peter Parker says the issue of flexible hours is not negotiable and has predicted a lengthy strike.

all the time like me, you really appreciate a good cup of coffee. Biggs goes on to say the Australian price is a "real steal."

The tribunal has banned the commercial from appearing on Australian television, saying Biggs is a criminal and therefore not suitable for television promotions.

Stad Barre's regime, is composed mainly of Somali refugees from the Mudecien clan that controlled Somalia before the 1969 military coup that put Stad Barre in power.

In a Washington telephone interview, Embassy spokesman Francis J. Barmore said the Somali government is a "dictatorship."

GI who stole tank charged earlier, Army

Post News Service

MANNHEIM, West Germany — The American soldier who crept through the city in an Army tank before crashing into a tree and drowning was charged to be court-martialed for stealing a pistol, a U.S. Army spokesman said Monday.

Maj. Sonny Craven said the soldier, Pvt. Charles Keeler, 20, of Berwick, Pa., faced a pending court-martial for unauthorized receipt of a .45 Army pistol and adding in theft.

"We cannot give any reason why the soldier took the tank," said Craven, adding a military commission was investigating the weekend incident.

Keeler, who joined the Army two years ago and came to West Germany three months later, had also undergone non-political punishment from his unit for a minor offense, Craven said.

Keeler, a tank operator, stole the Patton M-48 tank from Sullivan Barracks Saturday and charged through the city, injuring four people. The tank ran over a streetcar and crushed it cars before plunging over a bridge into the Neckar River.

Two off-duty soldiers chased the tank from the barracks and one of them, Sgt. 1st Class Michael Morry, from Chico, Calif., injured his shoulder when he was thrown off the tank after trying to switch off the engine.

The other soldier, military policeman Sgt. 1st Class Jeffrey Lutz, from Okemah, Ok., said Keeler was "an outstanding tank driver."

"He did no damage prior to entering the narrow pedestrian area," said Lutz, 35. "He was trying to get back into the open."

Keeler was found drowned inside the tank, which had toppled from a bridge while he was trying to evade his pursuers.

A Washington police spokesman said Monday that claims for civilian damages were still coming in, but currently totaled about \$1.2 million. The Army has said it will pay damages.

Mexican recession could increase flow of aliens to U.S.

MEXICO CITY (AP) —

co's worst recession since World War II will probably increase the flow of Mexicans going illegally to the United States in search of jobs and a better life, American officials here predict.

The economic slump, which started last year with a sharp fall in world oil prices, may get worse. Already, President-elect Miguel de la Madrid says he plans tough austerity measures to restore the nation's economic health when he takes office Dec. 1.

In Madrid's plans to cut government spending, reduce inflation — now running at 60 percent a year — and slash a foreign debt that is expected to reach \$80 billion by the end of 1982.

Further complicating the country's economic health was the 40 percent devaluation of the peso in February. All of this adds up to the prospect of about 1 million people out of jobs by

year's end in a country where unemployment and under-employment combined now total 45 percent of the labor force. Mexico needs to create 650,000 new jobs every year just to keep up with its population growth, one of the world's fastest.

De la Madrid, 47, an economist with a master's degree in public administration from Harvard University, won by a landslide in elections July 4. His Institutional Revolutionary Party has been ruling since it was founded in 1929.

One of his first tasks, aides say, will be to slow down — or even stop for a while — an ambitious industrial development program financed with oil export revenues that outgoing President Jose Lopez Portillo started when he took office six years ago.

De la Madrid took a calculated 73 percent of the vote in the elections, giving him more than enough political strength to try to enforce some unpopular measures.

"If the government party takes its victory as a mandate, there could be a honeymoon period in which he'll have a chance to turn things around," said one American analyst, who asked not to be identified for diplomatic reasons.

"But the economic recovery will be difficult and there will be fewer jobs and less job opportunities. The migration will continue one way or another," the analyst said.

However, so far this year, the recession in the United States has apparently helped reduce the number of illegal aliens arrested at the Mexican border, American authorities say.

Border patrol agents arrested 171, 529 aliens since Jan. 1 in Southern California, a drop of 25,212 arrests from the corresponding period last year.

Steve Williams, assistant chief patrol agent of the Chula Vista sector covering most of Southern California, said "When all along the border there seems to be a downturn in arrests, and there had been no real change in the manpower we are using, then it means there is a decrease in the total number of illegal entries."

A bill sponsored by Sen. Alan Cranston, R-Wyo., and Rep. Ron Minkoff, D-NV, would increase the United States' control over employment opportunities for employers that hire foreign workers.

There are no firm estimates of the number of Mexican illegal immigrants in the United States, though various studies have given numbers ranging

from 1.5 million to as high as 15 million.

The most common averages given are from two to four million, and some people say as many as one million Mexican illegal aliens enter the United States illegally every year, said one U.S. official, who spoke on condition not to be further identified.

De la Madrid, in an interview a month before the election, said he regards Mexican immigration as fulfilling an unavoidable need in both nations.

"In the United States, there is an effective, structural demand for Mexican labor," he said. "In a certain way, it fulfills a need of the American economy. But it also obeys the instinct, that we still face in creating enough jobs in Mexico."

John Garry, the U.S. ambassador to Mexico, claimed there has been "ag-

ricultural progress" on the immigration issue.

In an interview last week with Mexico City's English-language newspaper The News, Garry said that if the Simpson-Mazzoli "bill does not come out perfect, and I promise you it won't, at least it will be a step in the direction of trying to achieve some kind of legislation of this very difficult problem."

"I believe it is our aspiration to be able to create enough well-paid jobs for all Mexicans. I think the time will come when we even may be able to attract some Mexicans back from the United States," de la Madrid said.

De la Madrid said Mexico recognizes the right of the Reagan administration to establish immigration policies, but he also urged protection of the rights of Mexican aliens in the United States.

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Houston Post

July 13 A-4

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SUPP.

Ban on foreign currency sales eased by Mexican government

MEXICO CITY (AP) — The government partially lifted a ban on foreign currency sales Monday but kept all dollar accounts in banks frozen as the country considered seeking outside help to cope with its economic crisis.

New measures and restrictions further regulating the economy were expected to be issued later this week, said a source at the Bank of Mexico, the country's central bank. The source, who asked not to be identified, did not elaborate.

Mexico's leading newspaper El Excelsior said Treasury Secretary Jesus Silva Herzog quietly traveled to Washington on Friday for two days of talks with International Monetary Fund officials.

A source at the Mexican Embassy in Washington confirmed that Silva Herzog spent two days last week in that city, but declined to give any details.

IMF approval of a government austerity plan to revive the economy would enable Mexico to obtain bail-out loans from international banking institutions. But many officials and politicians fear that the IMF's strict rules of doing away with government subsidies for basic foods and services would bring along further price increases that could touch off labor unrest.

An announcement Sunday night by the Bank of Mexico said people can send money abroad if they deposit an equivalent amount of dollars in cash with a Mexican bank. Mexican banks can also honor dollar checks and

obligations issued previously and presented by banking institutions for collection abroad.

Mexico suspended foreign payments when it ordered all foreign currency trading halted on Friday to try stop a rush by people anxious to buy dollars, fearing the peso will sink even more.

Authorities also froze an estimated \$13 billion in dollar accounts in Mexican banks, where people had been depositing their savings and extra cash as a hedge both against inflation and devaluation.

A drop in world prices of oil, silver, coffee and other principal exports cut heavily in Mexico's foreign revenue. The country is the world's third-largest oil exporter, with a major part of the exports going to the United States.

Arrests of illegal aliens rise after peso drop

EL PASO (AP) — Mexican citizens, their buying power virtually cut in half by the devaluation of the peso, are streaming into Texas and New Mexico in search of work, U.S. Border Patrol officials say.

Illegal alien arrests in Texas and New Mexico jumped dramatically immediately after the Mexican government's latest devaluation of the peso. Border Patrol officials in Arizona and California say they have yet to see such a surge.

Because it's harvest time for many crops picked by illegal aliens, Border Patrol officials are hesitant to blame the increases totally on the devaluation. But Alan Eliason, El Paso sector chief agent, said the devaluation "certainly is a factor."

The peso dropped from about 45 to the dol-

lar to as low as 90 to the dollar last week, following the government's Aug. 5 announcement that it could no longer support the peso in international trading.

Last Thursday, the government announced a freeze on dollar trading at Mexican banks, a step taken to prevent panicky Mexicans from changing their pesos into more stable U.S. currency. The freeze was partially lifted on Monday to allow banks to honor foreign currency drafts and checks presented for collection outside the country and to sell documents in foreign currency if customers could prove they had pressing debts abroad.

"These steps may be frightening some people enough that they feel they just have to get out and come over here in search of work," Eliason said.

In the El Paso sector, which encompasses West Texas and southern New Mexico, arrests of illegal aliens so far in August are up 28 percent over the same period last year.

More telling, perhaps, is last week's sudden upswing in apprehensions as the effects of the devaluation made themselves known. Sector officers arrested 3,586 illegal aliens during the first eight days of the month. Four days later, that number had jumped to 6,092.

Larry Richardson, chief of the Border Patrol office in McAllen, said arrests there have jumped more than 30 percent since mid-July.

"For a couple of months there, we were averaging between 90 and 100 (arrests) a day," Richardson said. "During the first 13 days of this month, we've been averaging 140 a day."

Yields on Treasury bills plummet to lowest levels since summer 1980

WASHINGTON (UPI) — Treasury bill yields dropped sharply by more than a percentage point at the government's auction Monday, to levels not seen for the past two years.

The government sold \$5.5 billion of three-month bills at an average discount of 8.616 percent, down from 10.025 percent last week.

The government also sold \$5.5 billion worth of six-month bills at an average discount of 9.821 percent, down from 10.940 percent last week.

The latest rates were the lowest for three-month bills since they were 8.221 percent on July 28, 1980, and the lowest for six-month bills since they were 9.705 percent on Aug. 10, 1980.

The latest three-month discount rate is

ings certificate. The interest rate for the new certificate, available in denominations of \$7,500 or more, will be 8.616 percent at savings and loan associations and a quarter point less, 8.366 percent, at commercial banks, effective Tuesday.

The rate had been 10.025 percent for thrifts and 9.775 percent for banks.

The latest four-week average of six-month T-bill rates plus a quarter point is 10.932 percent, the highest rate banks and thrift institutions may choose to pay on six-month money market certificates issued in denominations of \$10,000 or more effective immediately. The rate had been 11.357 percent.

The government imposed ceiling for the six-month money market certificate is a quarter point more than whichever is higher, the discount rate for the latest six-month T-

bill or an average of the last four weeks' discount rates.

The actual return to the investor on the three-month T-bill itself is 8.93 percent and for the six-month bill, 10.48 percent.

The actual T-bill yields to the investor may be higher after adding the benefit of their exemption from state and local taxes.

The ceiling rate for the 2 1/2 year "small saver" certificate with no minimum deposit, also set Monday, was 13 percent for thrifts, 12.75 percent for commercial banks. The rate had been 0.45 percentage points higher.

The current annual return on "All-Savers" certificates is 8.88 percent. These are one year certificates on which individuals can earn up to \$1,000 in tax-free interest or \$2,000 for couples filing joint tax returns.

Block paints bright

F001692

Sentencing of Watts postponed to Sept. 3

By GUY SIMMON
Post Reporter

Sentencing for confessed mass killer Orel Eugene Watts again has been postponed on authorities from Michigan, Indiana and Canada can question him about slayings and assaults in jurisdictions there.

Watts, who has admitted killing 12 women in Texas and one in Michigan, was scheduled to be sentenced Friday to 40 years in prison. He pleaded guilty to a charge of burglary with intent to murder.

The burglary sentencing, which hinges on a plea-bargain agreement with the Harris County District Attorney's office, is now scheduled for Sept. 3, said District Judge Doug Shaver said Thursday.

Watts originally was scheduled to be sentenced Sept. 16, but the proceeding was delayed to give police more time to question Watts about other slayings he might be guilty of.

The burglary with intent to murder charge against Watts stems from a May 21 attack on two Houston girls who then led to Watts' capture by police.

DAVID BE DELAYED the sentencing at the request of Harris County District Attorney John Morris.

Morris said Thursday he asked for the delay at the request of Houston Police homicide detectives who are investigating the Watts' killings.

He said detectives here wanted additional time to question Watts about other slayings he might be guilty of.

He said he was not sure if Watts was guilty of the slayings, but he was not sure if Watts was guilty of the slayings.

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partment said the city, however, has one unsolved homicide and neighboring West Lafayette has another involving female victims killed in the late 1970s.

He said about the Watts case in Texas and said the Lafayette Police Department will review the two areas claim for jurisdiction to the claim in which Watts has confessed.

Waters said he is interested in Watts because some "good fingerprints" were lifted at one of the crime scenes and police never found the person who left them. He said he is interested in whether they belong to Watts.

The Lafayette homicide involved the apparent slaying of Linda Perry, a housewife in her late 20s, whose decomposing body was found in the trunk of her car about four days after she disappeared while on route to a grocery store, Waters said. He said a piece of her clothing was found around her neck.

THE BODY OF KIMMY KOGAN, a 21-year-old Purdue University senior, was found in a field in near West Lafayette, he said. She had been celebrating the completion of exam finals and was apparently on route between a tavern and a sorority house when she disappeared. Waters said, her body was found several months later, he said.

Both women disappeared on weekend nights, he said. Because of the body decomposition, investigators were unable to determine whether either woman was sexually assaulted, he said.

None of the homicides to which Watts has confessed had involved sexual mutilation of victims, according to authorities. He confessed to strangling or stabbing 11 women in the Houston-Galveston area, one woman in Austin and one woman in Green Police Farm, Mich.

Prosecutors here said the plea bargain with Watts was reached because they had no physical evidence to tie Watts to any of the homicides. His admission to the slayings helped police find some missing bodies and allowed investigators to clear heretofore unsolved homicide cases.

Watts' attorneys also allowed him to be interviewed by law-enforcement officers from Austin and Green Police Farm after he was assured nothing derived from his confession would be used against him for purposes of prosecution.



There aren't many ways to escape the blis- Will Robinson II was sheltered from some of tering afternoon sun, but this lone bicyclist the heat Thursday afternoon as he rode his flanks some relief under a canopy of shade. bike on North Boulevard.

— Post photo by Audrey Ueckert

Arrests of aliens soaring

EL PASO (AP) — U.S. Border Patrol officers are leveling illegal alien arrest records as increasing numbers of Mexicans attempt to flee their country's troubled economy.

Alan Eliason, chief agent for the El Paso sector, said more illegal aliens have been arrested in the area already in August than in all of the same month last year.

By midnight Wednesday, 14,951 aliens had been arrested, compared with a total of 14,031 in August 1980.

Tuesday set a one-day record for apprehensions when officers arrested 1,285 aliens who were trying to get into the country, Eliason said. That broke a record set Monday, when 989 aliens were caught.

The previous high was 951 aliens caught on July 4, 1979, he said.

Meanwhile, officers, acting on tips from unemployed citizens, arrested 74 illegal Mexican aliens at several construction sites near Bay City Thursday.

Galveston Border Patrol agent-in-charge H.L. LaPointe, whose territory includes 56 counties, said officers arrested 77 aliens in one vehicle Wednesday and another 35 on Tuesday.

LaPointe said Thursday's arrests came as a result of tips provided by callers to the Border Patrol office.

"We've had our hands full," Eliason said. "We certainly think that (detention of the pass) is a significant contributing factor."

The peso's value was virtually cut in half Aug. 5 when the Mexican government announced it no longer could support the ailing currency on the international money market. Unemployment in Mexico is about 40 percent this year, and inflation is climbing at a rate of 65 percent.

In McAllen, chief agent Larry Richardson said his officers are averaging 132 arrests a day this month, up from "about 90 a day six to eight weeks ago."

Problems cited in city's failure to get crime data to FBI

F-JACK DONOFRAS
and Reporter

about 5,000 criminal offense reports would not have been included.

Higgins said he knew the city's figures were incomplete and late when he went them to the Department of Public Safety in Austin in May State crime figures were first sent to the FBI.

Higgins said about 100,000 offense reports had not been categorized — about 5,000 of which were from 1981 — when it reached the time for last year's statistics to be sent to the FBI.

Higgins said there are still about 1,000

coded and categorized. He also said some of the reports are "so bunched up" by employees since filed that they most likely will never be entered in the computer.

"Very few" of those reports are of major crimes, Higgins said.

He blamed a computer system too small to store all the reports and a lack of personnel for the backlog. Higgins said he is more concerned with getting caught up in coding the reports so they can easily be categorized and submitted for statistical reasons. "By this time next

in statistical form.

When an offense report is made it takes no more than 24 hours for it to be routed to the division in the police department which will investigate it, Higgins said.

With the approved addition of 24 people for his staff, and the planned improvement to the computer system, Higgins hopes his staff also will be caught up in coding the reports so they can easily be categorized and submitted for statistical reasons. "By this time next

Cal Killingworth, manager of the DPS' uniformed crime reporting bureau in Austin, said Houston is the only Texas city with more than 100,000 residents not to be included in the FBI's figures. To make matters worse, the police department's crime statistics for the first six months of this year had still not been received by the DPS Thursday, meaning those figures will not be included in the DPS' publication for crime statistics for the first half of 1981.

Higgins said he was under the impression

incomplete, would still meet the FBI's deadline when he sent them to the DPS. And Killingworth said the city's crime figures did "not barely miss" the May 15 deadline. Deputy Police Chief Frank Yerich, who heads the bureau which includes the records division, said the department offered to deliver to press the statistics but Killingworth's office gave assurances they could be dropped at the last minute and still make it in time.

Killingworth crime reports May 31 and that it was dated May 29 — one day

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CAUSE NO. 359805

STATE OF TEXAS	§	IN THE 248TH DISTRICT COURT
VS.	§	OF
RICARDO ALDAPE GUERRA	§	HARRIS COUNTY, TEXAS

ORDER

The clerk now having custody of the photographs introduced in evidence during the trial of Ricardo Aldape Guerra, Cause Number 359805, is ordered to release the photographs to counsel for Ricardo Aldape Guerra for examination and copying, on the condition that counsel, or a representative from counsel's office, is accompanied by a representative from the office of the Harris County District Attorney. The clerk shall release the photographs for two hours, or for the minimum amount of time as is necessary to have the photographs professionally copied.


HON. WOODY R. DENSEN
Judge, 248th District Court
Harris County, Texas

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IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

POST-CONVICTION WRIT
(Capital Murder)

FILED

KATHERINE TYRA
District Clerk

OCT 22 1992

GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

Time: 9:30
Harris County, Texas
By M. W. [Signature]
Deputy

CAUSE NO. 359805-A

THE STATE OF TEXAS * IN THE 248TH DISTRICT COURT
VS. * HARRIS COUNTY, T E X A S
EX PARTE *
RICARDO ALDAPE GUERRA * AUGUST TERM, A.D., 1 9 9 2

A P P E A R A N C E S

FOR THE STATE OF TEXAS: Ms. Kari Sckerl
Assistant District Attorney
Houston, Texas

FOR THE DEFENDANT: Mr. Scott J. Atlas
And
Mr. Richard A. Morris
VINSON & ELKINS
2500 First City Tower
1001 Fannin
Houston, Texas 77002
And
Mr. Stanley G. Schneider
11 E. Greenway Plaza
Suite 3112
Houston, Texas

BE IT REMEMBERED, that upon this 21st day of
September, 1992 the above entitled and numbered cause came
for ~~Motion For Discovery~~ ^{WRIT HEARING} before Woody R. Densen, JUDGE of
the 248th District Court of Harris County, Texas; and the
State appearing by counsel and the Defense appearing by
counsel announced ready to proceed; and all preliminaries
having been disposed of, the following proceedings were
had, viz:

1 SEPTEMBER 21, 1992

2
3 THE COURT: For the record,
4 this is Ex Parte Ricardo Aldape Guerra. And, Mr.
5 Scott Atlas, you filed a motion. You may proceed.

6 MR. ATLAS: Your Honor, we
7 filed a motion to withdraw the order setting the
8 execution date pending the consideration and
9 disposition of the Application for Writ of Habeas
10 Corpus proceeding. We're asking that the September
11 24th, 1992 execution date be withdrawn completely
12 pending final disposition of our Amended Application
13 for Writ of Habeas Corpus, both final disposition by
14 this Court and, if necessary, by the Federal Courts.

15 And let me give the Court the reasons for
16 our request: First, as the Court will recall at the
17 hearing last July when we asked for discovery, the
18 Court asked for some indication of whether there was
19 any reason to believe that the trial in this case
20 had been conducted unfairly or, in other words,
21 conversely, if in fact Mr. Aldape Guerra had
22 received a fair trial.

23 Last week, late Wednesday night, we filed a
24 296-page Amended Application for Writ of Habeas
25 Corpus. I had offered Ms. Sckerl or sent portions

1 to her earlier, but it took awhile, and by the time
2 I offered them, she said I might as well go file the
3 final version, which I did.

4 In that application we raised, literally,
5 dozens of meritorious claims with numerous fact
6 issues and we're requesting an evidentiary hearing
7 to resolve those fact issues.

8 Let me give the Court some of the
9 allegations in the application. We are alleging
10 police intimidation and manipulation of witnesses.
11 We're alleging concealment of exculpatory evidence
12 by both the police and the prosecutors. We're
13 alleging, literally, I think, seventeen or eighteen
14 other examples of police or prosecutorial
15 misconduct; improper appeals to ethnic prejudice on
16 the part of the jury; insufficient evidence at trial
17 as well as new evidence; some of it was suppressed
18 by the State, showing that Mr. Carrasco Flores, not
19 Mr. Aldape Guerra, was in fact the person who shot
20 the police officer, Officer Harris.

21 We have raised several claims that are,
22 literally, identical to the claims in Herrera and
23 the Graham case. In addition, we have raised a
24 claim that is, literally, identical to a claim in
25 which Judge Hittner, in Federal District Court here

1 in the Southern District, ruled, granting an
2 Application for Writ of Habeas Corpus just a few
3 weeks ago, and we maintain, at the minimum, that the
4 Court ought to have the execution date delayed until
5 final disposition of those cases. Because if those
6 cases are resolved in our favor, particularly if
7 Judge Hittner's opinion is affirmed on appeal, then
8 we think it will follow, virtually, automatically
9 that we are entitled to issuance of Writ of Habeas
10 Corpus

11 Secondly, if the Court agrees to our
12 request for an evidentiary hearing, Your Honor, both
13 sides are going to need time to prepare for the
14 hearing and to let the court reporter prepare and
15 file a transcript and to submit briefs and proposed
16 findings of fact. The Court will then have to sift
17 through the hearing and pleadings to come to its
18 conclusion, and we think to continually change the
19 trial date will be a waste of the Court's time.

20 Thirdly, we think withdrawal of the date
21 will eliminate the artificial crisis atmosphere that
22 would inevitably surround the Court, would eliminate
23 both turmoil for this Court considering future
24 appeal, prison officials, for both sides and my
25 client, Mr. Aldape Guerra and his family. This

1 would allow the attorneys to predict their time
2 demands between deadlines. Frankly, Your Honor, we
3 think fairness requires the attorneys in this first
4 Post-Conviction Writ of Habeas Corpus Application to
5 have a period of time after a court denies relief to
6 prepare pleadings and brief for the next appeal, and
7 this can be done in one of two ways: either by
8 having a period of time after relief is denied,
9 before a new execution date will be set, until the
10 next application is filed, or to wait until the
11 State Court denies relief, if that should happen,
12 and then schedule the execution date more than 30
13 days in advance so there's enough time for the
14 attorney to file the next appeal. Continuing to
15 have an execution date, even one delayed four
16 months, as Ms. Sckerl will apparently request, would
17 impose significant administrative burdens on the
18 Texas Department of Criminal Justice.

19 As I'm sure the Court knows, before the
20 Court set an execution date, Mr. Aldape Guerra was a
21 participant in the Death Row Work Capable Program,
22 which was set up to comply with the Ruiz v. Estelle
23 case. It's the only one in the United States that
24 lets inmates who qualify, after being reviewed by a
25 classification board, work in the garment factory at

1 the Ellis I Unit pending an execution date, no
2 matter how far a distance the prisoner is ineligible
3 to participate in that Work Capable Program. The
4 program has been a tremendous success, Your Honor.
5 It is the most efficient garment factory in the
6 entire TDC system. They sold, literally, more than a
7 million and a quarter dollars' worth of goods to
8 other state agencies in the most recent years, which
9 I found the statistics in '87. I'm sure that number
10 has gone up since. Prisoners who qualify for this
11 Work Capable Program receive limited privileges:
12 they don't have any wire mesh on their bars, they
13 are not handcuffed, they are not strip-searched when
14 leaving their cells, they are fed from tables, they
15 are allowed to eat in their cells or in the day
16 room, they can shower in the general prison
17 population bath house and they're permitted out of
18 their cells 14 hours a day on weekdays and 10 hours
19 a day on weekends. In other words, except for
20 contact visits, which they are denied, they're
21 treated like a general inmate population.

22 They have found that inmates who qualify
23 and participate in this program are better behaved
24 and have better attitudes than those in segregation.
25 They have fewer disciplinary violations, less

1 stress. They need fewer guards per prisoner because
2 these people, frankly, have something to lose if
3 they misbehave. And they need fewer cells because
4 they don't need to have one cell for prisoners as
5 you do when someone has an execution date.

6 In summary, the presence of an execution
7 date, even one four months or six months or a year
8 off, deprives Mr. Aldape Guerra of a few small
9 privileges and, frankly, complicates the State's
10 offer to comply with the Ruiz ruling on prison-cell
11 requirements and imposes an unnecessary and
12 artificial urgency on this court proceedings and,
13 frankly, doesn't contribute to the fair and full
14 presentation of Mr. Aldape Guerra's argument in this
15 case. The Court can still control the filing-
16 docketing hearing matters without an impending
17 execution date. If the Court denies relief, this
18 Court can promptly schedule his execution 30 days
19 away. So the case will not lie dormant, but the
20 attorneys will still have an opportunity to file a
21 Federal Habeas Corpus Petition.

22 So in summary, we would argue both to
23 relieve the administrative burden to this Court, to
24 the attorneys, to the prison system, and to allow
25 Mr. Aldape Guerra the few privileges that someone on

1 death row is entitled to. We would ask that the
2 execution date be completely withdrawn.

3 THE COURT: Does the State want
4 to respond?

5 MS. SCKERL: Yes, Your Honor.

6 While I certainly understand the viewpoint
7 of habeas counsel, the fact is that Mr. Guerra had a
8 valid sentence that was found by the jury in 1982,
9 convicting him of capital murder, and sentencing him
10 to death.

11 The Court of Criminal Appeals has already
12 affirmed that conviction, it was statutorily denied
13 by the Supreme Court, therefore, we have a valid
14 conviction. There's absolutely no reason that we
15 cannot go forward with an execution date.

16 Because of the filing of the Amended Writ
17 of Habeas Corpus, which they actually filed late
18 Wednesday, and I received it on the 17th of
19 September, there is no possible way that we, the
20 State, can respond to the allegations made prior to
21 the Thursday execution date, and we're requesting
22 that the execution date be modified for
23 approximately four months, January 28th of 1993, and
24 that four-month time frame should give us enough
25 time to answer the allegations and to have any

1 hearings that are necessary for consideration by the
2 Court of Criminal Appeals.

3 THE COURT: Ms. Sckerl and Mr.
4 Atlas, you filed your writ back in May. We had an
5 extensive hearing on your motion for discovery. The
6 execution date was delayed for four months, and I
7 don't believe another four months is going to serve
8 justice in this case. This case is ten years old.

9 I am denying your motion to withdraw the
10 order setting the execution date. I am going to
11 leave the execution date as it is at this time.

12 MR. ATLAS: Your Honor, let me
13 be clear. While we would like the execution date
14 withdrawn, we do not oppose the four months --

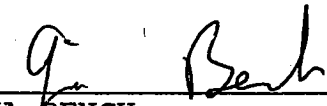
15 THE COURT: I understand what
16 both sides are doing, but this case is being
17 litigated to death, and if you want to take it to
18 another court, you're welcome to do it, but I am
19 denying your motion to set aside the execution date.
20 So you will be excused at this time.

21
22
23
24
25

1 THE STATE OF TEXAS *
2 COUNTY OF HARRIS *

3
4 I, Gina Bench, Certified Court
5 Reporter for the 248th District Court of Harris County,
6 Texas, do hereby certify that the foregoing pages of
7 typewritten material contain a true and correct
8 transcript of all evidence adduced and admitted at the
9 POST-CONVICTION WRIT in the case shown in the caption
10 hereof; that I was present in open court and reported
11 said testimony in shorthand, and that later I transcribed
12 same into typewriting.

13 IN TESTIMONY WHEREOF, witness my official
14 signature on this the 23rd day of October,
15 1992.

16 
17 GINA BENCH
18 Certified Court Reporter
19 248th District Court
20 Harris County, Texas

21 Certification Number: 221
22 Certification Expires: 12-31-92
23 Business Address: 248th District Court
24 301 San Jacinto
25 Houston, Texas 77002
Telephone Number: (713) 755-7094





23



THOMAS LOWE
CLERK

RICHARD WETZEL
EXECUTIVE ADMINISTRATOR

Court of Criminal Appeals

State of Texas
Box 12308
Capitol Station
Austin 78711
September 21, 1992

MICHAEL J. MCCORMICK
PRESIDING JUDGE

SAM HOUSTON CLINTON
CHUCK MILLER
CHARLES F. (CHUCK) CAMPBELL
BILL WHITE
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MORRIS L. OVERSTREET
FRANK MALONEY
FORTUNATO P. BENAVIDES
JUDGES

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SEP 24 1992

S.J.A.

Honorable Woodrow R. Densen
Presiding Judge
248th Judicial District Court
Harris County Courthouse
Houston, TX 77002

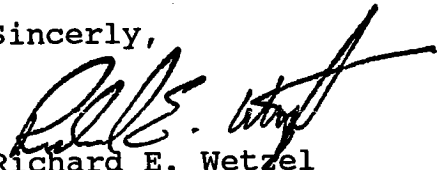
RE: Writ No. 24,021-01
Ricardo Aldape Guerra
Trial Court No. 359805

Dear Judge Densen:

Enclosed herein is an order entered by this Court
regarding the above-referenced applicant.

If you should have any questions concerning this
matter, please do not hesitate to contact me.

Sincerely,


Richard E. Wetzel
Executive Administrator

REW/bh

cc: John B. Holmes
District Attorney
201 Fannin, Suite 200
Houston, TX 77002

Katherine Tyra
District Clerk
Harris County
301 Fannin
Houston, TX 77210

Hon. Woodrow R. Densen
Page -2-

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Ricardo Aldape Guerra
c/o Scott J. Atlas
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2500 First City Tower, 1001 Fannin
Houston, TX 77002-6760

EX PARTE RICARDO ALDAPE GUERRA

NO. 24,021-01

Habeas Corpus Application
From HARRIS County

O R D E R

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Art. 11.07, V.A.C.C.P.

On October 12, 1982, applicant was convicted of the offense of capital murder. After the jury returned affirmative answers to the special issues submitted under Art. 37.071, V.A.C.C.P., punishment was assessed at death. This Court affirmed applicant's conviction on direct appeal. Guerra v. State, 771 S.W.2d 453 (Tex.Cr.App. 1988). The trial court has scheduled applicant's execution to be carried out on or before sunrise, September 24, 1992.

In the instant cause, applicant presents seventeen (17) allegations in which he challenges the validity of his conviction and resulting sentence. The trial court has entered an order recommending the relief sought be denied.

In order to fully consider the merits of the allegations presented, it is necessary to study the record further. Accordingly, applicant's Motion for Stay of Execution is granted to the extent the execution, scheduled for September 24, 1992, is hereby stayed pending further orders of this Court.

IT IS SO ORDERED THIS THE 21ST DAY OF SEPTEMBER, 1992.

PER CURIAM

En banc

Do Not Publish

White, Baird & Benavides, JJ., not participating.

A True Copy
Attest:
Thomas Lowe, Clerk
Court of Criminal Appeals of Texas

By: *Gray Bennett*
Deputy



Q

)

22

f- A1(c)

VINSON & ELKINS
L.L.P.
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September 21, 1992

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FAX 011 (48-2) 625-22-44

By Federal Express

Thomas F. Lowe
Clerk, Texas Court of Criminal Appeals
14th and Lavaca
Price Daniel Building
Room 201
Austin, Texas 78701

Re: Cause No: 359805; Ex Parte Ricardo Aldape Guerra

Dear Mr. Lowe:

As requested by Rick Wetzel, enclosed are the following:

- (1) Nine copies of the First Amended Application for Writ of Habeas Corpus filed on behalf of Ricardo Aldape Guerra; and
- (2) an Order signed by Judge Densen this morning denying Mr. Guerra's petition for Habeas Corpus and denying both Mr. Guerra's motion to withdraw the setting of his execution date and the State's request for a modification of the execution date to January 28, 1993.

You should have received by messenger yesterday afternoon a copy of Mr. Guerra's motion for stay of his execution date.

Very truly yours,



Scott J. Atlas

Thomas F. Lowe
September 21, 1992
Page 2

Enclosures

cc: Ms. Kari Sckerl - by messenger [w/Order only]
Monica Washington, U.S. Court of Appeals for the 5th Circuit - by telecopy
[w/Order only]
Ricardo Aldape Guerra [w/Order only]

Thomas F. Lowe
September 21, 1992
Page 3

bcc: Stan Schneider - by telecopy [w/Order only]
Amb. Francisco Gonzalez de Cossio - by telecopy [w/Order only]
Sandra Babcock - by telecopy [w/Order only]
Team

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA)
_____))
_____)


Case No. _____
(Harris County
Cause No. 359805-A

ORDER DENYING APPLICANT'S PETITION FOR

WRIT OF HABEAS CORPUS

On this 21st day of September, 1992, it is hereby ORDERED that applicant's petition for writ of habeas corpus is DENIED. It is further ORDERED that applicant's motion to withdraw the setting of applicant's execution date, and the State's request for a modification of the execution date to January 28, 1993 are both hereby DENIED.

Signed this SEP 21 1992 day of September, A.D., 1992.


HONORABLE WOODY R. DENSEN
JUDGE, 248TH DISTRICT COURT
HARRIS COUNTY, TEXAS

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TYRA, DISTRICT

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** TX CONFIRMATION REPORT **

AS OF SEP 22 '92 14:01 PAGE.01

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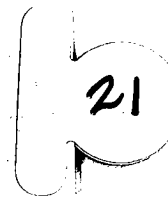
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21
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IN THE TEXAS COURT OF CRIMINAL APPEALS

SEP 21 1992

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A)

Thomas Lowe, Clerk

MOTION FOR STAY OF EXECUTION
PENDING CONSIDERATION AND DISPOSITION OF
APPLICATION FOR WRIT OF HABEAS CORPUS PROCEEDING

Petitioner Ricardo Aldape Guerra hereby respectfully requests, pursuant to Rule 233, Texas Rules of Appellate Procedure, that this Honorable Court stay execution of his death sentence, presently scheduled for 12:01 a.m., September 24, 1992, pending consideration and disposition of his amended application for post-conviction writ of habeas corpus.

1. On September 21, 1992, the state trial court denied Petitioner's request for a withdrawal of the execution date and the state's request for a four-month delay in the execution date, even though the state had not yet responded to either Petitioner's original Application for Writ of Habeas Corpus or his 296-page Amended Application for Writ of Habeas Corpus.

2. On September 17, 1992, Petitioner filed an amended application for writ of habeas corpus and motion to withdraw the setting of Petitioner's execution date pending disposition of his application for writ of habeas corpus. On September 21, 1992, the trial court heard arguments by both Petitioner and the State as to why Petitioner's execution date should not proceed on September 24. The State requested a modification of Petitioner's execution date to January 28, 1993, in order to allow the State

time to respond to the numerous, substantial allegations presented in Petitioner's First Amended Application for Writ of Habeas Corpus. Petitioner did not oppose this request, but requested a withdrawal of the execution order. Both parties agreed that the execution date should be postponed. Nevertheless, the judge refused to modify Petitioner's execution date, and, at the same time, denied Petitioner's Application for Writ of Habeas Corpus. At that time, the state had not yet responded to Petitioner's 296-page Amended Application for Writ of Habeas Corpus. A copy of the judge's order denying Petitioner's motion for withdrawal of the execution date, the State's request for a modification of the execution date, and denying Petitioner's Application for Writ of Habeas Corpus is attached to this motion.

3. Petitioner respectfully requests that this Court stay his execution date and remand Petitioner's case to the trial court for an evidentiary hearing. Petitioner presents the following information and argument in support of this motion.

4. Petitioner's case is before this court on his first state post-conviction application for writ of habeas corpus. Dozens of meritorious claims for relief raising numerous factual allegations remain unresolved by the trial court. The state has not yet been afforded an opportunity to respond to these allegations, and the trial court has not issued proposed findings of fact.

5. Petitioner's application for habeas corpus relief must

receive full and fair review by the state courts. The trial court has not afforded Petitioner even the most minimal due process to ensure that the factual allegations he has raised are fully developed and fairly resolved. See Tex. Code Crim. P. Art. 11.07(2)(c).

6. An evidentiary hearing is necessary to resolve at least the following meritorious claims for relief raised in Petitioner's First Amended Application for Writ of Habeas Corpus:

(a) Intimidation and manipulation of witnesses by the police and prosecutors resulted in the introduction of false and misleading testimony in Petitioner's trial;

(b) Prosecutors and police concealed exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), and committed more than a dozen other acts of prosecutorial misconduct;

(c) Prosecutors informed three jurors at voir dire that Petitioner's status as an "illegal alien" could be properly considered at the punishment phase of Petitioner's capital sentencing trial. This prosecutors reinforced their appeals to ethnic prejudice during trial and closing argument;

(d) Petitioner was denied effective assistance of counsel.

(e) Petitioner's jury was unable to give mitigating weight to evidence of his youth (20 years old) or his lesser role in the offense, as required by Penry v. Lynaugh, 492 U.S. 302 (1989);

(f) The prosecutors instructed the jury on the law of parties during voir dire, but the judge refused a request for a

jury instruction that the jury could not consider the law of parties at the punishment phase of Petitioner's trial, as required by the recent decision by Judge Hittner in Nichols v. Collins, No. H-92-36, (S.D. Tex. Aug. 31, 1992) (See Appendix to Petitioner's First Amended Application for Writ of Habeas Corpus at 196-232).

7. In his Amended Application for Writ of Habeas Corpus, Petitioner has set forth the evidence that would be proffered at an evidentiary hearing on the claims presented in his Application. The factual allegations in Petitioner's Application are based on evidence that Petitioner will present to the trial court, if he is afforded the opportunity to do so.

8. All of these claims, and others Petitioner has raised, must be viewed against the backdrop of his claim of innocence. Petitioner's amended application not only alleges that the evidence introduced at his trial was insufficient to support a guilty verdict, but he describes new evidence, some of which was suppressed by the state, that has surfaced since his 1982 conviction that lends convincing support to his claim that Roberto Carrasco Flores, not Mr. Guerra, shot Officer James Harris. Mr. Guerra is entitled to an evidentiary hearing in order to fully and fairly present this important evidence.

9. Petitioner has also raised meritorious claims identical to issues currently pending before the United States Supreme Court in Herrera v. Collins, No. 91-7328 (U.S. February 19, 1992), and Graham v. Collins, ____ U.S. ____, 60 U.S.L.W. 3827

(1992). To allow Petitioner's execution to proceed when the Supreme Court may resolve in his favor issues that would entitle him to relief, would be a miscarriage of justice. Therefore, pending the Court's decisions in Herrera and Graham, Petitioner's execution should be stayed.

10. Furthermore, Petitioner has raised a claim for relief identical to an issue presented by the Petitioner in Nichols v. Collins, No. H-92-36, (S.D. Tex. Aug. 31, 1992), in which habeas corpus relief was granted by the United States District Court for the Southern District of Texas, Houston Division.¹ Should the federal district court's decision to grant habeas corpus relief be upheld, Mr. Aldape Guerra will likewise be entitled to a reversal of his conviction.

11. In order to manage the workload generated by capital habeas litigation, it is critical that the attorneys for all parties be able to predict, with some degree of reliability, the major time demands in pending cases. This requires that there be a reasonable window of time following court's ruling before the next major event takes place, e.g., before a pleading is due or a hearing is conducted.

¹The federal court in Nichols held that evidence that Nichols was not the triggerperson was mitigating evidence beyond the scope of the special issues outlined in Article 37.071. Nichols, No. H-92-36, slip op. at 9. Thus, it was fundamental error for the trial court to fail to instruct the jury that the law of parties may not be applied to the special issues during the sentencing phase of a capital murder trial. Id. at 10.

The Nichols court, like Petitioner, applied the cumulative constitutional error analysis of Derden v. McNeel, 938 F.2d 605 (5th Cir. 1991), and found that the cumulative error during Nichols' trial resulted in a denial of due process. Id. at 26.

12. It is equally important to the fair administration of justice that attorneys for death row inmates seeking relief in their first habeas appeals have a reasonable window of time after one court denies relief within which to prepare and file appropriate pleadings and briefs for the next appeal. The Court can ensure this by (1) making it known to the parties that an execution date will be set within a specified period of time after relief is denied if the next appeal is not filed within that time or (2) entering an order when the state court denies relief, scheduling the execution date long enough away to provide sufficient time, considering other current obligations of counsel, to prepare and file the next appeal. None of these circumstances are facilitated by an outstanding execution date, the timing of which is not necessarily related to the actual advancement of the proceeding.

WHEREFORE, for the reasons set forth above, Petitioner moves the court to withdraw the order setting his execution date, presently scheduled for September 24, 1992, and remand his case to the trial court for an evidentiary hearing on the issues that he has raised in his First Amended Application for Writ of Habeas Corpus.

Respectfully submitted,

VINSON & ELKINS L.L.P.

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by: *W.A. express permission*
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Attorney for
Ricardo Aldape Guerra

APPENDIX

IN THE TEXAS COURT OF CRIMINAL APPEALS


and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA)
)
)
)Case No. _____
(Harris County
Cause No. 359805-AORDER DENYING APPLICANT'S PETITION FORWRIT OF HABEAS CORPUS

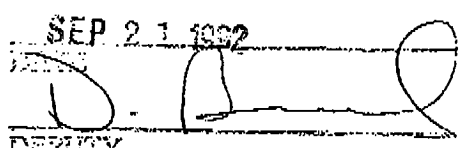
On this 21st day of September, 1992, it is hereby ORDERED that applicant's petition for writ of habeas corpus is DENIED. It is further ORDERED that applicant's motion to withdraw the setting of applicant's execution date, and the State's request for a modification of the execution date to January 28, 1993 are both hereby DENIED.

Signed this SEP 21 1992 day of September, A.D., 1992.


HONORABLE WOODY R. DENSEN
JUDGE, 248TH DISTRICT COURT
HARRIS COUNTY, TEXAS

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HARRIS COUNTY, DISTRICT
CLERK'S OFFICE

SEP 21 1992


DEPUTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading and proposed order was served by mail/delivery on Roe Wilson, Assistant District Attorney of Harris County on the 21st day of September, 1992.

Scott Atlas
with express permission
SCOTT J. ATLAS