

# Texas Senate

P.O. Box 967  
Austin, Texas 78767-0967



## Hispanic Caucus

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May 19, 2006

Governor Rick Perry  
1400 Congress, Capitol 2S.1  
Austin, Texas 78711

Dear Governor Perry:

I am concerned both by recent immigration raids conducted by Sheriff Leo Samaniego in El Paso County and by confirmed reports that the sheriff is setting up roadblocks and asking the vehicle occupants for driver's licenses, car insurance information, and social security cards<sup>1</sup>. These raids and roadblocks are questionable in their legality, may give rise to civil rights lawsuits against Texas, and will distract local law enforcement from focusing on criminal activity such as drug trafficking and violent crime. Because I believe that Operation Linebacker monies are being misused by the El Paso County sheriff's deputies, I am asking you to develop a policy regarding the use of funds received under your border initiative - Operation Linebacker.

Operation Linebacker is being funded with money from the federal *Byrne Grant*, a program intended to fight the drug war in the Border Region, not illegal immigration. A good example of an appropriate use of Operation Linebacker funds is the plan developed by the Hidalgo County Sheriff's Department<sup>2</sup>. Instead of targeting workers, the department used the funds to create a specialized Criminal Illegal Immigration Unit that responds to violent criminal activity.

My first concern with Sheriff Samaniego's activities is their legality. Though your Border Security Plan for Texas includes funds for local officers' overtime and hiring of additional local law enforcement personnel, it does not give the officers new arrest powers. The mere illegal presence of someone in the United States is a civil immigration violation, but not a criminal offense. Under Article 14.01 of the Texas Code of Criminal Procedure, a Texas peace officer may only make a warrantless arrest for a criminal offense if the criminal offense is *committed in his or her presence or within his or her view*. Texas law does not authorize a peace officer to engage in activities designed to uncover illegal immigration, such as immigration raids or roadblocks. A February 5, 1996 memorandum opinion from the United States Department of Justice Office of Legal Counsel confirms this interpretation by allowing a Texas peace officer to arrest a person for a criminal violation of immigration laws occurring *within the officer's presence*, but not for the apprehension and removal of deportable aliens.

Second, I am concerned that Sheriff Samaniego's detention of people based on their Mexican ancestry will result in numerous civil rights lawsuits against Texas.

Please consider that last month, Sheriff Samaniego directed an immigrant search at a far-east El Paso quarry. In an interview with a local TV station, the El Paso Sheriff's Department explained the method they used to search, detain, and turn over to Border Patrol allegedly undocumented immigrants:

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<sup>1</sup> Telephone conversation with Kevin Courtney, El Paso Interreligious Sponsoring Organization lead organizer. May 11, 2006.

<sup>2</sup> *Interim Charge 7. Testimony by Ana Yanez Correa*: Texas Criminal Justice Coalition, April 25, 2006.





"We patted them down for immediate weapons; turns out they didn't have any weapons on them, so we called Border Patrol. You can tell they were undocumented immigrants."<sup>3</sup>

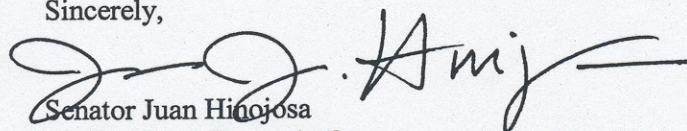
The El Paso County Sheriff's remarks imply that Mexican ancestry or "looking Mexican" is sufficient grounds to identify and detain undocumented immigrants. However, in *United States v. Brignoni-Ponce*<sup>4</sup>, the United States Supreme Court established a number of factors to consider before any federal immigration officer or employee, may search or detain a person due to speculation over that person's immigration status. The Supreme Court ruled that Mexican ancestry alone was not enough to warrant a search or detainment.

Furthermore, please consider *Murillo v. Musegades*<sup>5</sup> - the class action lawsuit filed against the INS in the El Paso community more than a decade ago. This lawsuit against INS and thirteen of its agents documented the serious personal harm incurred by individuals when government officials violated the U.S. Constitution. Plaintiffs in this case were subjected to violations of the Fourth and Fifth Amendments through widespread unlawful searches, seizures, and harassment by the federal agents involved.

Third, Sheriff Samaniego's "raid and roadblock" approach to immigrants undercuts the ability of local law enforcement to ensure the public's safety because it discourages both legal and illegal immigrants from seeking help from the police. The sheriff's activities increase the likelihood that frightened residents will refuse to cooperate with law enforcement. This lack of cooperation undermines the ability of our police to solve more serious crimes. In fact, the Association of Chiefs of Police (IACP) opposes local officers' enforcing of immigration law<sup>6</sup>.

The development of a clear policy by your office regarding the appropriate use of funds under Operation Linebacker will effectively focus immigration efforts within the Border Patrol where Congress and the Constitution intended they reside. I look forward to your response on this issue.

Sincerely,



Senator Juan Hinojosa  
Chair, Senate Hispanic Caucus

cc: The Honorable David Dewhurst  
The Honorable Silvestre Reyes  
The Honorable Elliot Shapleigh  
The Honorable Dolores Briones  
The Honorable Jose Rodriguez  
The Honorable Jaime Esparza  
The Honorable Lupe Trevino

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<sup>3</sup> Beaubien, Elizabeth. "Texas Sheriffs Help Out With Border Security." *News Channel 3* 13 April, 2006.  
<<http://www.kesq.com/Global/story.asp?S=4758412&nav=9qrx>>

<sup>4</sup> *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)

<sup>5</sup> *Murillo v. Musegades*, 809 F. Supp. 487 ( W.D. Tex. 1992)<sup>5</sup>

<sup>6</sup> Grissom, Brandi. "EP chief opposes bill to let police go after immigrants." *El Paso Times* 6 October 2005.

<<http://www.borderlandnews.com/apps/pbcs.dll/article?AID=/20051006/NEWS/510060340/1001&template=printart>>