

## **Expanded Border Policing Clogs the Courts and Jails**

The New York Times

July 1, 2000, Saturday, Late Edition - Final

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**Distribution:** National Desk

**Section:** Section A; ; Section A; Page 7; Column 5; National Desk ; Column 5;

**Length:** 1242 words

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**Dateline:** EDINBURG, Tex., June 30

### **Body**

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Five years after the Clinton administration and the Republican-led Congress began an enormous law enforcement buildup along the Mexican **border** to fight the war on drugs and illegal immigration, federal and state **courts** are buckling under the strain of the resulting criminal caseload.

The unprecedented numbers of new drug and immigration indictments are inundating the five federal judicial districts along the nearly 2,000-mile **border** that stretches from the mouth of the Rio Grande in Texas to San Diego. Those now handle 26 percent of all federal criminal filings in the United States. The remaining 74 percent is spread among the country's 89 other district **courts**.

Federal judges along the **border** are struggling with caseloads double to quadruple the national average. Judges on senior status who would otherwise have retired are hearing **clogged** dockets, while visiting judges are being buckled in from as far away as Vermont.

In **border** cities like Del Rio, Tex., and Las Cruces, N.M., the caseload is nearly twice the national average, yet neither city has a sitting federal district judge.

In Washington today, a bipartisan group of lawmakers announced an emergency appropriation of \$12 million to compensate state district attorneys along the **border** who have seen their dockets and their **jails clogged** by smaller drug cases handed off by federal prosecutors. District attorneys in Texas, who represent some of the poorest counties in the nation, had threatened to refuse all federal drug cases as of July 1, unless the government began reimbursing them for the costs.

The **clogged courts** further illustrate the difficulty and complexity of **policing** the Mexican **border**, which remains the primary entry point for drugs and illegal immigrants into the United States. The strategy of building up federal law enforcement along the **border** has brought increases in drug seizures and in the arrests of illegal immigrants, but the flow of both is continuing.

Since 1994, the number of United States **Border** Patrol and Immigration and Naturalization Service personnel has nearly doubled. This heightened presence has created a spike in criminal cases along the **border**, to 14,517 in 1998 from 6,460 in 1994. But the size of the **court** system has remained essentially the same; judicial resources in the five **border** districts have increased by only 4 percent.

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"Everybody talks about the war on drugs," said Representative Silvestre Reyes, a Democrat representing El Paso who has pushed for more resources. "They want to put in additional border patrol agents, I.N.S. agents and customs agents without giving any thought to what happens to a case when it's generated."

To some degree, the disparity in financing reflects a historical reluctance by Congress to expand the judiciary, said Eric E. Sterling, president of the Criminal Justice Policy Foundation, a Washington group that studies issues like drug policy. Mr. Sterling said Congress had traditionally been eager to finance drug enforcement efforts but less enthusiastic about creating new judgeships because they are powerful, politically appointed positions.

Still, Congress seems to be taking notice of the problems on the border. Last fall, Congress authorized three new judgeships in Arizona, though the positions remain unfilled.

In June, a bipartisan group of border-state senators, including the Republicans Pete V. Domenici of New Mexico and Kay Bailey Hutchison of Texas and the Democrat Dianne Feinstein of California, introduced legislation to authorize 13 more judgeships along the border. The bill provides for eight permanent and five temporary positions, and sponsors are trying to insert the measure in the regular appropriations bill for the coming fiscal year.

"Everyone on both sides of the aisle acknowledges that this is a crisis," Senator Hutchison said. "We've just got to have help."

She said courts were just one part of a growing crisis on the border, where in recent weeks frustrated ranchers in Arizona have begun rounding up illegal immigrants trespassing on their land.

"Everything has been too little, too late," Senator Hutchison said. "We've had a very difficult time getting control of what's happened on the border."

Here in Hidalgo County in South Texas, where the Border Patrol presence along the Rio Grande has sharply increased, state and federal courts are inundated. George P. Kazen, chief judge of the Southern Judicial District of Texas, said Del Rio had more than 1,000 criminal cases every year, but no sitting district judge. Visiting judges from Louisiana have been called on to reduce the caseload.

"The point is that there is no sense to having a huge influx of law enforcement officers if you're not going to pay corresponding attention to what you're going to do with offenders after you pick them up," Judge Kazen said.

The volume of new cases has created friction between federal and state prosecutors in Texas. Immigration cases fall solely under federal law, but state prosecutors are handling more and more drug arrests made by federal agents. Federal prosecutors usually prosecute the larger seizures and refer smaller cases to state courts. In South Texas, the United States attorney Mervyn Mosbacher said his office referred about 500 cases a year to state prosecutors, most of them involving marijuana seizures of less than 60 pounds.

But the cost of prosecuting those cases provoked a rebellion by district attorneys on the Texas border, who had threatened to stop taking federal cases on July 1. Hidalgo County's district attorney, Rene A. Guerra, estimated that such cases cost taxpayers in his county about \$1 million annually. His criminal caseload has risen to 3,246 indictments last year from 2,233 in 1995. Jaime Esparza, the district attorney in El Paso, said his office spent more than \$2 million. And increasingly, Mr. Esparza said, his office is handling offenders arrested with more than 100 pounds of marijuana.

The announcement today of the emergency \$12 million, which is expected to become law soon as part of a larger military appropriations bill, put an end, for now, to the plans for the boycott. But Mr. Esparza emphasized in an interview earlier this week the burden placed on El Paso and other border areas.

"You can't expect these border counties, which are some of the poorest counties in the country, to continue to pay these costs," Mr. Esparza said. "It's like double taxation. No other place in the country has to shoulder these costs, and it's only because of our proximity to the border."

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Another problem is the lack of jail and prison space. There are no federal detention centers along the Southwest border, so federal detainees are held in local jails. In vast West Texas, defendants are often bused hundreds of miles to jails with space. In New Mexico, Chief Judge John Edwards Conway said, the federal courts pay local jails \$18,000 a day for 300 beds. Over all, Judge Conway said, the number of federal criminal defendants in New Mexico rose to 1,700 in 1999 from 800 in 1998.

Most judges disputed any suggestion that the caseload diminished the quality of justice meted out. But Carolyn Dineen King, chief judge of the United States Court of Appeals for the Fifth Circuit, which includes Texas, did express a concern.

"What you worry about," Judge King said, is defendants who get shorter sentences than they deserve "because the court simply has to move the case."

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## Graphic

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Map of United States highlighting Edinburg

## Classification

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**Language:** ENGLISH

**Subject:** JUDGES (91%); TERRITORIAL & NATIONAL BORDERS (90%); PUBLIC PROSECUTORS (90%); CONTROLLED SUBSTANCES CRIME (90%); DRUG POLICY (89%); IMMIGRATION (89%); ILLEGAL IMMIGRANTS (89%); US FEDERAL GOVERNMENT (89%); BORDER CONTROL (89%); LAW ENFORCEMENT (89%); SPECIAL INVESTIGATIVE FORCES (89%); US REPUBLICAN PARTY (78%); CITIZENSHIP (78%); POLITICAL PARTIES (78%); CRIMINAL LAW (78%); PUBLIC POLICY (78%); SUPPLEMENTAL APPROPRIATIONS (78%); ARRESTS (78%); US PRESIDENTS (78%); LAWYERS (78%); US DEMOCRATIC PARTY (78%); APPROPRIATIONS (78%); INDICTMENTS (77%); US STATE GOVERNMENT (77%); EXCISE & CUSTOMS (72%)

**Company:** WASHINGTON GROUP-ENGINEERING & CONSTRUCTION (55%); WASHINGTON GROUP-ENGINEERING & CONSTRUCTION (55%); BORDER PATROL (58%)

**Organization:** BORDER PATROL (58%); BORDER PATROL (58%)

**Industry:** LAWYERS (78%)

**Person:** SILVESTRE REYES (58%)

**Geographic:** EL PASO, TX, USA (79%); SAN DIEGO, CA, USA (79%); TEXAS, USA (92%); NEW MEXICO, USA (79%); CALIFORNIA, USA (79%); UNITED STATES (94%); MEXICO (92%)

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**Load-Date:** July 1, 2000

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