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Border Militarization Via Drug And Immigration Enforcement: Human Rights Implications

Timothy J. Dunn

On May 20, 1997, a United States Marine on a clandestine reconnaissance and drug surveillance mission for the U.S. Border Patrol shot and killed a teenager who was herding goats near the U.S.-Mexico border in Redford, Texas. It is one of the few instances during the second half of the 20th century in which a U.S. soldier killed a citizen during a domestic law enforcement mission. This encounter was fraught with misunderstanding, misperceptions, and gross errors, and it graphically illustrates the dangers to human rights posed by the militarization of domestic law enforcement. Though the latter is a broader phenomenon throughout the U.S., it has been taken to its highest level in some key regards in the border region, under the pretext of the “war on drugs,” but also “spilling over” into immigration matters. Although its most obvious expressions, such as the use of ground troops, have taken place largely out of public view, involvement of the military in domestic policing has been taken further along the Southwest border than elsewhere.

The Southwest border is perhaps the key locus of militarization of law enforcement in the U.S., for it is also the site of the longest-running manifestation of such efforts (over a decade) and the home of the deepest institutional ties between the military and police bodies. The military unit that now coordinates nearly all military support for antidrug efforts in the continental United States is located on the border, and has worked the most extensively with the U.S. Border Patrol, a police unit whose first responsibility is immigration enforcement. This article focuses on Border Patrol/military collaboration and highlights the Redford shooting as the key episode in this phenomenon. The study has three main sections: the development of military assistance in border enforcement before the Redford

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shooting, the Redford shooting itself and its aftermath, and the role of the military since then. Information for this study is drawn from military documents, military journals, the border region press, congressional documents, interviews, and my own observations made during four years of fieldwork in El Paso, Texas.

By way of background, the U.S. Border Patrol is the main enforcement arm of the Immigration and Naturalization Service (INS). Its chief mission is the apprehension, and prevention of entry, of undocumented immigrants. In the latter 1980s, however, its formal mission gradually expanded to include drug enforcement as a secondary concern (Dunn, 1996: 80). Previously, the Border Patrol operated largely in isolation from other organizations, since it was the sole federal police force (along with several smaller parts of the INS) to focus on immigration enforcement. With the advent of the “war on drugs” in the mid-1980s and the sharing of drug enforcement duties among a plethora of federal, state, and local organizations, the Border Patrol began to work more regularly with a range of other police bodies and the military.

Though the Border Patrol works in varying capacities with many police agencies and organizations, its collaboration with the military raises the most concern, especially for human rights — illustrated most clearly by the Redford shooting. For over a century before the 1980s, the U.S. military was largely removed from domestic law enforcement duties. The recent shift toward a military role in the border region has gone largely unexamined by scholars and has occurred with little public awareness or debate. Debate did arise for a time after the Redford killing, in the wake of which the military appears to have become more reluctant to use ground troops. Nonetheless, enthusiastic endorsement of the deployment of troops along the border continues to emanate from lawmakers, with three authorizing bills passing in the U.S. House of Representatives in the years 1997 to 2000. Despite its relevance to public policy and human rights concerns, academics know relatively little about Border Patrol/military collaboration, having been largely ignored in contemporary studies of immigration and drug issues. Despite a growing body of literature on immigration and drug enforcement along the U.S.-Mexico border, Border Patrol/military collaboration has received sparse coverage.¹

This article will take up this under-examined phenomenon of military support for, and collaboration with, the Border Patrol. The Redford shooting and a discussion of the human rights implications of such collaboration round out the essay. Other border enforcement matters also have profound human rights implications, such as the series of Border Patrol blockades initiated in key urban border areas during the 1990s that target unauthorized immigration.² Continued expansion of the military role in border enforcement, it is argued, could pose a grave danger to human rights. Police authorities must be nominally concerned with civil rights and due process, while military troops are not. Instead, they are oriented toward the “neutralization” or elimination of hostile threats or enemies.
**Border Militarization Via Drug and Immigration Enforcement**

**Military Participation in Border Enforcement (Up to May 1997)**

During the 15 years before a U.S. Marine shot Esequiel Hernandez, a Redford, Texas, teenager on May 20, 1997, the military had been one among many agencies involved in drug enforcement along the border (playing a supportive rather than leading role). Although this tragedy led to changes in the military’s border efforts, its involvement has been mostly unabated; thus, much of this discussion is relevant for subsequent years. The U.S. military’s drug enforcement role engaged it in ongoing domestic law enforcement for the first time in over a century. Such involvement had been limited by the Posse Comitatus statute, the longstanding legal prohibition that precluded the military from making arrests, searches, or seizures. However, beginning in 1982 drug enforcement concerns led to a series of legal changes that opened a new chapter in U.S. law, allowing the military to provide a vast array of support for civilian police (see Dunn, 1996: Chapter 4). Its role now ranged from the provision of military equipment and construction work, to military training and transport, and the use of ground troops to assist police. Congress has even seriously considered more extreme measures, such as military patrols of urban areas. Much of this military support has focused on the U.S.-Mexico border region. Importantly, the border effort is part of the military’s nationwide domestic antidrug activity, which receives the bulk of its antidrug funding (80% in 1996), compared to the 20% (1996 levels) that goes to the military’s more publicized international antidrug activities in Colombia, Peru, Bolivia, and elsewhere (see Mendel and Munger, 1997: 115). My “spectrum of border militarization” in Appendix 1 (found at the end of the article) summarizes the use of militarily allowed and other activities considered by policymakers. This spectrum could be applied to other instances of police/military collaboration in the U.S., though it was developed with reference to the border experience, a vanguard area in the militarization of U.S. law enforcement.

Recent collaboration between the military and law enforcement entails the establishment of an entirely new set of interorganizational relationships. In the border region, the Border Patrol has been the primary police unit with which the military has collaborated (interview with JTF-6 official, April 30, 1997). Given that the military had neither expertise nor experience in regular, nonemergency domestic law enforcement or the criminal justice system, and that its mission and tactics were distinct from that of the Border Patrol, the new relations were not simple. Army Lt. General Thomas Kelley, Director of Operations for the Joints Chiefs of Staff, expressed some of these difficulties in 1989, during the relatively early stages of military/police collaboration:

> We’re learning to work with law enforcement agencies, and there’s cultural difficulties in doing that and it’s a cultural difficulty on our part. When you deal with police officers, they think in terms of going to court and we don’t. We’re sort of like a special operations soldier who is taught
to clear a room by killing the bad guys and not touching the hostages...
(House Committee on the Armed Services, 1989: 8).

The military generally stresses seeking out and destroying an enemy, while law enforcement agencies focus on the legal system and due process considerations. For its part, the Border Patrol’s enforcement encounters are with decidedly nonthreatening immigrants; a small fraction of those encounters are more dangerous, including some with armed drug traffickers.3

The military established Joint Task Force-6 (JTF-6) in late 1989 at the U.S. Army’s Fort Bliss base in El Paso, Texas, with the mission “to serve as a planning and coordinating headquarters to provide support from the Defense Department to federal, state, and local law enforcement agencies.” In characterizing the nature of the relations involved in this work, Lt. General Stotser, an early commander of JTF-6, stated: “Joint Task Force 6’s relationship with law enforcement, in my view, is one of total integration” (Dunn, 1996: 134). JTF-6 is mainly an administrative and coordinating body, with a staff of approximately 150 personnel that arranges for military units to provide various forms of support requested by police bodies (interview with JTF-6 official, April 30, 1997). By the mid-1990s, however, JTF-6 also had an active field unit at its immediate disposal, a “Rapid Support Unit” made up of Army Special Forces troops that provides an “immediate response to actionable intelligence,” three-quarters of which took the form of ground reconnaissance in 1996 (Mendel and Munger, 1997: 116). In 1995, JTF-6’s initial geographical focus on the Southwest border region expanded to include the entire continental United States.

After nearly a decade, JTF-6 has become one of the longest-lasting joint task forces in U.S. military history, during which over 72,000 troops have rotated through on temporary missions in 30 states (Paulsen, 1998). It works closely with Operation Alliance, an interagency task force of federal, local, and state law enforcement agencies established in 1986. That task force is the principal coordinating body for collaborative drug enforcement efforts in the Southwest border region (Dunn, 1996: 113–117; Lemus, 1994). The Border Patrol is a key member of its command structure, along with other federal police bodies. Operation Alliance funnels requests for military assistance from police bodies in the border region. They publicize the availability of military support, screen police requests, help structure requests so that they pass legal review, and forward them to JTF-6. Lawyers for JTF-6 review the police requests and, if approved, post the requests for assistance to the various branches of the military and aid in logistical arrangements (interview with JTF-6 official, April 30, 1997). Although emphasis is placed on police officials as the initiating and lead element in this police/military collaboration, deployed military troops remain under military, not police command (Schnaubelt, 1996: 18–19). Moreover, this collaboration has not always been straightforward. Most notably, conflicts emerged in the 1993 tragic assault...
and siege of the Branch Dividians in Waco, Texas, by the FBI and the Bureau of Alcohol, Tobacco, and Firearms. In this case, military units called upon to provide support reigned in the most deadly and extreme instance of law enforcement militarization in recent U.S. history, but no thanks to JTF-6. This episode involved military support in the preparatory stages and the loaning of military equipment during it. JTF-6 coordinated this and originally authorized a much more expansive list of support, but the Army Special Forces units that were solicited to provide it balked, resisted, and greatly reduced the scope of the original request, much to the displeasure of overeager JTF-6 officials (U.S. Congress, House Committee on the Judiciary, 1997: 71–79; Lujan, 1997: 4).

Military Support for the Border Patrol

The Border Patrol is the main police agency in the Southwest border region receiving military support. Though this has been justified in terms of aiding drug enforcement, as will be shown, much of this military assistance also aided immigration enforcement. JTF-6 carried out 1,260 missions between 1990 and 1993, most of which were conducted for the Border Patrol (Dunn, 1996: 134). This makes for an average of 315 JTF-6 missions per year, and an average of approximately 157 JTF-6 missions per year for the Border Patrol during the early 1990s. Precise data are not available for subsequent years, but Holt (1997b) reports that the JTF-6 conducted over 3,300 missions from 1990 through mid-1997. Thus, over 2,000 missions were conducted from 1994 to mid-1997, an average of 571 per year. During the mid-1990s, the Border Patrol continued to receive at least 157 JTF-6 missions per year. While JTF-6 missions increased, the Border Patrol’s share dropped to 30% after JTF-6 expanded its focus beyond the border to the continental United States in 1995 (interview with JTF-6 official, April 30, 1997). Still, 30% of the greater JTF-6 total mission figure accounted for at least 157 per year (30% of 571 is 171). While JTF-6 expanded its area of operation and mission total in the mid-1990s, the Border Patrol received more JTF-6 support missions than any other police agency up to the 1997 Redford shooting, and certainly more than any other in the Southwest border region.

JTF-6 provided law enforcement agencies with 19 types of support missions, classified in three broad categories: operational, engineering, and general support (Dunn, 1996: 135). Forms of support range from construction projects, to the deployment of ground troops for various forms of reconnaissance (covert surveil- lance), to the loaning of equipment, military training, and intelligence support. Appendix 1 demonstrates this breadth. However, most JTF-6 missions for the Border Patrol cluster in the more militaristic end of the spectrum. For example, in 1997 a JTF-6 official reported that most JTF-6 missions for the Border Patrol fell within the broader “operational” category (interview with JTF-6 official, April 30, 1997). Most missions in that category involve the deployment of ground troops for surveillance or patrol (Dunn, 1996: 135). During the mid-1990s, the most frequent
JTF-6 “operations” support for the Border Patrol was the Listening Post/Observation Post (LP/OP) mission — small groups of soldiers deployed in remote areas at or near the border to conduct covert surveillance of a suspected drug-trafficking area — followed in frequency by electronic ground sensor missions (interview with JTF-6 official, April 30, 1997). The number of these LP/OP missions has increased in recent years, from an average of 41 per year for the 1990 to 1993 period, to an average of 117 per year for the 1994 to mid-1997 period.4

The San Diego County border area was a focal point in 1996 for military operations, emphasizing immigration over drug enforcement. That year 4,200 Marines and Green Berets (U.S. Army Special Forces) rotated in small teams through a secret operations base in an eastern county area. Run by the California National Guard, it focused on temporary border drug reconnaissance missions (Reza, 1997). A JTF-6 source admitted that the San Diego Border Patrol sector had “no counterdrug program in place” (Anon., 1997: 9). The area is a site of heavy undocumented immigration, since the Border Patrol’s “Operation Gatekeeper,” initiated in late 1994, pushed undocumented immigrant crossers from western into eastern San Diego county (and further east). Given the lack of a counterdrug program in this sector and the heavy emphasis on immigration enforcement, especially in eastern county areas, it seems likely that this LP/OP mission military support expanded its ostensible drug focus into immigration enforcement.

Beyond “operational support,” JTF-6 provides engineering support to the Border Patrol, such as the construction of thin, corrugated steel walls along the border at various points and road construction. Although the most publicly visible type of military support, construction accounts for only 10% of all JTF-6 missions. The “general support” JTF-6 provides to the Border Patrol commonly takes the form of intelligence analysis assistance and military team training for Border Patrol officers (interview with JTF-6 official, April 30, 1997; Dunn, 1996: 135). These two forms of general support can be quite militaristic, ranging from training in small unit tactics, weapons training, interview/interrogation techniques, the use of pyrotechnics and booby-trap techniques, to reconnaissance operations. Other forms of support revolve around intelligence gathering and processing, at times with very militaristic overtones, including “target selection” and “intelligence preparation of the battlefield.” In reaction to the Waco tragedy, however, in 1996 the military’s Special Forces command prohibited its soldiers who were detailed to JTF-6 from providing certain severe military tactics, among them “sniper training, Military Operations in Urban Terrain, Close Quarters Combat,” and training for specific police operations.5 According to Kraska and Kappeler (1997: 11–12), 46% of the police departments with paramilitary SWAT units had those units training with “active-duty military experts in special operations.” One informant identified JTF-6 as the facilitating unit.

In the mid-1990s, military support for the Border Patrol most commonly took the form of Listening Post/Observation Post missions — small unit deployments
that conduct covert surveillance in remote areas where drug trafficking is suspected. These groups were “to watch for suspicious activity and report it to law enforcement” (Joint Task Force Six, n.d.). The same broad criteria typically applied to other forms of military surveillance conducted for the Border Patrol. According to a JTF-6 official, soldiers on LP/OP missions must see someone physically cross the border illegally before relaying information about a suspect to the Border Patrol. Soldiers are not supposed to draw conclusions about what they see (e.g., whether an unauthorized border crosser is an immigrant or drug trafficker), or to recommend a course of action to the Border Patrol. Their task is simply to report on what they observe (interview with JTF-6 official, April 30, 1997). Soldiers are armed on LP/OP missions (and in other ground troop deployments near the border) and operate under “rules of engagement” that allow them to fire in self-defense and in defense of a third party (Ibid.; Dunn, 1996: 132; Coyne, 1998: 38–40).

According to Drug Enforcement Administration (DEA) estimates, 85% of all illegal drugs, including almost all the heroin and the bulk of the cocaine entering the country, arrive via legitimate traffic at official ports of entry (Dunn, 1996: 105). In contrast, most military support for border-zone drug enforcement discussed so far focuses on areas in between the ports of entry. As such, most military support is apparently misdirected and of relatively minor consequence in the overall picture of illegal cross-border drug flows. However, military units receive extra training funds from the Pentagon for this activity, creating a dependence on such funding in some units (Coyne, 1998: 9–10).

JTF-6 officials acknowledge that much of the drug law enforcement assistance provided by the military also aids the Border Patrol in its immigration enforcement duties (interviews with JTF-6 officials, April 30, 1997; August 15, 1995). In the spring of 1997, for example, an LP/OP mission conducted by a Marine unit for the El Paso Border Patrol led to the apprehension of 620 undocumented immigrants and 1,500 pounds of marijuana (Conley, 1997). Similar dual immigration/drug enforcement outcomes have been part of military operations conducted for the Border Patrol since the latter 1980s (Dunn, 1996: 126–133). Equipment such as helicopters and night-vision devices loaned and maintained by the military often aid in both drug and immigration enforcement. Military drug intelligence support for the Border Patrol also helps in immigration enforcement. For instance, a “Threat Assessment” devised by a military intelligence officer working with the San Diego Border Patrol sector contained a section on “Threat — Illegal Aliens” that recommended new strategies for the Border Patrol to select undocumented immigrants for drug questioning (Anon., 1997: 6, Encl. 4 and 9). Moreover, “planning experts” from the Pentagon’s Center for the Study of Low Intensity Conflict helped design the “Border Patrol Strategic Plan: 1994 and Beyond” (U.S. Border Patrol, 1994: 1–2). This document, devoted mainly to immigration enforcement, casts immigration and drug prob-
lems as threats to “national security,” even though undocumented immigrants pose no physical threat to the U.S.

In the mid-1990s, as the immigration issue gained prominence, policymakers directed the military to aid in immigration enforcement along the Southwest border. The already established, but subtler “spillover” of military support for Border Patrol drug enforcement into immigration enforcement was surpassed in this way. The Clinton administration breached an important rhetorical “firewall” in January 1996, when high-ranking officials announced that 350 military troops would help with immigration enforcement along the border in Arizona and California for the first quarter of the year (McDonnell and Rotella, 1996). JTF-6 coordinated this effort, using troops already in the area for drug enforcement purposes. This was the first public acknowledgement by high-ranking administration representatives that the military would be used to aid the INS and Border Patrol in immigration enforcement. A similar initiative had been taken by California Governor Pete Wilson in 1994, when he directed the California National Guard to assist the Border Patrol’s immigration enforcement efforts, including LP/OP surveillance missions along the border, among other activities (Marelius, 1994; Dunn, 1996: 176, 261; House Committee on the Judiciary, 1995: 114–121). Moreover, the extensive military ground reconnaissance efforts in eastern San Diego County throughout 1996 probably served Border Patrol immigration and drug enforcement efforts alike.

The Redford Shooting Incident

A tragic episode in 1997 serves as a lightening-rod example of the dangers of border militarization. This episode in border militarization reveals much about the most problematic aspects of military/Border Patrol collaboration. It is one of the few instances during the second half of the 20th century in which a U.S. soldier killed a citizen during a domestic law enforcement mission (apart from several such killings during urban race riots/uprisings during the 1960s and 1992, and two anti-Vietnam War protests in the 1970s).

On May 20, 1997, Marine Corporal Clemente Banuelos shot and killed 18-year-old Esequiel Hernandez, Jr. The shooting took place on the edge of the rural border village of Redford, Texas (near the Big Bend area), during a JTF-6 LP/OP search mission for drug traffickers along the Rio Grande. Hernandez was not involved in the drug trade. He was a high school student known by local residents as a “good kid” (Holt, 1997a). Although this was the first fatality involving a U.S. citizen at the hands of soldiers on a border-region drug enforcement mission, it was at least the fourth shooting by soldiers on such missions (Lee, 1997; Coyne, 1998: 13, 136). In January 1997, an Army Special Forces soldier wounded an undocumented immigrant in an incident near Brownsville, Texas (Herrick, 1997).

Hernandez was killed not far from his house while herding his goats in the late afternoon near the Rio Grande. He was carrying a 70-year-old, single-shot .22
caliber rifle, which he used to protect his goats from predators. A four-member team of Marines on an LP/OP mission for the Border Patrol alleged that he shot at them twice near the river from a distance of approximately 220 yards just after six p.m. The soldiers, dressed in full camouflage, were discretely moving through the brush en route to their observation site for the evening. This late afternoon movement violated their mission guidelines, which mandated that all movement be conducted after dark (Coyne, 1998: 57, 59–61). It is not clear whether Hernandez knew who or what he was looking at in the brush, but it is unlikely that he knew they were U.S. soldiers (Ferry, 1997). He had recently lost a goat to wild dogs and may have mistaken the camouflaged Marines in the distant bushes for such predators (Paulsen, 1998). He had made a similar mistake several months earlier, in February, when he mistook Border Patrol agents for an animal threat to his goats and fired his .22 rifle near them, for which he apologized profusely.6 Moreover, Hernandez’ family and friends adamantly maintain that he never would have knowingly fired on someone (Katz, 1997).

After Hernandez fired two shots at or near the Marine team, they became agitated and radioed their mission commanders 70 miles away in Marfa, Texas, to report the episode. They then contacted the command center to state: “As soon as he readies that rifle back down range, we are taking him down.” The Marine radio operator at mission HQ in Marfa responded to Banuelos, “Roger, fire back,” thus authorizing Banuelos to shoot Hernandez if he pointed his rifle in the team’s vicinity (Coyne, 1998: 68).

The mission’s commanding officer, as well as other supervisors who were present, felt that the authorization to fire was incorrect, but they did not issue a correction and instead replaced the radio operator. A new operator issued a bland warning to “follow the R.O.E. [rules of engagement],” but Banuelos did not reply (Coyne, 1998: 68–70). The rules of engagement for this type of mission allow a soldier to fire in self-defense and in defense of third parties. However, the officer who briefed the Marines on this topic in the advance preparation stage reports that he not only stressed the self-defense and third-party defense criteria, but also added another: “AND lesser degrees of self-defense had been exhausted” (Ibid.: 38–39). In this case, the latter condition was not met. Banuelos and his team members did not attempt to diffuse the incident by identifying themselves, explaining their presence, telling Hernandez to stop shooting at them, or even firing a warning shot. Moreover, early media reports on the episode said they failed to take such measures because they “didn’t want to compromise the mission” (Filed Notes, May 22–25, 1997). In contrast, Marines had used verbal warnings to defuse a situation of mistaken civilian shooting near them four days before the Redford incident, during another border LP/OP mission (Coyne, 1998: 13).

The soldiers had little preparation for civilian contact, since they were supposed to avoid it on the clandestine surveillance mission. The mission commander told his team leader that in the event of civilian contact, they were to
“make immediate force protection decisions” (emphasis added) and radio mission command for instructions. However, another Marine team leader on the same mission recalled later that he had been instructed in the event of civilian contact to identify himself as a Marine and to ask civilians to leave the area (Ibid.: 50, 53). Banuelos’ subsequent actions did not follow these instructions, but instead pursued an exaggerated sense of “force protection.”

Shortly after the first radio report of the Marines taking fire, Border Patrol agents were dispatched to the scene and arrived 29 minutes later. According to the operation plan for this LP/OP mission, the Border Patrol was supposed to arrive within 15 minutes in such a case (McDonnell, 1997). Yet Border Patrol officials understood that timeframe to apply only to hours of darkness, when Marine teams were supposed to be staffing the observation sites (Coyne, 1998: 44, 113). This proved to be a fatal misunderstanding.

In the meantime, Hernandez moved away from the river and headed back toward the village. The Marine team fanned out and followed him for 20 minutes, though JTF-6 officials maintain the Marines “paralleled” him (Ferry, 1997). This appears to violate a JTF-6 rule of engagement for such missions that allows soldiers to “pursue armed persons only to defend or retrieve personnel” (Smitherman, 1997b; Coyne, 1998: 38–39). These conditions were not met, but the Marines felt they were not following him, but protecting their right flank (Coyne, 1998: 97). Law enforcement officials later re-created the incident and characterized such an interpretation of Hernandez’ slow movements as “wholly inconsistent with a rationale observation” (Ibid.: 137).

After following Hernandez for over 20 minutes, the Marines claim Hernandez raised his rifle to fire a third time and Banuelos shot him in his right side from approximately 140 yards. Hernandez fell and died within sight of his house a few hundred meters away. Banuelos claimed to be protecting another team member, a similar distance from Hernandez as himself, in the direction of whom he alleges Hernandez had pointed his rifle (El Paso Herald-Post, 1997; Coyne, 1998: 74–76).

Several inconsistencies and problems arise with that version of events. First, Banuelos is the only eyewitness to Hernandez allegedly raising and pointing his rifle. The other three Marine team members initially told investigators they did not, or could not, see Hernandez at that moment. Later, one changed his statement to say he saw him. The next day, however, after a walkthrough re-creation of the episode led by the team members, a military investigator determined that this soldier’s view was obstructed from his reported position, and that he could not have seen Hernandez (Coyne, 1998: 76, 97). Other evidence also cast doubt on Banuelos’ version. It was difficult, if not impossible, for Banuelos to see well enough from 140 yards to determine whether Hernandez’ gun movements were aimed toward his fellow team member; moreover, the angle of entry of the fatal bullet “is inconsistent” with the report that Hernandez raised his rifle in the direction of the Marines (Ibid.: 137).
It is known that Banuelos thought he had taken down a “bad guy.” In a law enforcement interview shortly afterward, he said of the incident: “I capped the [expletive]” (Holt, 1997d; Paulsen, 1998). The Marine team thought Hernandez was a probable drug scout or lookout, as he fit the profile they had received during their briefing (Smitherman, 1997c; Coyne, 1998: 68). They were incorrect in this case, since Hernandez was not involved in the drug trade.

Hernandez died from Banuelos’ single shot. The Marine team did not render aid to Hernandez, despite the presence of a Combat Aidsman (trained in combat first aid) on their team. They let the young man bleed to death and failed to call for medical assistance, even though a helicopter medevac unit was stationed at the nearby Presidio just for this mission (Holt, 1997c; Coyne, 1998: 79, 121–123). Due to a misunderstanding, the Marines and Border Patrol each thought the other was calling for medical assistance. The Border Patrol only did so after it arrived on the scene. Thirty-eight minutes elapsed after the first radio report of the Marines taking fire, and 18 minutes after the shooting of Hernandez, before the Border Patrol took full control of the scene from the edgy Marines (Coyne, 1998: 60, 76, 80–82).

**Aftermath of the Redford Shooting**

The Marine killing of Esequiel Hernandez shook up the border militarization process. For the first time, a U.S. Marine faced legal prosecution for his actions on a drug-support mission. The Pentagon temporarily suspended the use of ground troops along the border, and the Marines conducted a lengthy investigation that brought to light new details about the failures and mishaps surrounding the incident. I will examine each because they provide unparalleled background information on military preparation and procedures for border counterdrug missions.

Military officials maintained from the start that the shooting was a “tragic incident,” but insisted that the Marines had done nothing wrong and that their actions were allowed under the “rules of engagement” (Holt, 1997a). The military did not cooperate with the investigation by domestic law enforcement authorities, resisting the Texas Ranger’s attempts to subpoena the Marines. They quickly moved the Marines to their California base, among other things. The initial enthusiasm of the investigating authorities, including the Texas Rangers, for pressing for murder charges waned and a local grand jury, acting under state law, met twice in Marfa, Texas, before deciding in mid-August 1997 not to indict any of the Marines on any count (McLemore, 1997). However, the grand jury’s composition may have compromised its impartiality, for it contained three people with strong ties to the local Border Patrol (including a supervisor who had requested the military support in the first place). Two subsequent grand juries convened in West Texas over the following year, one federal and another state, also failed to indict any of the Marines involved (Associated Press, 1998; Estrada,
1998). Nevertheless, in 1998 the federal government settled a civil wrongful death lawsuit filed by the Hernandez family by paying the unusually large sum of $1.9 million. Though it formally admitted no wrongdoing, the size of the payment suggests an informal acknowledgment of some sort of malfeasance and liability (Montes, 1998). Despite providing some vindication for the family and supporters, it was a Pyrrhic victory.

Faced with the legal prosecution of an active-duty soldier for actions the military had sanctioned him to take during an antidrug mission, the Pentagon temporarily suspended the use of armed ground troops along the border. With great fanfare, the Pentagon announced this measure two days before the first grand jury met in July 1997, pending an internal Pentagon review of the practice. All other forms of military assistance would continue. Pentagon officials also announced a forthcoming review of ways to protect soldiers who followed the military “rules of engagement” from facing prosecution in civilian courts (Verhovek, 1997). Announcement of the ground troop suspension came on the heels of growing tension between the Border Patrol and the military in the weeks after the Redford shooting. A new policy was announced 18 months later, at which time the door again opened for ground troops to be used, a topic discussed further below.

Beyond these legal and policy maneuvers, the most revealing aspect of the aftermath of the Redford shooting was the release in July 1998 of a detailed Marine internal investigation of the incident. Quite sober and critical, it shed unprecedented public light on the ill-fated mission and the general Marine approach to such missions. Most damning was the chief Marine investigator’s evaluation, namely that he found that there were “systemic failures at every level of command responsible for training, support, and the exercise of command and control” of the Redford mission (Coyne, 1998: 140). In sum, the internal Marine investigation showed:

- The Marines’ mission preparation was exceptionally poor and brief;
- The Marines tended not to take border counterdrug missions very seriously;
- JTF-6 (and, to a lesser degree, the Border Patrol) provided extremely poor, superficial, incomplete, and at times inflammatory and inaccurate orientation and intelligence briefings for the Marines; and
- There was a distinct lack of mission oversight from JTF-6 and Marine officials (Coyne, 1998).

These profound flaws are especially disturbing since grossly inadequate Marine preparation, support, and oversight were cited in an earlier investigation of the accidental death of a soldier from the same Marine Division the previous year during a border counterdrug mission. New Division policies were supposed to have corrected all of these problems, but their implementation was seriously
lacking. Yet, the Marine investigator decided the Hernandez shooting was not a criminal act and recommended that no administrative or disciplinary action be taken against Banuelos or the other three team members (Ibid.: 136–139).

The only other publicly available investigation was congressional. Lamar Smith (R-Texas), chair of the immigration subcommittee of the House of Representatives, complained that the Departments of Defense and Justice “withheld necessary information...[thereby] seriously crippling any possibility of finding the truth in a criminal investigation.” He also held that those two agencies “‘were negligent in the shooting and killing’ of Hernandez.... Both agencies made serious mistakes that contributed to this terrible tragedy” (Martin, 1998). Smith’s critical tone is exceptional given that he is otherwise among the strongest congressional supporters of ever-greater border enforcement efforts.

**Border Militarization Since the Redford Shooting**

In early 1999, the military announced its new policy: armed ground troops could only be deployed along the border with the “specific permission of the secretary of defense or his deputy,” the purpose of which is, according to a military official, “to ensure...the appropriate level of oversight” (Holt, 1999). Thus, a decision on returning to the use of ground troops is left to internal bureaucratic discretion, though in the aftermath of the Hernandez shooting the military has clearly been very reluctant to place its troops in such a position. As of September 2000, the Pentagon had not resumed border deployment of armed ground troops, though it remains an option (Glenn, 2000). Glenn (2000) notes that JTF-6 continued to coordinate various forms of military support for the Border Patrol: aerial surveillance by Army helicopter units and reconnaissance support, fence and road building, and broad-reaching areas of military training and intelligence support. Army aerial surveillance missions appear to be somewhat more militaristic. The Army commander of such a mission for the Border Patrol near Laredo, Texas, characterized it as a “full battle drill,” although the helicopters were unarmed (Ibid.). During the first two years after the Redford shooting, road and fence building were the most visible military activities for the Border Patrol in West Texas, in the same county as Redford, as well as in southern New Mexico (Field Notes, May 1998; April 1999).

Border militarization continues in subdued form, since JTF-6’s work remains restricted in terms of ground troop deployments along the border. The longstanding collaboration between the Border Patrol and JTF-6 is slated to continue for another five years, and 19 mission types (unchanged from a 1994 list), including the use of ground troops, are being considered (U.S. Army Corps of Engineers, 1994). JTF-6’s website posted a 42-item August 2000 list of military support missions available to law enforcement agencies, with changes related to the Pentagon’s new ground troop policy denoted by an asterisk next to those mission types. By August 2000, JTF-6 had conducted over 4,300 missions during its tenure. This makes for
an additional 1,000 missions conducted since mid-1997, or 333 per year on average, a significant decline in its activity compared to the mid-1990s. These JTF-6 missions were conducted throughout the continental United States and not just in the border region. Nonetheless, the Border Patrol appears to retain support from the unit and a privileged relationship with it.

JTF-6’s website observes that it has the military’s longest-standing record (now a decade and counting) of collaboration with over 300 domestic police bodies throughout the U.S. As such, this military body will probably be involved in future moves to militarize the criminal justice system. However, this would take place beyond public scrutiny, since JTF-6 has no requirement for regular, public reporting of its activities. According to one JTF-6 official, police bodies receiving such support consider it “sensitive information” they generally do not wish to reveal (Field Notes, conversation with JTF-6 official, September 15, 1998).

Although the military suspended the use of ground troops along the border, their reintroduction is a matter of bureaucratic discretion, not public discussion or debate. Shifting political winds could induce the Pentagon to become less reluctant to deploy ground troops along the border. If so, no notification of the public or others outside the Pentagon would be required. State National Guard troops are exempt from the policy’s restrictions. They fall under the authority of state governors, not that of the Pentagon, though it funds much of the antidrug work in the states. Consequently, armed National Guard ground troops can be used along the border with a governor’s approval, a role they have avidly played in the past (Dunn, 1996: Chapter 4).

In the face of the Pentagon’s limitations on ground troop deployments, strong sentiment developed in the U.S. House of Representatives to shore up “national security” by vastly broadening the use of military troops along the border for drug, terrorist, and immigration enforcement purposes. In 1997, 1998, and 1999, the House overwhelmingly passed a bill promoted by Representative Traficant (D-Ohio) to achieve such a broadening (Cruz and Perez, 1999). The Departments of Defense and Justice opposed the measure, and the Senate has never considered the matter for debate, let alone a vote. Thus, it has little chance to become law in the near future. However, in the years 1999 and 2000 in southeast Arizona, border-area ranchers, acting as vigilantes to apprehend undocumented immigrants on their land, called for the Arizona National Guard to patrol the border against immigrants who were diverted there by Border Patrol blockades in other key border areas. The governor has so far steadfastly refused to do so (Associated Press, 1999; Palafox, 2000). Pressure for border militarization continues to build due to Traficant’s maneuvers and the ranchers’ drama, which some opponents have sought to defuse by proposing a rapid buildup of Border Patrol agents. Neither Congress nor the executive branch have debated, much less taken serious policy action, that addresses the underlying economic, political, social, and cultural factors that strongly contribute to the cross-border flows of immigrants and drugs.
Meanwhile, a spate of articles in two leading U.S. Army journals indicates that some in the military predict an expansion of its involvement in domestic law enforcement, particularly at the border and through JTF-6. One military author foresees “support to domestic civil authorities during domestic emergencies.... These activities also include border-control operations directed against illegal immigration” (Stringer, 2000: 98). This would entail close collaboration with the Border Patrol. According to Turbiville (1999: 37–38), “security along the U.S.-Mexico border will become a prominent and growing focus of United States strategic planning...[and] military actions.” He and two military colleagues list “illegal immigration and threats to the integrity of national borders” among their top five future U.S. security problems. Moreover, a military lawyer with the U.S. Special Operations Command believes “the coming years will see a continuation, if not increase, in the employment of the Army within the United States,” specifically to assist civilian law enforcement, with JTF-6 figuring most prominently (Lujan, 1997: 1, 3–5). Although debate within or outside the military over its involvement in domestic policing has not been closed, a dissenting position has been almost completely absent in the U.S. Army’s leading journals. This has been the case despite the May 1997 Redford killing, which illustrated the dangers such an approach holds for human rights.

Conclusion

Military collaboration with the Border Patrol in the U.S.-Mexico border region on drug and immigration enforcement has been extensive and enduring. The military’s geographic focus extends beyond the border and it now works with a plethora of police bodies throughout the U.S. on drug enforcement. Such ongoing military involvement in domestic police matters is unique in post-Reconstruction U.S. history. The more militaristic elements of that collaboration and support, however, have focused primarily on the border. Such support gave rise to the tragic killing in 1997 of a U.S. citizen by a Marine during a border-area ground surveillance mission conducted for the Border Patrol. Since then, military collaboration has lessened somewhat in practice, but has changed little at the level of formal policy. The door remains open to a return to the use of armed ground troops. Moreover, military support for border policing may expand in the future. Despite the significant human rights implications, neither the military, the Border Patrol, nor policymakers appear to have given them much consideration.

What are the human rights implications of military involvement in policing, at the border and beyond? Among the theoretical principles guiding such a discussion is the significance of human rights for nation-state conduct. For Turner (1993: 178, 182), “the point about the concept of human rights is that they are extragovernmental and have traditionally been used to counteract the repressive capacity of states....” He proposes that institutions are often responsible for human rights violations, an outcome attributable in part to the bureaucratization process.
Sjoberg and Vaughan (1993: 145–146) argue that bureaucracy tends to undermine the human rights of the “truly disadvantaged” through a process of “social triage” that includes the sacrifice of their general well-being and dignity, as well as the occasional use of repression. It becomes more “efficient” to write off the rights and well-being of the most subordinated groups, because to really address their needs would entail profound societal reforms and “sacrifices” on the part of elites (Sjoberg, 1996).

Thus, institutions and bureaucratic power structures threaten the rights, dignity, and well-being of people, especially subordinated groups. The military and Border Patrol are bureaucratic entities, and their law enforcement efforts target subordinated groups: working-poor undocumented immigrants, and poor, low-level drug couriers ("mules"). In the borderlands, this generally means people with a Latino/a appearance, especially Mexicans and Mexican Americans. Consequently, increased border enforcement efforts tend to “sacrifice” the human rights of members of those groups (at least more so than those of other groups). The Border Patrol’s troubled human rights record in the region reflects this pattern (e.g., Human Rights Watch, 1995; ILEMP, 1992; Dunn, 1996: 83–91; 1999a: Chapter 6; 1999b).

The military is responsible for the most severe human rights abuse related to border enforcement to date, the killing of a Mexican American teenager in Redford, Texas. In this instance of (probably unintentional) repression, military conduct was replete with gross misunderstandings by soldiers and their unwarranted escalation of the use of force. The inappropriate matching of military troops against nonmilitary threats (more properly, social problems) illustrates the danger bound up in border enforcement, because they are trained to respond with deadly force to perceived threats, regardless of the objective situation. As Lawrence Korb, a former assistant secretary of defense in the Reagan administration, stated shortly after the Redford incident, “the military, to put it bluntly, is trained to vaporize, not Mirandize” (Holt, 1997c). The institutional forces involved had as little regard for respecting human rights as they did with reading one’s rights.

Even the less severe forms of military collaboration in border policing have negative implications for the status of human rights. For instance, much of the military training and intelligence support offered by JTF-6 seems inappropriate for civilian police bodies. This is because military interrogation techniques, raids, and intelligence activities are typically not designed or conducted with a concern for the U.S. legal system’s requirements for safeguarding suspects’ rights, but rather aim to eliminate or neutralize an enemy threat. Even elements of the military recognize this. Part of the fallout from the 1993 Waco tragedy is that the Special Forces Command has since 1996 refused to provide police with training in some of the most extreme military tactics.

Another danger is the spread of militarization related to antidrug enforcement from the Southwest border to interior areas. My “spectrum of border militariza-
tion” could be used to examine interior areas, for the border experience appears to be a vanguard of a larger process of military/police collaboration. Ground troops have been restricted mainly to border areas, but elsewhere other types of military support for police agencies, such as training in military operational and intelligence tactics, could lead police to adopt ever-more military tactics. (Kraska, 1997, has documented this with regard to the flourishing of police paramilitary units.) The blurring of lines between the police and the military has long been associated with human rights problems, especially in developing countries. Moreover, once military collaboration has developed with the Border Patrol and other police bodies, limiting it to features on the less militaristic end of the continuum has proved difficult, apart from the few actions explicitly prohibited by law (i.e., military troops conducting arrests, searches, or seizures). The tendency seems to be gradual escalation, one quite removed from public consciousness, let alone debate.

The Redford tragedy, an illustration of the human rights danger of that evolution, spurred a relatively brief period of public debate and a partial inhibition of the escalation in the militarization of border enforcement. Human rights concerns are by default “sacrificed” in favor of ever-greater drug and immigration enforcement, and perhaps a future “homeland defense” mission for the military that exceeds physical threats. When illegal immigration and drugs are cast principally as security matters, human rights become a secondary concern. Debate could bring to light that the drug issue would be better viewed as a public health problem than a security threat.

Scholars have yet to theorize the human rights implications and significance of the trend toward enhanced military collaboration with police border enforcement. The border is a contemporary proving ground for the militarization of law enforcement. Largely out of public view, subordinate groups have been targeted in this peripheral region on a broader scale than anywhere else in contemporary U.S. history. An insidious form of “mission creep,” this expansion of militarism is consistent with the state’s intensified and punitive wars against crime and drugs. Collaboration between the state’s main corporal bureaucratic power structures does not auger well for the vulnerable human rights of subordinated groups, mainly those of Hispanic appearance in the borderlands. Given the importance of human rights as a building block for a decent, democratic society, it would be a grave error if policymakers were to continue to neglect them; their security may even hang in the balance.

Beyond making human rights a central consideration in all law enforcement measures, several reforms could address this ominous development. Democratic accountability for JTF-6 and other military bodies engaged in domestic policing could be fostered by requiring regular, detailed, public reporting on their activities and the establishment of a mechanism for public, external oversight and investigation. Another positive step would be to prohibit the most coercive and severe
forms of military support for police bodies. An example would be the U.S. Special Forces Command’s refusal to allow its troops to provide training to police in several extremely coercive military tactics; such restrictions could be generalized to all U.S. military units.

Ultimately, the best course would be to abolish JTF-6 and to sever most or all military ties to domestic police agencies. Recent history in Latin America and other developing regions demonstrates that such collaboration invariably imperils human rights and democracy itself. Beyond these reforms, serious policy attention is needed to address the larger underlying economic, social, political, and cultural dimensions on both sides of the border that drive so much of the cross-border flow of immigrants and drugs. Failure to do so will likely fan the mania for border enforcement and endanger human rights.

Appendix 1:
Spectrum of Militarization of the U.S.-Mexico Border

<table>
<thead>
<tr>
<th>Less Militaristic (1) to Most Militaristic (11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Military gives or loans equipment to Border Patrol (BP) and Law Enforcement Agencies (LEA);</td>
</tr>
<tr>
<td>2. Military troops operate and/or maintain loaned equipment;</td>
</tr>
<tr>
<td>3. Military provides “expert advice” to BP and LEAs;</td>
</tr>
<tr>
<td>4. Military construction for BP/LEAs;</td>
</tr>
<tr>
<td>5. Military provides advisors and training for BP/LEAs;</td>
</tr>
<tr>
<td>6. Military transports supplies, equipment, and personnel for BP/LEAs;</td>
</tr>
<tr>
<td>7. Military aerial reconnaissance and surveillance for BP/LEAs;</td>
</tr>
<tr>
<td>8. Military ground troops deployed on a small scale at or near border, mainly recon for BP/LEAs;</td>
</tr>
<tr>
<td>9. “Improved integration” — “total integration” of military and BP/LEA efforts. Blurring of institutional lines between military and BP/LEAs;</td>
</tr>
<tr>
<td>10. Massive deployment of military troops at or near border to perform variety of border enforcement roles;</td>
</tr>
<tr>
<td>11. Military granted authority to arrest, search, seize civilians and property.</td>
</tr>
</tbody>
</table>

Sections 1 through 3: Allowed by the 1982 DOD Defense Authorization Law; added new chapter to U.S. law, *Military Cooperation with Civilian Law Enforcement Officials*. This support is allowed for police bodies with jurisdiction to enforce drug, contraband, and immigration laws.


Sections 10 and 11: Bills filed and debated in Congress; no laws passed.
NOTES

1. The scholars who have devoted attention to immigration enforcement issues have generally not focused on military/Border Patrol collaboration (e.g., Bean et al., 1994; Calavita, 1992; Heyman, 1995; Singer and Massey, 1998; Dunn, 1999a; Andreas, 2000; Nevins, 2001). Meanwhile, the few drug enforcement studies that discuss the role of the military within the U.S. (e.g., Kraska, 1993; Lemus, 1994; Palafax, 1996; Andreas, 1996; Dunn, 1996) have not focused on Border Patrol/military collaboration in great detail, though they certainly have explored some aspects.

2. Border Patrol blockades and other border immigration enforcement efforts have had profound human rights consequences. An estimated 1,600 accidental migrant border-crossing deaths occurred from 1993 to 1997, along with over 500 such migrant crossing deaths from 1994 to 2000 in the California-Mexico border area alone (Eschbach et al., 1999; American Friends Service Committee, personal communication, August 25, 2000). These have been largely the result of migrants attempting to make unauthorized crossings while avoiding the Border Patrol, whose blockades have increasingly forced crossers into more remote and dangerous areas.

3. Field notes from Border Patrol Citizens Academy class, October 18, 1995. I participated in a six-session “Border Patrol Citizens Academy” (BPCA), held by the El Paso Border Patrol in the fall of 1995, which consisted of a series of Border Patrol agent speakers on various topics. The BPCA is a public relations and outreach effort of the local Border Patrol to educate members of the public on its mission and activities, which asked those attending “to see our job from our perspective.” The agent speakers made it clear that most of the people they apprehend are undocumented immigrants who are generally quite nonthreatening and well behaved. Agents have told me similar things for years, before and since in El Paso and elsewhere.

4. These LP/OP mission averages, based on figures for 1990 to 1993, are drawn from the U.S. Army Corps of Engineers (1994: 4–2; as cited in Dunn, 1996: 135), as compared to the figures for 1990 to mid-1997 period reported in Lee (1997) and Holt (1997b).


6. See Coyne (1998: 26–27). Shortly after shooting, Hernandez investigated in his truck and came upon two Border Patrol agents, who had heard a popping sound, but were unaware he had shot near them. Realizing his mistake, Hernandez apologized and offered his explanation. This satisfied the agents, who told him to be more careful; the incident was so lacking in seriousness that they never reported the episode.

7. These include the Border Patrol’s cancellation of such missions in several border sectors and the public trading of accusations between JTF-6 and Border Patrol personnel over which unit’s mistakes were responsible for the death of Hernandez (Smitherman, 1997b; McDonnell, 1997).

8. See Coyne (1998); for excellent press summaries, see Holt (1998) and Paulsen (1998). The report by Marine Corps Major General John T. Coyne is the only available summary of the vast quantity of information gathered during a host of official investigations, totaling some 13,000 pages, from the Marines Corps inquiry to various federal and state criminal investigations and earlier military inquiries. Most of the relevant information on the incident corroborates what was reported in the media immediately after the event and has already been cited.

9. See JTF-6 web site at http://www-jtf6.bliss.army.mil. Most of the increase from 19 to 42 types of support (compared to earlier documents) lies in a number of newly specified training and intelligence support activities.

10. See Turberville et al. (1997: 3–4, on-line version). The other top security problems were insurgencies and separatist movements, heavily armed criminal gangs and paramilitaries, arms trafficking and illegal trade in strategic materials, and a broad category encompassing disasters, environmental damage, and public health threats. Lest we think this is fringe thinking in military circles, it is the lead article of an issue of Military Review (May-June 1997) devoted to “Security Challenges and the Nature of the Future War.” Military Review is the journal of the U.S. Army Command and General Staff College.
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