

**IN RELATION TO PETITION NO. P-478-05 (U.S.A.)
SUBMITTED BY BORDER ACTION NETWORK REGARDING
VICTIMS OF ANTI-IMMIGRANT ACTIVITIES
AND VIGILANTE VIOLENCE IN SOUTHERN ARIZONA**

REQUEST FOR PRECAUTIONARY MEASURES

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I. Introduction

1. The Border Action Network (“Border Action”), the petitioner in the above-referenced case, hereby submits this request for precautionary measures under Article 25 of the Commission’s Rules of Procedure.¹ Precautionary measures are necessary in order to prevent irreparable harm to future victims of anti-immigrant violence in the wake of recent killings by the Minuteman American Defense in southern Arizona.
2. Border Action’s petition of April 28, 2005 and subsequent submissions² allege that the United States has violated human rights in southern Arizona by failing to take action to prevent vigilante violence and anti-immigrant activities. This failure violates the rights of immigrants, Mexican Americans³ and Hispanics overall, to physical integrity and security of the person, judicial protection, and equal protection under the law, all rights affirmed by the American Declaration of the Rights and Duties of Man.⁴ The petition also describes how anti-immigrant activities and vigilantism, combined with government inaction, has created a widespread sense of insecurity amongst undocumented migrants and Mexican-American citizens.⁵
3. This submission will inform the Commission of the serious and urgent nature of recent activities of vigilante groups in southern Arizona, which have now taken a deadly turn following the arrest of members of the Minuteman American Defense for the killing of a Hispanic man and his child in Arivaca, Arizona.

II. Escalation of Violence by Anti-Immigrant Vigilantes

4. Arizona law enforcement officials have reported that members of the Minutemen American Defense (“MAD”) vigilante group murdered [REDACTED] and his

¹ See Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights (“Commission Rules of Procedure”), OAE/Ser.L/V./1.4 rev. 12, revised Jan. 31, 2007.

² See Petition to the Inter-American Commission, submitted by the Border Action Network in relation to Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona, against the United States of America, April 28, 2005 (“Petition”); Response to the Request of the Inter-American Commission on Human Rights for Supplemental Information on the Petition by Border Action Network in Relation to Victims of Anti-Immigrant Activity and Vigilante Violence in Southern Arizona, Aug. 19, 2005 (“Petitioner’s Response”); Observations of The Border Action Network on the Response of the Government of The United States of America to The Petition Regarding Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona, June 16, 2006 (“Petitioner’s June 2006 Observations”); Ltr from S. James Anaya to Santiago Canton, October 25, 2006 (“Petitioner’s October 2006 Observations”); Supplemental Submission of Border Action Network on its Petition Regarding Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona, March 2008 (“Petitioner’s March 2008 Update”); Supplemental Information in Response to March 7, 2008 Admissibility Hearing, April 15, 2008 (“Petitioner’s Response to Hearing”).

³ The human rights violations alleged impact the entire Hispanic community of southern Arizona.

⁴ Petition, *supra* note 1, at paras. 72-94.

⁵ *Id.* at para. 8.

9-year-old daughter ██████████ on May 30, 2009 in their home in Arivaca, a small town in southern Arizona near the U.S./Mexico border.⁶ Mr. ██████████' wife ██████████ suffered three gunshot wounds but managed to shoot one of the intruders and survive the attack. The suspects are Shawna Forde, executive director of MAD, her boyfriend Albert Robert Gaxiola and MAD operations manager Jason Eugene Bush. MAD is a Washington state based anti-immigration organization yet it conducts its operations along the U.S./Mexico border in Arizona. Forde was previously a member of the better known Minuteman Civil Defense Corps before she started up her own organization.

5. Forde, Gaxiola and Bush disguised themselves in police uniforms and forced their way into the home with the intention of killing everyone inside so as not to leave any witnesses.⁷ The Pima County Sheriff's department stated that the motive appeared to be financial gain as Forde intended to steal money to fund her vigilante operations. The authorities also reported that members of the group may have been involved in at least one other home invasion.⁸
6. Since her arrest, the Minuteman movement has attempted to discredit Shawna Forde and distance itself from her, describing her as a loose canon who acted without support from other groups, yet there are clear ties between Forde and other vigilante organizations. In fact, the FBI tracked Forde to the home of Glenn Spencer, president of American Border Patrol, a well known vigilante group based in Sierra Vista, Arizona. She was arrested about a mile from his home as she drove up to an FBI road block.⁹ Forde is also connected to Jim Gilchrist of the Minuteman Project who spoke of Forde on his website stating, "The Minuteman Project is proud to be a supporter of Shawna Forde's Minutemen (women) American Defense (M.A.D.)"¹⁰ Finally, Forde claims to be a member of the Patriot Border Alliance, the vigilante group formed by former Minutemen Civil Defense Corps state directors¹¹
7. In addition to endorsements from vigilante groups Shawna Forde has also garnered support for her cause from individual members of Congress, further legitimizing her operations. In 2007, California Congressman Duncan Hunter spoke to the audience at a conference Forde organized via cell phone at which representatives of former Colorado Congressman Tom Tancredo were also in

⁶ Police reports were released by the Pima County Sheriff's Department to The Green Valley News and Sun on June 24, 2009 [App. 1].

⁷ Ryan Smith, "Anti-Illegal Immigration 'Extremists' Murder Girl and Father, Say Police" CBSNEWS, June 15, 2009 [App. 2].

⁸ Jesse McKinley & Malia Wollan, "New Border Fear: Violence by a Rogue Militia", NEW YORK TIMES, June 27, 2009 [App. 3].

⁹ Scott North, "Minuteman says he warned authorities of robbery plot", EVERETT WASHINGTON HERALD NET, June 23, 2009 [App. 4].

¹⁰ Tim Steller, "Woman held in 2 slayings an outcast, activists say: But Shawna Forde had high-level contacts in Minuteman movement despite extreme views," ARIZONA DAILY STAR, June 28, 2009 [App. 5].

¹¹ Anti-Defamation League, "Border Vigilante Leader and Two Others Charged with Murder of Arizona Man and Nine Year-old Daughter", July 15, 2009 [App. 6].

attendance.¹² That same year, Forde herself ran for City Council in her home town of the Everett, Washington on an anti-immigration platform.¹³ She lost the election but received 35% of the votes.

8. The Minuteman groups portray Shawna Forde as an outlier who splintered off and formed her own fringe group.¹⁴ However, this fragmentation accurately characterizes the entire Minuteman movement since its inception in April 2005.¹⁵ Founding members Jim Gilchrist and Chris Simcox disagreed over the financial management of the organization and in 2007 formed two separate groups, Chris Simcox ran the Minuteman Civil Defense Corps (“MCDC”), while Jim Gilchrist formed the Minuteman Project (“MMP”).¹⁶ Litigation between the two groups has been extensive. Around the same time, questions surrounding the use of donations and financial accountability caused many of the leaders of the MCDC state chapters to break off and start their own groups. These local chapters formed the Patriots’ Border Alliance (“PBA”). Each of the three national groups also have state and local chapters whose numbers continue to grow. There are at least 78 chapters of the MCDC, 18 chapters of the MMP, 4 Patriot Borders Alliance chapters and 14 other groups who are not affiliates of MCDC, MMP or PBA but use the words “minutemen” or “minuteman” in their title (such as Shawna Forde’s group MAD).¹⁷ The MCDC also started a youth branch called Operation Generation in an attempt to change the demographic of the movement.¹⁸
9. Minuteman co-founder Jim Gilchrist has expressed his concern over the direction the anti-illegal immigration movement has taken, stating that some of the people involved have “sinister intentions”. He acknowledged his role by stating: “I have found, after four years in this movement (...) I very well may have been fighting for people with less character and less integrity than the ‘open border fanatics’ I have been fighting against,” he said. “And that is a phenomenal indictment of something I have created.”¹⁹ Gilchrist also warned, “I’d be wary of going down to the border myself these days...I’m worried about what [the Minutemen] would do with a sidearm.”

¹² Wendy Norris, “Tancredo linked to Minuteman group accused of Arizona double-murder”, THE COLORADO INDEPENDENT, June 18, 2009 [App. 7].

¹³ *Id.*

¹⁴ Forde has claimed that MAD has several thousand members. Anti-Defamation League, *supra* note 11.

¹⁵ Jim Gilchrist even discusses the current fragmentation on his website: “The efforts of the many fragmented minuteman groups, acting separately, have been loosely, and weakly, bound together by a commonality of purpose.” See: <http://www.minutemanproject.com/start-a-chapter/introduction.asp>

¹⁶ Both of the Minuteman co-founders have political aspirations. In 2005 Gilchrist unsuccessfully ran for a seat in the United States House of Representatives but received 25.5% of the votes, see:

http://www.sos.ca.gov/elections/Special/cd48/elections_cd48_gen_results.htm while Simcox is currently challenging Senator John McCain for his Senate seat in 2010, see: <http://www.simcoxforsenate.com/>

¹⁷ Southern Poverty Law Center, “Intelligence Report – ‘Nativist Extremist’ Group List”, Spring 2009 [App. 8].

¹⁸ For examples of the anti-immigrant rhetoric used to recruit young people to the youth branch see logos downloaded from Operation Generation website [App. 9].

¹⁹ Amy Taxin, THE ORANGE COUNTY REGISTER, June 25, 2008 [App. 10].

10. The U.S. government is well aware of the dangers posed by increasingly violent anti-immigrant groups but has refused to take any action against them. In April 2009 the Department of Homeland Security (“DHS”) issued a report on rightwing extremism²⁰ that warned of potential growth of recruitment in response to the failing economy and the election of the first African-American president. Rightwing extremism was defined in relation to religious, racial or ethnic hatred; anti-government sentiment or opposition to a single issue such as abortion or immigration.²¹ In the section of the report dedicated to rightwing extremists concerned with illegal immigration, it warns of militias’ and white supremacists’ anti-immigration fervor directed against specific groups and the potential for violence, and mentions the increase in anti-Hispanic crimes in the past 5 years.²² The report was quickly withdrawn by DHS Secretary Janet Napolitano in May 2009. This recent action by the government demonstrates both an outright refusal to bring this issue to the U.S. Congress for debate and response and a conscious suppression of this important and alarming information from the American public.

III. Proliferation of Anti-Immigrant Vigilantes

11. The number of “nativist extremist” groups in the United States rose 20% in 2008 from 144 to 173.²³ The Southern Poverty Law Center defines “nativist extremist” groups as those targeting immigrants as individuals rather than focusing strictly on immigration policy.²⁴
12. The growing number of anti-immigrant extremist groups corresponds with the rise in hate crimes against latinos according to the government’s own statistics as reported by the U.S. Federal Bureau of Investigation.²⁵ The Minuteman movement began in 2004 and was formally organized in 2005. A comparison of rates from 2003 against the most recent 2007 data reveals a 40% increase in hate crimes against latinos.²⁶ The breakdown is as follows:

- 2003: 426 anti-Hispanic crimes against 595 victims
- 2004: 475 anti-Hispanic crimes against 646 victims
- 2005: 522 anti-Hispanic crimes against 722 victims
- 2006: 576 anti-Hispanic crimes against 819 victims
- 2007: 595 anti-Hispanic crimes against 830 victims

²⁰ Department of Homeland Security, Office of Intelligence and Analysis Assessment, “Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment”, April 7, 2009 (Withdrawn in May 2009) [App. 11].

²¹ *Id.* at 2.

²² *Id.* at 5.

²³ David Hotlhouse, “Sinister Intentions: Hard Core of Nativist Movement Growing”, Southern Poverty Law Center, Intelligence Report, Spring 2009 [App. 12].

²⁴ *Id.*

²⁵ United States Department of Justice, Federal Bureau of Investigation, “Hate Crime Statistics”, 2003, 2004, 2005, 2006, & 2007. Available at: <http://www.fbi.gov/ucr/ucr.htm#hate>

²⁶ *Id.*

13. Many of the high profile vigilante groups are based in Southern Arizona such as the MCDC, the Patriot's Border Alliance and the American Border Patrol, because they want to be in close proximity to the border. Both Chris Simcox of the MCDC and Glenn Spencer of the American Border Patrol, left California and moved to Arizona to start up their vigilante organizations. In addition, groups such as MAD, although based in Washington State, conduct citizen border patrols in southern Arizona. It is reported that Shawna Forde was looking to buy a ranch in Arivaca (where the shooting occurred) to build a compound.²⁷
14. The petitioners understand that prosecutors have discretion in deciding whether to proceed with a charge due to a number of factors such as insufficient evidence, difficulty in securing a conviction etc., however the ongoing and persistent indifference toward vigilantism amounts to a pattern of prosecutorial neglect. Despite numerous reports by victims of anti-immigrant violence, and much media attention there has yet to be an effective response to vigilante activities by the United States government and its agents. The withholding of vital information in the DHS report on rightwing extremism mentioned above is further evidence of the United States' lack of concern with anti-immigrant vigilantism, a position which can no longer be described as simply indifference or neglect but an active and conscious suppression of information from the public.

IV. Racist motives

15. As the petitioner's previous submissions have noted many of these vigilante operations are motivated by xenophobia and racism.²⁸ Murder suspects Shawna Forde and Jason Bush of MAD provide a concrete example of this hate-based agenda. According to police in Washington, Jason Bush has connections to white supremacist groups and Aryan nations and a long criminal history including a second-degree murder charge of a Hispanic man in Washington.²⁹
16. During his arrest, the third suspect Robert Gaxiola was questioned about one of the contacts in his cell phone listed as "White". Gaxiola replied that this was Shawna Forde's nickname because "she hates all ethnicity with the exception of Caucasians." A former MAD member reported that he quit the group when Forde asked him to take an oath not to eat Mexican food.³⁰ Forde had received attention earlier in the year when she alleged that she was raped and beaten by a Mexican gang, which many, including those in the anti-immigration movement, believed to be a hoax.³¹

²⁷ *McKinley & Wollan, supra* note 8.

²⁸ *See* Petition, *supra* note 1, at paras. 18, 22, 24 & 26. *See also* Petitioner's March 2008 Update, *supra* note 1.

²⁹ Anti-Defamation League, *supra* note 11.

³⁰ *McKinley & Wollan, supra* note 8.

³¹ *Id.*

V. State responsibility

17. The United States government and the state of Arizona have failed to take any action to combat vigilante behavior and their complicity has resulted in intensifying violence as border vigilantes continue to act with impunity. The United States' condonation of vigilante behavior has fostered anti-immigrant hostility giving rise to a proliferation of border vigilante groups which have terrorized communities in Southern Arizona. The state has yet to prevent, prosecute, condemn or even discourage anti-immigrant violence and crimes. The lack of accountability for vigilante groups bolsters anti-immigrant sentiment and results in violence, threatening the lives of Hispanic residents in the United States.

VI. Request

18. The petitioners respectfully request that the Commission issue the following precautionary measures by calling upon the United States to:

- a) Classify Minutemen American Defense a domestic terrorist group;
- b) Apply federal hate crimes legislation in the case against Shawna Forde, Jason Bush and Albert Gaxiola;
- c) Pass law or policy denouncing vigilante activities particularly with respect to anti-immigration groups highlighting the illegal nature of their activities; and
- d) Provide commitments by law enforcement and the U.S. attorney's office to fully investigate and prosecute vigilante activities