NATIONAL LAWYERS GUILD,
LOS ANGELES CHAPTER

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IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

GONZOLO MENDEZ, et al,

Plaintiff,

vs.

WESTMINSTER SCHOOL DISTRICT OF ORANGE COUNTY, et al.,

Defendants.

No. 4292 M

BRIEF OF

NATIONAL LAWYERS GUILD, AND

AMERICAN CIVIL LIBERTIES UNION,

AMICI CURIAE

I

THE FEDERAL DISTRICT COURT HAS JURISDICTION TO HEAR AND DETERMINE THE ABOVE ENTITLED ACTION.

A. The complaint on file herein alleges a cause of action and the evidence introduced at the trial supported said allegations, based upon the violation of plaintiffs' rights for themselves and for all persons similarly situated, under the Fourteenth Amendment to the Constitution. The specific clauses in question are the due process and equal protection provisions. There is proof that there was discrimination against persons of Mexican descent, solely because thereof, through the systematic segregation of pupils of such descent in separate school buildings. Thus the evidence supports the plaintiffs' claim that

there was discrimination against a definite class of persons, those of Mexican descent. That the discrimination violates constitutional rights will be discussed at a later point in this brief.

B. Amendment XIV of the United States Constitution is the basis of the rights violated. The applicable part thereof reads:

> " . . . nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. United States Code, Title 28, Section 41, U.S.C.A., Section 41, Clause 14, is the section conferring specific jurisdiction on the federal district courts to entertain civil suits based on the XIV Amendment; it provides that the District Court has jurisdiction:

> "Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The cases support the proposition that there is jurisdiction herein based upon the violation of rights under the Fourteenth Amendment. The language of Amendment XIV is not limited merely to the protection of persons of the colored races, but applies broadly to "any person" and forbids all arbitrary discrimination; not just discrimination based upon race.

1. In American Sugar Refining Co., v. Louisiana, 179 U.S.

89, 92, (1900), which involved a license tax on a corporation, the rule is stated as follows:

"The Act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination if founded upon a reasonable distinction in principle, is valid. Of course if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers, such exemptions would be pure favoritism and a denial of the equal protection of the laws to the less favored classes."

2. Juarez v. State, 107 Tex. Cr. 279, 277 S.W. 109 (1925), affirms the general rule enunciated in the American Sugar Refining Co. case, supra, and reversed a conviction upon the grounds that Catholics as a class were excluded from grand juries and thus denied the convicted party equal protection of the laws under the XIV Amendment.

3. In Bell's Gap R.R. v. Pennsylvania, 134 U.S. 232, the rule is states as follows:

"Clear and hostile demonstrations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our government, might be obnoxious to the constitutional prohibition.

4. Missouri v. Lewis, 101 U.S. 22, 31, contains the following language:

". . . that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

This language is cited with approval in Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 559 (1901).

5. Rawlins v. Georgia, 201 U. S. 638, 640, (1905), involved an objection to the grand jury by a party convicted for murder on the ground that lawyers, preachers, doctors, engineers and firemen of railroad trains, and dentists were expressly excluded from the jury, and thus there was a violation of the XIV Amendment. Justice Holmes, in holding that there was no violation of the Amendment, states the rule as follows:

> "The nature of the classes excluded was not such as was likely to affect the conduct of the members as jurymen, or to make them act otherwise than those who were drawn would act. The exclusion was not the result of race or class prejudice. It does not even appear that any of the defendants belonged to any of the excluded classes."

6. The decision of the Supreme Court in Truax v. Raich, 239 U.S. 33 (1915), by Justice Hughes, held that a State law which prohibited the hiring of more than 20% non-citizens by employers of more than five persons was unconstitutional as being in violation of the equal protection clause of the XIV Amendment. The pertinent part of the decision is stated at page 39, as follows:

> " . . . being lawfully an inhabitant of Arizona, the complainant is entitled under the Fourteenth Amendment to the equal protection of its laws. The description- 'any person within its jurisdiction' - - as it has frequently been held, includes aliens. 'These provisions', said the court in Yick Wo v. Hopkins, 118 U.S. 356, 369 (referring to the due process and equal protection clauses of the Amendment), 'are universal

in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws.'"

And at page 41 as follows:

"It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood.

8. In the important case of Hague v. C.I.O. 307 U.S. 496,(1939) the Court through Justice Stone discussed the matter of jurisdiction in some detail, especially as follows at page 526:

"The argument that the phrase in the statute 'secured by the Constitution' refers to rights "created" rather than "Protected" by it, is not persuasive."

And at page 525:

"Since all of the suits thus authorized are suits arising under a statute of the United States to redress deprivation of rights, privileges and immunities secured by the Constitution, all are literally suits 'arising under the Constitution or laws of the United States'. But it does not follow that in every such suit the plaintiff is required by § 24 (1) of the Judicial Code to allege and prove that the constitutional immunity which he seeks to eradicate has a value in excess of $3000. There are many rights and immunities

secured by the Constitution, of which freedom of speech and assembly are conspicuous examples, which are not capable of money valuation, and in many instances, like the present, no suit in equity could be maintained for their protection if proof of the jurisdictional amount were prerequisite."

And at page 550:

"By treating § 24 (14) as conferring federal jurisdiction of suits brought under the Act of 1871 in which the right asserted is inherently incapable of pecuniary valuation, we harmonize the two parallel provisions of the Judicial Code, construe neither as superfluous, and give each a scope in conformity with its history and manifest purpose."

And at page 551:

"The conclusion seems inescapable that the right conferred by the Act of 1871 to maintain a suit in equity in the federal courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that wherever the righter immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights; there is jurisdiction in the district court under § 24 (14) of the Judicial Code to entertain it without proof that the amount in controversy exceeds $3000."

8. Mamoux v. United States, 264 F. 816 (CCA 6, 1920) recognized that the XIV Amendment prohibits discrimination against any class of persons in the following language, at page 818:

". . . The mere fact, if it were such, that there were no wage-earners on the jury, would not be enough to entitle plaintiff in error to complain. It must appear

that wage-earners were purposely excluded because they were of that class."

9. An interesting problem was raised in Richards v. State, 144 Fla. 177,197 So. 772, (1940), when the person who was convicted of accepting a bribe claimed that he belonged to a political faction known as "Anti-ring faction", and that his faction was excluded from the jury and thereby he was deprived of the equal protection of the laws. The court in refusing to reverse the conviction however did affirm the general rule that XIV Amendment prevented discrimination against classes of persons, in the following language at page 774:

> "From these and similar cases, we glean the general rule to be that any intentional and persistent discrimination against a race or class of persons in the selection of a jury list to try a criminal case is a violation of the constitutional rights of the accused, and that such violation is not excused by the fact that the persons actually selected possess all the qualifications for jury duty prescribed by law. The discrimination on the basis of race, religion, or class must, however be constant. It can have no relation to classes or faction more or less fanciful, mysterious, or nebulous, bound by no restrictions or common loyalties and who continually shift from one faction to the other unless conclusively shown that the verdict was influenced by that fact."

10. Korematsu v. United States 323 U.S. 214 (1944) involved a petitioner of Japanese descent who was convicted for remaining in San Leandro, California contrary to military orders. The court spoke of racial discrimination in its opinion in giving expression to the rule that racial

antagonism can never justify restriction of civil rights, although persons of Japanese descent were the subject of the exclusion order based upon their Japanese ancestry, and not because they were members of any certain race. Thus Chinese members of the same race as Japanese were not excluded. This case is authority for the proposition that the Constitution enjoins discrimination because of ancestry or nationality. Thus in the cited case, persons of Japanese descent; while in the case at issue, persons of Mexican descent.

11. The famous flag salute case, Barnette v. West Virginia State Board of Education, 319 U.S. 624, was a class suit by members of Jehovah's Witnesses for themselves and for other Jehovah Witnesses not mentioned as plaintiffs, under the due process clause of the Fourteenth Amendment, and the court granted plaintiffs an injunction; and also to those of the same class as the plaintiffs.

12. See the discussion as to the application of the equal protection clause in "Our Civil Liberties" by Osmond K. Fraenkel, New York Counsel for the American Civil Liberties Union, at page 199 he states:

> "The equal protection clause has nevertheless proved useful in various respects, for it protects both the citizen and the alien, the individual and the corporation, and all minorities, whether racial or religious, as well as Negro, for whom it was originally designed."

And again at page 207 he states:

> "The equal protection clause is not limited to the protection of the Negro, nor to the protection of personal rights. Any law is void that discriminates without reasonable basis for the classification made by the law."

E. The action of the defendants is state action under the Fourteenth

Amendment.

1. In the recent case of Screws v. United States, 89 L. Ed. (Adv. Op.) 1029 (1945), the court defined and interpreted the words "under color of any law" as follows, at page1041:

> "Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the state in fact authorized, the words "under color of any law" were hardly apt words to express the idea."

And at page 1043 in the concurring opinion by Justice Rutledge:

> ". . . The Amendment and the legislation were not aimed at rightful state action. Abuse of state power was the target. Limits were put to state authority, and states were forbidden to pass them,by whatever agency."

2. In Barnette v. West Virginia State Board of Education, 319 U.S. 624, at page [illegible], the Court stated the general rule:

> "The Fourteenth Amendment, as now applied to the States, protects the citizens against the State itself and all of its creatures, Boards of Education not excepted."

3. The leading case which permitted suits against officials of states is Ex Parte Young, 209 U.S. 123, 150,155. A long line of cases have consistently followed this opinion. It was held that a suit to restrain a state officer from executing an unconstitutional statute is not a suit against the state itself.

In Regan v. Farmers Loan & Trust Co., 154 U.S., 362,390, the following is found:

" . . . a valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual."

Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 558, by Justice Harlan speaking, stated:

"No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the powers to pass such enactment may have been derived."

4. A few of the cases in which the court has held that the acts of certain persons were acts of representatives of the state, follow:

Missouri ex Rel Gaines v. Canada, 305 U.S. 377, 343 (1938):

"The action of the curators who are representatives of the State in the management of the State University (R.S.Mo., Sec. 9625) must be regarded as State action."

Clarke v. Deckebach, 274 U.S. 392 (1926). City officials involved city ordinance under the Fourteenth Amendment.

Hague v. C.I.O., 307, U.S. 496, (1939) Suit enjoining municipal officers.

Mamoms v. United States, 264 F. 816, (C.C.A. - 6, 1930). County officials.

Barnette v. West Virginia State Board of Education, 319 U.S. 624. Suit against the Board of Education.

Cumming v. Board of Education, 175 U.S. 78 (1927). Suit against a local Board of Education.

F. The Federal Courts have not hesitated to intervene wherever necessary to protect rights arising under the Fourteenth Amendment.

1. Barnette v. West Virginia State Board of Education, 319 the Court speaking through Justice Jackson stated at page 637:

"Free public education if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction."

And at page 637:

"The Fourteenth Amendment, as now applied to the States, protects the citizens against the state itself and all of its creatures--Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

And at page "Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less urgent in calling it to account. . . There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution."

And at page 638:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to votes,

they depend on the outcome of no elections."

2. Missouri Ex Rel Gaines v. Canada, 305 U.S. 337. The argument was made that the Federal Court should not interfere with educational matters as it was a State matter, but the Supreme Court did not hesitate to direct mandamus to enable a colored student to enter a law school of the State. In Hague v. C.I.O., 307 U.S. 496, the dissent by Justice McReynolds was based upon the theory that the District Court should refuse to interfere by injunction with the function of the municipality to control its parks and streets, and that plaintiffs had ample opportunity to assert their claims through the State courts. The majority opinion thus is authority that District Courts have power to interfere by injunction in local matters.

Clarke v. Deckebach, 274 U.S. 392, was a petition of mandamus against city officials to secure a license to conduct a poolroom, and although the petition was denied the Court based it on the ground that no arbitrary discrimination was proved. From the opinion it is evident that the Court would not have hesitated to order the writ if a proper case had been proved.

C. If the Federal Court has jurisdiction at all, it may proceed to a complete adjudication, although this may involve matters of state or general law.

Cyclopedia of Federal Procedure, 2d Ed., Vol. 1, Sec 65, p. 116

Greene v. Louis & Interurban R.R.Co., U.S. 499

At page 508 the Court stated:

"The contention of plaintiffs, set forth in their respective bills of complaint, that the action of the Board of Valuation and Assessment in making the assessments under consideration and the threatened action of

defendant in respect of carrying those assessments into effect constituted action by the state, and if carried out would violate the equal protection provision of the Fourteenth Amendment, presents without question, a real and substantial controversy under the Constitution of the United States, which (there being involved a sum and value in excess of the jurisdictional amount) conferred jurisdiction upon the federal court, irrespective of the citizenship of the parties. This being so, the jurisdiction of that court extended, and ours on appeal extends, to the determination of all questions involved in the case, including questions of state law, irrespective of the disposition that may be made of the federal question, or whether it be found necessary to decide it at all. Siler v. Louisville & Nashville R.R.Co., 213 U.S. 175, 191; Ohio Tax Cases 232 U.S. 576, 586."

II

THERE IS A CLEAR VIOLATION OF THE RIGHTS OF PLAINTIFF AND THE CLASS ON BEHALF OF WHOM THEY SUED UNDER THE FOURTEENTH AMENDMENT, UNDER BOTH THE DUE PROCESS AND EQUAL PROTECTION CLAUSES.

A. The evidence is without contradiction that children of Mexican descent have been segregated in separate school houses. Such segregation was demonstrated to be based upon the ancestry of the pupils, that of being descendants of Mexicans. The defense contention that the segregation was based upon other reasons was not supported at the trial. The evidence of the experts put on the stand by plaintiffs is uncontradicted in many particulars; their testimony amply supports the conclusion that it is bad education and social

policy to segregate children upon the basis of Mexican ancestry from other children in separate school houses.

B. The segregation as practiced by the defendants is arbitrary, discriminatory and unjust, and clearly in violation of the Fourteenth Amendment.

1. In Korematsu v. United States, 323 U.S. 214, (1944) the Court stated the broad principle, at page 216, that:

> "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions, racial antagonism never can."

Although the Court used the words "racial group" they were actually speaking of persons of Japanese descent since the army exclusion order was directed only at such persons, and therefore the case involved only such persons. The strong dissent of Justice Murphy should be noted as on the point he was discussing, namely, racial discrimination, he was in general agreement with the majority opinion. Although he used the words "racial discrimination" and "races" he was actually speaking of the treatment of persons of Japanese descent as the case involved exclusion by military order of such persons. Thus his words are applicable in the case at issue since persons of a certain national descent, Mexicans, are involved herein. At page 242 he states:

> "I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our

democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution."

Discrimination of any kind against any person or class of persons can only be supported under the general police power, and then only if the exercise of the power is reasonable and extends only to such laws, enactments, customs, etc., that are enacted in good faith for the promotion of the public good. Arbitrary or irrational discrimination is plainly prohibited under the cases.

Rawlins v. Georgia 201 U. 638, in denying relief, stated the rule at page 640 that:

"The nature of the classes excluded was not such as was likely to affect the conduct of the members as juryman, or to make them act other wise than those who were drawn would act. The exclusion was not the result of race or class prejudice. It does not even appear that any of the defendants belonged to any of the excluded classes."

Clarke v. Deckebach, 274 U.S. 392, held that alien race and allegiance could be a legitimate object of legislation as to be made the basis of and permitted classification if it were not irrational.

Truax v. Raich, 239 U.S. 33, held that it was not a reasonable classification to prohibit the employment of more than 20% non-citizens. The Court stated at page 41 that:

". . . But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race of nationality, the ordinary means of earning a livelihood."

And at page 43:

"The discrimination is against aliens as such in competition with citizens in the described range of enterprises, and in our opinion it clearly falls under the condemnation of the fundamental law."

Reagan v. Farmers Loan & Trust Co., 154 U.S. 362, 390, contains this statement:

" . . . A valid law may be wrongfully administered by officers of this state, and so as to make such administration an illegal precendent and exaction upon the individual."

Simpson v. Geary, 204 F. 507, although denyingrelief recognized the rule of law, at page 511, as follows:

" . . . it is only when a state law regulating such employment discriminated arbitrarily against the equal rights of some class of citizens of the United States, or some class of persons within its jurisdiction, as, for example, on account of race or color, that the civil rights of such persons are invaded, and the protection of the federal Constitution can be invoked to protect the individual in his employment or calling."

Hague v. C.I.O., 307 U.S. 496, enjoined city officials on the basis that the ordinances in question were arbitrary and were not based on the comfort of convenience of the people in the use of the streets.

Barnette v. West Virginia State Board of Education, 310, U.S. 586. The opinion in this case, part of which was

quoted supra, gives strong support to the protection of the fundamental rights. Although Hustice Murphy in his concurring opinion, at page 645, was speaking of the freedom to worship, his words are appropos here. A portion of his statement follows:

"Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold the spiritual freedom to its fartherest reaches."

C. This is a proper case for a class suit. In Barnette v. West Virginia State Board of Education, 319 U.S. 624, members of Mehovah's Witnesses sued for themselves and for other members of said sect, and were granted injunctive relief both for themselves and for their class.

Cumming v. Board of Education, 175 U.S. 78. Although the Court denied relief on the ground discrimination was not proved, the action was a class suit by colored persons to enjoin the School Board from using tax funds to operate a separate school for white highschool females, thus the court in not putting its opinion on that ground upheld the suit as a class suit.

III

THE CALIFORNIA LAW DOES NOT PERMIT SEGREGATION UPON THE BASIS OF DESCENT FROM MEXICAN ANCESTRY OR SPEAKING THE SPANISH LANGUAGE.

The California School Code, Section 8003, governs what types of separate schools may be established, and among those listed there is not mentioned separate schools for persons who speak Spanish as distinguished from those who speak English, or separate schools for those of Mexican descent. The Section is quoted as follows:

"§ 8003. Schools for Indian children, and children of Chinese, Japanese or Mongolian parentage: Establishment. The governing board of any school district may establish separate schools for Indian children, except

ing children of Indians who are wards of the United States Government and children of all other Indians who are descents of the original American Indians of the United States, and for children of Chinese, Japanese, orMongolian parentage." Under the rules of interpretation which are well recognized, the omission of the mention of separate schools for persons of Mexican ancestry, or for children who speak the Spanish language, acts as a prohibition in the establishment of such schools, as only those types of schools listed can be established as separate schools.

Expressio Unius Est Exclusio Alterius. See 23 Cal. Jur., Sec. 118, p. 740, and cases cited.

IV

UNDER THE CASE AS PRESENTED COMPLETE RELIEF CAN BE GRANTED THE PLAINTIFFS AND THE CLASS ON BEHALF OF WHOM THEY SUE.

A. Injunction was granted in the following cases:

Barnette v. West Virginia State Board of Education, 319 U.S. 624. Flag salute case. (Class suit)

Truax v. Raich, 239 U.S. 33. Restraint against state officers.

Greene v. Louis & Interurban R.R. Co., 244 U.S. 499. Enjoining collection of taxes.

Hague v. C.I.O., 307 U.S. 496. Enjoining municipal officers.

Ex Parte Young, 209 U. S. 123.

Connolly v. Union Sewer Pipe Co., 184 U.S. 540.

B. In the following cases among numerous others, the court recognized the right to injunctive relief, although belief was not granted:

Cumming v. Board of Education, 175 U.S. 78

Plessy v. Ferguson, 163, U.S. 537.

Simpson v. Geary, 204 F. 507

Gobitis v. Minersville School District, 310 U.S. 586. flag

salute involving School District.

C. Mandamus was granted in the following case:

Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, against curators of State University.

The right to mandamus was recognized in the following case, among others:

Clarke v. Deckebach, 274 U.S. 392.

Respectfully submitted,

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