

U.S. JUDGE BALKS A SONGMY CHARGE

Acts on Sergeant's Plea on
Legality of Asian War

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Special to The New York Times

ATLANTA, June 25—A Federal district judge ordered today a temporary halt to the Army's prosecution of a soldier accused of murdering Vietnamese civilians at Songmy.

The judge acted on a petition, filed in behalf of Sgt. Esequiel Torres, that questioned the legality of American military involvement in Indochina and challenged the constitutionality of the Uniform Code of Military Justice.

Earlier today, Sergeant Torres, of Brownsville, Tex., and Pvt. Gerald A. Smith, of Chicago, were formally charged by the Army with premeditated murder in connection with the alleged massacre of civilians at the Mylai 4 hamlet of the Songmy village complex in South Vietnam on March 16, 1968.

Private Smith, 22 years old, is also charged with indecent assault on a Vietnamese woman. He faces a preliminary hearing before a military panel at Fort McPherson here in Atlanta on July 2.

Curb to Be Assessed

On the same day, a Federal district court will decide whether to make permanent Judge Newell Edenfield's temporary restraining order against the Army, issued today. Should that occur, Sergeant Torres would be immune from further prosecution.

Sergeant Torres is accused of murdering at least three civilians with a machine gun at Songmy. He is also accused of hanging a Vietnamese man earlier.

At a news conference today, the young infantryman said he was not guilty of the crimes.

"I didn't commit no crime," he said, seated behind an oriental desk in the office of his attorney, former United States Representative Charles Longstreet Weltner.

Mr. Weltner told reporters that his client "had never taken human life except at the direction of his superiors." But he emphasized that the basis of his petition was the legality of the war in Vietnam and his client's constitutional rights.

Procedures Attacked

The petition on which Judge Edenfield issued his restraining order contended that, because there has been no state of declared war, Sergeant Torres, under Fifth Amendment rights, could not be held to answer for a capital crime.

The petition also maintained that the procedure of a court-martial, in which the prosecution selects the panel by which the defendant is judged and in which depositions in place of witnesses are acceptable, violate the due process provisions of the Fifth Amendment.

The petition argues that Sergeant Torres has been denied the right of compulsory process for obtaining witnesses in his favor because the Central Intelligence Agency has refused to identify persons involved in "Operation Phoenix."

Mr. Weltner described Operation Phoenix as an intelligence operation involved in the assassination of persons unfriendly to the South Vietnamese Government in Quangnia Province, of which Sangmy is a part.

Enlisted in 1967

Special to The New York Times

WASHINGTON, June 25 — Sergeant Torres, who enlisted in the Army in San Antonio on June 26, 1967, after two years in the Army Reserve, re-enlisted for six years in April, 1969. He is 22 years old.

An official Army statement of service shows that his formal education ended after seven years of grammar school.

In December, 1967, he arrived in South Vietnam with the 11th Infantry Brigade, a unit of the Americal Division, and served 12 months in the combat zone.

His service awards and decorations include a Parachute Badge and a Purple Heart.