

ANNUNCIATION HOUSE PRESS STATEMENT REGARDING THE RULING IN THE CASE OF SHOOTING DEATH OF JUAN PATRICIO PERAZA

El Paso, TX – July 29, 2008 – U.S. Magistrate Judge Richard P. Mesa delivered a verdict late last Friday in the case of Cesar Peraza Barraza and Ramona Irene Quijada Soto versus the United States of America, regarding the 2003 shooting death of Juan Patricio Peraza, at the time a 19-year-old national of Mexico, by Border Patrol Agent Vernon Billings.

The ruling concluded that Billings' use of deadly force was justified, and that Peraza's tragic death, therefore, did not result from negligence. Annunciation House, however, views Magistrate Judge Mesa's decision as deeply troubling and bearing significant consequences for the El Paso and greater border community.

Indeed, in places like El Paso, where the harsh realities associated with grinding poverty and immigration are a lived experience for most, and where the ubiquitous presence of the Border Patrol figures prominently in daily life, it is of the utmost importance that matters pertaining to both are treated with meticulous care.

It is nevertheless clear that, in Juan Patricio Peraza's case, this did not occur.

The trial evidence presented to the court was shaped to a significant degree by the numerous actions and violations of fundamental Border Patrol policy and investigative procedures that transpired before and after the shooting—such as staking out a homeless shelter, failing to ascertain basic information before applying deadly force, the removal of witnesses from the scene before they could be questioned by the El Paso Police Department (EPPD), and the failure to gather information at the crime scene.

This evidence significantly informed Judge Mesa's decision and, ultimately, rendered the outcome of the case. We therefore find these procedures to be crucial and highly problematic, and believe that such actions and the resulting evidence evoke fundamental questions of thoroughness, reliability, and bias.

Similarly, Judge Mesa privileged the perspective and testimonies of the implicated agents over those of the two lay witnesses in determining a credible source. The Border Patrol agents' testimonies are increasingly questionable given that they were immediately spirited away after the incident to the Border Patrol Headquarters (also known as Camp Montana) without have been interviewed by the police. Thus, the six Border Patrol agents, including Billings, were given the adequate time and space to collaborate their stories.

That said, it is worth highlighting the fact that the various investigative entities—such as Crimes Against Persons unit and the Sector Evidence Team—were effectively prevented from conducting their investigations in customary fashion due to the efforts of the Border Patrol. As evidenced in the court proceedings, police homicide investigator Detective Leyba, now retired after 22 years of service, reiterated this point by stating that it was his understanding that detectives were “there to take statements but the BP was running the show” (pg. 15).

THE SCENE OF THE SHOOTING

Immediately after the shooting, Agent Billings and the other five Border Patrol Agents at the scene were ordered by Border Patrol supervisors to leave the scene of the shooting and go to Border Patrol Headquarters on Montana Street. Once at Border Patrol Headquarters, the six Border Patrol Agents had the opportunity to talk about the shooting and Judge Mesa notes that “Border Patrol Agent Tope discussed the incident with other agents before he gave his statement to the police.”

Judge Mesa also notes EPPD Lt. McBain’s description of “arriving at the scene as chaotic. . . were numerous agents and police officers [were] inside the crime scene area.” And from the very beginning, Border Patrol supervisors were actively involved in controlling the scene, including, Judge Mesa notes, a point at which Chief of Border Patrol Barker “voiced concerns about having the agents [the six agents at the scene at the time of the shooting] interviewed by EPPD and suggested that the FBI be present at the interviews.” EPPD officers testified during the trial of the difficulty in trying to conduct their investigation because of the intransigence of Border Patrol and Judge Mesa’s ruling notes that “Discussion about the procedure for conducting the interviews went on for about an hour and a half.” It was Border Patrol who was determining the conditions, locations, participants and approach that would be taken by EPPD in the crucial initial phase of the investigation.

THE INVESTIGATION

EPPD Crimes Against Persons (CAP) Officers testified at the trial that in the case of a shooting, standard procedure is to separate witnesses at the scene, transport them to CAP offices at EPPD Headquarters, and conduct interviews and take witness statements there because that is where CAP is set up to do its work. Also standard procedure is the use of specialized forms such as the witness form and the confession form in the taking of those statements. Basic standard EPPD investigative procedures were countermanded by Border Patrol as exemplified by the use of the witness form to take Agent Billing’s statement, and in which instance Judge Mesa’s ruling noted, “This was contrary to CAP’s customary procedure of taking the shooter’s statement on a confession form.”

Border Patrol conducted its own internal investigation through its El Paso Sector Evidence Team (SET), and whose purpose is to gather facts and compile administrative reports for ‘critical incidents’ for use by Border Patrol upper management. Judge Mesa’s ruling notes that “The team’s operational responsibilities include identifying, documenting and securing evidence, safeguarding the scene by sealing it off, limiting access via a manned single entry and exit point, keeping a record of those who are granted access, and identifying and separating witnesses.” In his ruling, Judge Mesa goes on to note the failure of the SET to fulfill numerous of its responsibilities and in its investigative credibility stating in his ruling that “the shortcomings of the investigation are not inconsequential and do not create confidence in Border Patrol management’s policy decisions.”

THE SHOOTING

Border Patrol Agents undergo an almost year long process of academy training, field training and “rookie status” supervision before being considered as having fulfilled the requirements to be a Border Patrol Agent. Post training, Border Patrol Agents continue to receive in-service training specifically designed to response to hi-tension situations as the one involving Juan Patricio.

On the day of the shooting, key to the judgment of whether to use lethal force were such factors as the assessment of the number of agents already on the scene and their position relative to Juan Patricio; the determination of a 15 to 20 foot “reactionary gap” relative to Juan Patricio; the identification of the lead agent in control of the scene; and an assessment of the de-escalation tactics being used to get Juan Patricio to surrender. On the witness stand, Agent Billings testified that he was unaware of the number of agents on the scene; that he was unaware that a senior Border Patrol Agent (Ramirez) was present and had taken the lead in trying to de-escalate the situation; that he was unaware of any de-escalating tactics that had been or were being used. Crucial to Agent Billings’ testimony (because of the reactionary gap agents are trained to maintain) was the physical distance between himself and Juan Patricio; and in this regard, he testified to two different distances, first that Juan Patricio was 12 feet away and then that he was between 20 and 23 feet away.

THE LAY WITNESSES

Two lay (non law enforcement) witnesses testified at the trial. Their testimony contradicted the testimony of Agent Billings and the five other Border Patrol Agents at the scene in regards their assertion that Juan Patricio charged at Agent Billings, posing what Agent Billings perceived as a life threat to himself. Key to this question is the manner and direction of Juan Patricio’s movements immediately before being shot. Judge Mesa found the Border Patrol Agents at the scene reliable and therefore credible and he also found the two lay witnesses unreliable and therefore not credible.

During cross examination during the trial, of all the witnesses presented by the Plaintiffs, the one who received the most attention by the defendant’s attorneys was lay witness, Mrs. Berta Barrientos. Try as they may to challenge her account of what happened that morning, the defendant’s attorneys and were unsuccessful. In the end, Judge Mesa found her unreliable because of her uncertainty in regards the baseball cap Juan Patricio had that morning and the trajectory of the bullets in Juan Patricio’s body in comparison to Juan Patricio’s movement right before he was shot. Judge Mesa lamented the absence of expert testimony at the trial but then proceeded to draw such conclusions from the autopsy report to judge Mrs. Barrientos’ testimony as unreliable.

STATE OF MIND

Judge Mesa wrote, “This case turns on the state of mind of Border Patrol Agent Billings at the instant prior to the shooting.” Given the facts presented at the trial, it is possible to arrive at a different conclusion than that of Judge Mesa. To have allowed the six Border Patrol Agents to compare their versions of what happened that morning prior to being interviewed by EPPD goes to the heart of credibility and reliability.

In responding to Judge Mesa's decision, no attempt is being made to dismiss that Juan Patricio shares significant responsibility for the outcome that day. But it is difficult to believe that if Border Patrol had followed all of the training and procedures it has in place for tense situation such as this one, that the outcome would not have been very different – an outcome in which Juan Patricio would probably still be alive.

The killing of Juan Patricio Peraza must ultimately be situated within a larger social context—one characterized by a dominant ideology that consistently naturalizes the dehumanization of undocumented people, and by a deep-seated history of border violence. Moreover, murder and other forms of violence against migrants, particularly those who are or appearing to be Mexican and undocumented, have been and continue to be defining features of the U.S.-Mexico border since its establishment. But they don't have to be.

When law enforcement officers such as Border Patrol Agent Billings —the very individuals entrusted to uphold peace and safety—shoot and kill members of the community, a rigorous investigation into the origins of such an incident must be conducted. The procedures of which must therefore be of the highest caliber, and for the goal of achieving justice.

The case of Juan Patricio Peraza is no exception.