

# Federal court arraigns Arizona Border Patrol agent for murder of Mexican teenager

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US Border Patrol agent Lonnie Swartz was arraigned in a federal courtroom in Tucson, Arizona, October 9, nearly three years after he allegedly killed unarmed Mexican teenager Jose Antonio Elena Rodriguez while patrolling near Nogales, Arizona.

The arraignment, which marks the first time a Border Patrol agent has been brought to trial for killing a civilian on the other side of the border, came two weeks after a federal grand jury indicted Swartz for second-degree murder on September 23.

On October 10, 2012, Swartz shot 16-year-old Rodriguez at least 10 times, including 8 shots to his backside, while firing downward at the youth from behind a fence atop a cliff more than 40 feet above where Rodriguez was standing, according to an autopsy conducted by the Sonoran state medical examiner.

Swartz has been on “administrative leave” since the incident, remaining free to travel at will throughout Arizona and Nevada. His identity was covered up by the US Border Patrol for more than year following the incident.

Rodriguez was standing near a group of youths who Border Patrol agents allege were throwing rocks at the patrol at the time of his death. Witnesses have contradicted that justification, however, testifying that Rodriguez was walking alone on the sidewalk at the time of his death, and was not involved in any rock throwing. Rodriguez’s family similarly maintains that the boy was returning from a basketball game and had nothing to do with the rock throwing.

“You don’t understand what I feel, as a mother. It’s very difficult being in the courtroom, seeing my son’s murderer,” the victim’s mother, Araceli Rodriguez, told the *Arizona Daily Star* on the day of Swartz’s arraignment.

US Border Patrol agents have used deadly force in

response to alleged rock throwing on more than 40 separate occasions, leading to at least 10 civilian fatalities, according to the *Daily Star*. The Border Patrol claims that rock throwing is potentially deadly, and that its officers have been attacked with rocks more than 1,700 times since 2010. Border Patrol agents have killed at least 33 persons since 2010, according to statistics compiled by Southern Border Community.

Evidence indicates that accusations of rock throwing along the border are little more than rationalizations for the systematic use of terror and cold-blooded murder by the Border Patrol. The alleged rock throwers were standing some 40-50 feet below the fence and the cliff where the Border Patrol team was located. The fence itself was composed of iron bars spaced only 3.5 inches apart, making it virtually impossible to pass a sizable rock through.

“Because of the arc rocks thrown over the fence would have to follow, it would be all but impossible for a rock thrown from Mexico to hit someone near the fence on the U.S. side,” AZ Central noted in its report.

In light of this, it is impossible to believe that Swartz felt threatened by the rock throwing. The far more plausible explanation is that Swartz shot Rodriguez as a result of being indoctrinated into a police culture that encourages the use of deadly force and trains recruits to view civilian lives, especially those of working class persons and foreigners, as expendable.

Following the standard practice among all US police agencies, the Border Patrol has resisted efforts to uncover the truth about the incident and hold Swartz accountable at every turn. In addition to concealing Swartz’s identity, the Border Patrol repeatedly sought to prevent local media from accessing surveillance camera footage from the area, successfully denying multiple Freedom of Information Act requests.

In November 2013, more than a year after the slaying, a federal court finally ordered the Border Patrol to reveal Swartz's name and unseal other relevant documents that Swartz and his attorney had sought to conceal.

US government attorneys representing the Border Patrol sought to have the case dismissed altogether, citing a federal appeals court ruling from 2010, which held that the family of 15-year-old Sergio Adrian Hernandez Guereca had no standing to press charges in US courts because the youth was not a US citizen, and therefore was not protected by the US Constitution.

Guereca's killer, who shot the teenager in the face as he was playing in a cement culvert, was granted "qualified immunity" by the US Fifth Circuit Court of Appeals in April, and was allowed to return to duty after a period of paid administrative leave.

The judge in the Swartz case ruled against a similar motion for "qualified immunity" in July, clearing the way for the case to proceed.

Border Patrol agents have been responsible for scores of civilian deaths in similar incidents during the past decade. So widespread have been the agency's abuses that the Department of Homeland Security (DHS) was forced this year to conduct an internal investigation of the Border Patrol, which released its final report at the end of June.

Following the line of previous Department of Justice reports on police killings, the 29-page DHS document made limited criticisms of the Border Patrol and revealed some significant facts about abuses by the Border Patrol, but ultimately served to cover over the root causes of such events, concluding with a list of minor regulatory tweaks supposed to limit future killings.

Border Patrol internal investigations are "chronically slow," DHS found, and the department as a whole is dogged by "systematic corruption" arising from its relations with drug smugglers and other criminals.

Arrests of border agents and customs officers for corruption "far exceed, on a per capita basis, such arrests at other law enforcement agencies," the report found.

Border Patrol agents have frequently fired at vehicles without good cause, doing so even when bystanders were present, and have consistently resorted to shooting instead of alternative strategies when faced with rock

throwing. Border Patrol agents have also shown a propensity for not displaying their name badges in encounters, and have refused to make body cameras part of their standard equipment, the report found.

According to figures cited by the DHS report, Border Patrol officers were involved in at least 67 shootings of civilians between 2010 and 2012, leading to at least 19 fatalities. None of the officers involved were significantly disciplined, the report found.

The report's recommendations are typical of other reports of this nature, and include recommendations for increased training of officers, better staffing of patrol teams, "outreach to engage stakeholders, community partners and leaders," etc.

In reality, as the report's authors are themselves undoubtedly aware, no serious measures will be implemented to stem the bloodshed along the border. Murder of civilians has become standard practice among police agencies at every level, federal, state and local, and the legal maneuvering in response to Rodriguez's killing has underscored that immigrant youth in particular are considered by US federal police to have no rights.



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