Mississippi city attorney argues immigrant killed by police had no rights under US Constitution

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An attorney for the city of Southaven, Mississippi argued in court documents filed last month that a man who was shot dead by police in a case of mistaken identity did not have any legal rights under the Fourth or the 14th Amendments to the US Constitution because he was an undocumented immigrant and his family therefore had no legal standing to file suit against the city and its police department.

Ismael Lopez, a 41-year-old auto mechanic, was shot and killed by Southaven police in July 2017 in his mobile home after authorities mistakenly went to the wrong address. According to an autopsy, Lopez died from a single bullet to the back of his head. A grand jury declined in July 2018 to bring any criminal charges against the two officers involved in the killing.

Last June, Lopez's surviving family filed a civil lawsuit against the city of Southaven, it's police chief and the officers involved in his death as part of a $20 million wrongful-death lawsuit.

On September 4, city attorney Katherine S. Kirby filed a motion seeking to dismiss the suit, arguing essentially that Lopez was not protected by the Constitution because he was an "illegal alien" at the time of his death and his family had no right to sue over the violation of his civil rights.

The court filing went on to say that since Lopez had been convicted on a domestic violence charge in the 1990s, and was in the US without proper documentation after two deportations, he did "not have the same rights as legal or resident aliens."

Kirby's motion added, "If he ever had Fourth Amendment of Fourteenth Amendment civil rights, they were lost by his own conduct and misconduct. Ismael Lopez may have been a person on American soil but he was not one of the 'We, the People of the United States' entitled to the civil rights invoked in this lawsuit."

In the court filing, Kirby went so far as to argue that Lopez's widow, Claudia Linares, lacked any standing to sue because she, too, was an undocumented immigrant! Dragging Linares' name through the mud, it referred to her as a "bigamous paramour" and accused her falsely of posing as Lopez's wife. Linares' legal team filed a marriage certificate showing the two had indeed married in Arkansas in 2003.

Astoundingly, Kirby concluded that, "Federal civil rights are not civil rewards for violating the laws of the United States."

Murray Wells, an attorney representing Lopez's family, spoke at a news conference this week, telling media the city's response was "chilling." Another family attorney, Aaron Neglia, previously described the city's legal argument as "the most insane thing I've ever heard."

"In an address to a federal judge in an open pleading in court, the city of Southaven has announced that it is their policy that if you are an undocumented resident of that city, you have no constitutional protections," Wells said.

He added, "Meaning, that storm troopers can come into your house and kill you without regard to any constitutional results or repercussions whatsoever."

"It's in direct conflict with the Constitution of the United States, which clearly says under the 14th Amendment line one (that) all persons on United States territories have constitutional rights," Wells noted. "We're shocked; we do not believe that those arguments are in good faith. We don't believe they're founded on any real law whatsoever."

DeSoto County District Attorney John Champion brought the case before a local grand jury in July 2018 informing them that the officers went to the wrong address and never identified themselves at the door. The

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grand jury was given the option to indict or not on charges of homicide or manslaughter, ultimately choosing not to indict the officers involved.

Champion immediately moved to bury the case saying at the time, “From my perspective, the case is closed now at this point.” Champion stalled the case for a year, arguing the prior December that the investigation report given to him by the Mississippi Bureau of Investigation was incomplete without an autopsy, which was further delayed because of “staffing shortages” at the state crime lab in the state capital, Jackson. Champion complained that the two-page report he received was “very poorly written.”

The police claim Lopez cracked opened the door and pointed a rifle at officers when they arrived at his door. Lopez was in the living room while his wife was in the bedroom telling him police were outside. The family pit-bull ran outside the house and was shot at by officers. They then shot Lopez when he allegedly refused to lower his gun but his lawyers contest that he was armed.

Lopez owned two guns, but after the shooting his wife told neighbors that the rifle was in its usual spot, contradicting the official account. Bullet holes in the porch bannister spotted by neighbors indicated that the police were shooting through a closed door. Lopez reportedly spoke good English and would have understood commands to put down a gun, but his wife reported that she never heard any such commands.

One of the officers involved has since resigned from the Southaven Police Department while the other officer had been assigned to desk duty, but has since returned to full duty. According to Champion, only one of the officers fired his gun a total of four times, with one shot entering the back of Lopez’s head. Champion argued that Lopez may have been turning away from the police when he was shot and killed.

The shooting sparked immediate outrage in the city and nationally. Lopez and his wife were well known and liked in their community for mentoring troubled teens. A native of Veracruz, Mexico, Lopez had lived and worked in the US for many years, operating a small mechanic’s shop across the street from his home.

The legal implications of the Lopez family lawsuit’s dismissal are indeed “chilling.” The Supreme Court in 1982 ruled that immigrants have the right to public education and that all residents of the US are entitled to constitutional protections regardless of citizenship status.

The line of argument is an alarming echo of the infamous *Dred Scott* Supreme Court case in 1857 in which the Supreme Court ruled in part that blacks, slave or free, had no right to citizenship under the Constitution. This decision was decisively overturned with the passage of the 14th Amendment in the aftermath of the Civil War, providing citizenship rights to all those born under the jurisdiction of the United States as well as guaranteeing equal protection and due process to anyone living under its laws.

Southaven’s position is in lock step with the Trump administration’s fascistic war against immigrants, which has eviscerated democratic rights in order to divide the working class and create the scaffolding for a police state. Trump has repeatedly raised the possibility of eliminating birth-right citizenship by overturning the 14th Amendment, and smeared immigrants as “violent criminals” and “invaders.”

It is entirely likely that Kirby’s far-reaching arguments were contrived as a test case to challenge the constitutional rights of immigrants before the Supreme Court. If the argument of the Southaven attorney holds up in a court of law it would mark a fundamental assault on the democratic rights of the working class in the United States, native born or immigrant.

What would stop the government from arguing that migrant deaths in the concentration camps, or at the hands of Border Patrol and the police were not covered by the Constitution? How long would it be before the government argued that even native-born citizens are no longer considered, “We, the People of the United States” because they are deemed “left-wing extremists” for holding views critical of the government and the capitalist system?

For his part, Southaven Mayor Darren Musselwhite told local media that the city “will defend this matter in the court of law, not in the media via press conferences with ridiculously-misleading sound bites,” a flippant dismissal of the Lopez family and legal team’s press conference.

A reporter asked Linares for her thoughts on the extraordinary effort to dismiss the civil suit, prompting her to tell cameras in Spanish, “There are no words.”

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