

1 Lee Gelernt\*  
2 Andre Segura\*  
3 AMERICAN CIVIL LIBERTIES UNION  
4 FOUNDATION  
5 IMMIGRANTS' RIGHTS PROJECT  
6 125 Broad St., 18<sup>th</sup> Floor  
7 New York, NY 10004  
8 T: (212) 549-2660  
9 *lgelernt@aclu.org*  
10 *asegura@aclu.org*

Luis F. Parra (Bar No. 21570)  
PARRA LAW OFFICES  
571 North Grand Avenue  
Nogales, AZ 85621  
T: (520) 281-9369  
F: (520) 281-1396  
*lfparra@azmxlaw.com*

11 Daniel J. Pochoda (Bar No. 021979)  
12 James Duff Lyall (Bar No. 330045)\*\*  
13 ACLU FOUNDATION OF ARIZONA  
14 3707 North 7th Street, Suite 235  
15 Phoenix, AZ 85014  
16 T: (602) 650-1854  
17 F: (602) 650-1376  
18 *dpochoda@acluaz.org*  
19 *jlyall@acluaz.org*

Roberto C. Montiel (Bar No. 003198)  
ROBERTO MONTIEL LAW OFFICES  
571 North Grand Avenue  
Nogales, AZ 85621  
T: (520) 281-2923  
*lawrobertomontiel@hotmail.com*

20 *Attorneys for Plaintiff*

21 *(Additional Counsel on Subsequent Pages)*

22 **IN THE UNITED STATES DISTRICT COURT**  
23 **FOR THE DISTRICT OF ARIZONA**

24 ARACELI RODRIGUEZ, individually  
25 and as the surviving mother and personal  
26 representative of the ESTATE OF J.A.,  
27 Deceased,

28 *Plaintiff,*

v.

LONNIE SWARTZ, Agent of U.S.  
Border Patrol,

*Defendant.*

CASE NO. 4:14-CV-02251-TUC-RCC

**FIRST AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1 *Additional Counsel*

2 Cecillia D. Wang\*  
3 AMERICAN CIVIL LIBERTIES  
4 UNION FOUNDATION  
5 IMMIGRANTS' RIGHTS PROJECT  
6 39 Drumm Street  
7 San Francisco, CA 94111  
8 T: (415) 343-0770  
9 F: (415) 268-7522  
10 *cwang@aclu.org*

Arturo J. Gonzalez\*  
Hector Suarez\*  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
T: (415) 268-7000  
F: (415) 268-7522  
*agonzalez@mofo.com*  
*hsuarez@mofo.com*

8 Mitra Ebadolahi\*  
9 ACLU FOUNDATION OF SAN DIEGO  
10 AND IMPERIAL COUNTIES  
11 P.O. Box 92138  
12 San Diego, CA 92138-7131  
13 T: (619) 232-2121  
14 F: (619) 232-0036  
15 *mebadolahi@aclusandiego.org*

14 \* *Admitted pro hac vice*

15 \*\* *Admitted pursuant to Ariz. Sup. Ct.*  
16 *R. 38(f)*

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1 Plaintiff Araceli Rodriguez, through counsel, hereby complains and alleges the  
2 following:

3 **INTRODUCTION**

4 1. This civil rights case involves the brazen and lawless killing of a sixteen-  
5 year-old boy, J.A., by Lonnie Swartz, agent of the United States Border Patrol. The  
6 fatal shooting of J.A. is not an isolated incident by the Border Patrol. United States  
7 Border Patrol agents have been responsible for multiple unjustified deadly shootings  
8 and physical abuses along the U.S.-Mexico border over the past several years. J.A.'s  
9 killing is one of the latest and most egregious of these incidents.

10 2. On the night of October 10, 2012, J.A., a Mexican national, was  
11 peacefully walking along a street in his hometown of Nogales, Sonora, Mexico. The  
12 street on which he was walking, Calle Internacional, runs parallel to the border fence.  
13 At approximately 11:30 pm, Defendant Swartz, who was standing on the U.S. side of  
14 the fence, opened fire. An autopsy report shows that J.A. was fatally hit with ten  
15 bullets. At the time of the shooting, no Border Patrol agent or officer of the United  
16 States Customs and Border Protection (CBP) was under threat by J.A. or anyone else  
17 standing near him — much less in immediate danger of deadly or serious bodily harm.  
18 J.A.'s death was senseless and unjustified.

19 3. J.A.'s mother, Araceli Rodriguez, brings this lawsuit for monetary  
20 damages for the killing of her youngest son, alleging claims under the Fourth and Fifth  
21 Amendments to the United States Constitution.

22 **JURISDICTION AND VENUE**

23 4. This case is brought pursuant to *Bivens* and the Fourth and Fifth  
24 Amendments to the United States Constitution. *See Bivens v. Six Unknown Named*  
25 *Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Court has  
26 jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction).  
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1 anywhere from 14 to 30 shots were fired. Upon information and belief, no agents or  
2 officers issued any verbal warnings before opening fire.

3 11. Defendant Swartz hit J.A. and he collapsed where he was shot, in front of  
4 a medical office on the corner of Calle Internacional and Calle Ingenieros. He was  
5 found moments later lying in a pool of his own blood.

6 12. J.A. was shot approximately ten times and virtually all of those shots  
7 entered his body from behind.

8 13. Upon information and belief, no one else was shot.

9 14. Just prior to the shooting, J.A. was visible and not hiding; an observer  
10 could see that he did not pose a threat. He was doing nothing but peacefully walking  
11 down the street by himself when he was gunned down. He was not committing a crime,  
12 nor was he throwing rocks, using a weapon, or in any way threatening U.S. Border  
13 Patrol agents or anyone else. Furthermore, no one near J.A. at the time of the shooting  
14 was throwing rocks or threatening U.S. Border Patrol agents in any manner (or  
15 threatening anyone else).

16 15. At the moment he was shot, J.A. was walking on the southern side of  
17 Calle Internacional, directly across the street from a sheer cliff face that rises  
18 approximately 25 feet from street level. The cliff is approximately 30 feet from where  
19 J.A. was standing when shot. The border fence, which is approximately 20–25 feet tall,  
20 runs along the top of the cliff. Thus, at the location where J.A. was shot, the top of the  
21 fence towers approximately 50 feet above street level on the Mexican side. The fence  
22 itself is made of steel beams that are 6.5 inches in diameter. Each beam is  
23 approximately 3.5 inches apart. Defendant Swartz fired from the U.S. side of the fence.  
24 (A photograph from Google Maps of the border fence and the corner where J.A. was  
25 killed is attached to this Complaint as Exhibit A.)

26 16. According to an emergency police dispatch, a Border Patrol agent phoned  
27 authorities in Mexico approximately five minutes after shots were fired. The agent  
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1 informed Mexican authorities that there were shots fired on the borderline and that  
2 someone was wounded on the Mexican side, but the agent did not identify the shooters.

3 17. At the time of the shooting, J.A. lived in Nogales, Sonora, Mexico,  
4 approximately four blocks from where he was shot. Because J.A.'s mother was away  
5 for work, his grandmother was often with him in Nogales, Mexico to care for him. His  
6 grandmother and grandfather live in Arizona and were lawful permanent residents of  
7 the United States at the time of the shooting. They are now U.S. citizens. Upon  
8 information and belief, Defendant Swartz did not know whether J.A. was a U.S. citizen  
9 or whether he had significant contacts with the United States.

10 18. Defendant's actions in killing J.A. were unreasonable and excessive, and  
11 were unnecessary to defend against bodily injury or deadly force. Defendant acted  
12 intentionally with the specific purpose of causing serious harm and/or death to J.A.,  
13 without legal justification.

14 19. Defendant acted under color of law.

15 **Systemic Problems of Abuse at the Border by U.S. Agents**

16 20. J.A.'s killing is unfortunately not a unique event, but part of a larger  
17 problem of abuse by Border Patrol agents in Nogales and elsewhere.

18 21. The U.S.-Mexico border area in Mexico is unlike other areas of Mexico.  
19 U.S. Border Patrol agents not only control the U.S. side of the fence, but through the  
20 use of force and assertion of authority, they also exert control over the immediate area  
21 on the Mexican side, including where J.A. was shot.

22 22. U.S. control of the Mexican side of the border fence in Nogales and other  
23 areas along the Southern border is apparent and longstanding, and recognized by  
24 persons living in the area.

25 23. Border Patrol agents use guns, non-lethal devices and other weapons, as  
26 well as military equipment and surveillance devices to target persons on the Mexican  
27 side of the border. For example, U.S. surveillance cameras are mounted along the  
28 border fence, monitoring activity on the Mexico side of the fence. One such camera,

1 with a clear line of sight over Calle Internacional, is mounted approximately 150 feet  
2 from the location where J.A. was shot. Additionally, Border Patrol agents have opened  
3 fire into Nogales from the U.S. side on prior occasions and are known to launch non-  
4 lethal devices such as pepper spray canisters into Nogales neighborhoods from the U.S.  
5 side of the border fence. By shooting at individuals on the Mexican side, and using  
6 weapons and devices with a range extending to the Mexican side of the border area, the  
7 United States, through the Border Patrol, controls the area immediately adjacent to the  
8 international border fence on the Mexican side. This control extended to the street,  
9 Calle Internacional, where J.A. was killed.

10 24. U.S. Border Patrol agents, with force, exercise control over areas on the  
11 Mexican side adjacent to the international border fence. U.S. Border Patrol agents  
12 make seizures on the Mexican side of the fence. CBP officials are authorized to be on  
13 Mexican soil to conduct pre-inspection of those seeking admission to the United States.  
14 U.S. Border Patrol helicopters fly in Mexican airspace near the border and swoop down  
15 on individuals, inundating those individuals with dust and debris. Thus, as the Chief of  
16 the U.S. Border Patrol has acknowledged, U.S. border security policy “extends [the  
17 nation’s] zone of security outward, ensuring that our physical border is not the first or  
18 last line of defense, but one of many.” *Securing Our Borders—Operational Control  
19 and the Path Forward: Hearing Before the Subcomm. on Border and Maritime  
20 Security of the H. Comm. on Homeland Security*, 112th Cong. 8 (2011) (prepared  
21 statement of Michael J. Fisher, Chief of U.S. Border Patrol).

22 25. In recent years, physical abuse of persons near the border by U.S. Border  
23 Patrol agents has been rampant in Nogales and elsewhere. The Border Patrol  
24 consistently denies public access to basic information about its operations, including  
25 whether agents responsible for abuse are disciplined in any way, thus shielding the  
26 agency and individual agents from public accountability for abusive policies and  
27 practices. Even after many fatal shooting incidents involving Border Patrol agents, the  
28 agency has refused to release the names of those involved.

1           26. Based on an extensive investigation, the Arizona Republic found that  
2 between 2010 and 2012, the year J.A. was killed, there were 487 “use of force incidents”  
3 in the Border Patrol’s Tucson Sector, 233 of which occurred in the Nogales area. *See*  
4 Bob Ortega and Rob O’Dell, *Force at the Border: Tucson Sector*, ARIZ. REPUBLIC  
5 (Dec. 16, 2013).

6           27. Reports also found that nationwide there were 15 deaths caused by  
7 Border Patrol agents in 2011–2012 alone, five of which occurred in the Tucson Sector.  
8 Thirteen of these deaths were caused by shootings. Another source found that CBP  
9 agents have killed 28 people since 2010. From 2005 to 2014, Border Patrol agents  
10 caused 46 deaths nationwide, according to media reports and data provided by the  
11 government.

12           28. A report by the American Immigration Council in May 2014 reviewed  
13 809 complaints of alleged abuse by Border Patrol agents between 2009 and 2012 and  
14 found that “CBP officials rarely take action against the alleged perpetrators of abuse.”  
15 AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP  
16 ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE 3 (2014). The report  
17 noted that it was impossible to determine which cases had merit based on the data  
18 provided by the government, but concluded that it was “astonishing that, among those  
19 cases in which a formal decision was issued, 97 percent resulted in ‘No Action Taken.’”  
20 *Id.* at 1.

21           29. A former high ranking official at CBP has publicly stated: “With very  
22 serious misconduct—borderline criminal activity—senior management often gave  
23 Border Patrol agents a slap on the wrist or did nothing at all.” Andrew Becker,  
24 *Removal of Border Agency’s Internal Affairs Chief Raises Alarms*, HUFFINGTON POST  
25 (June 12, 2014).

26           30. In response to continuing public interest and controversy surrounding  
27 CBP’s use of force policies and practices, and in particular to a letter sent by 16  
28 members of Congress seeking information about CBP’s use of force policies, CBP



1 commissioned an external, independent review of its use of force policies and practices  
2 from the Police Executive Research Forum (“PERF”), a non-profit research  
3 organization comprised of experts on police practices. *See* POLICE EXEC. RESEARCH  
4 FORUM, U.S. CUSTOMS AND BORDER PROTECTION USE OF FORCE REVIEW: CASES AND  
5 POLICIES (2013). PERF reviewed all deadly force events from January 2010 through  
6 October 2012, including 67 case files related to CBP officers’ use of deadly force.  
7 PERF subsequently provided CBP with a report and recommendations, detailing  
8 significant shortcomings in CBP use of force policies and practices, including the  
9 following:

10 a) “It is not clear that CBP consistently and thoroughly reviews all use of deadly  
11 force incidents.” (Report at 4);

12 b) Too many cases [involving shootings at rock throwers] do not appear to meet  
13 the test of objective reasonableness with regard to the use of deadly force.”  
14 (Report at 7);

15 c) Of the 25 case files PERF reviewed involving shots fired by Border Patrol  
16 agents who responded to alleged rock throwing, “[s]ome cases seemed to be a  
17 clear cut self-defense reaction to close and serious rock threats or assaults, while  
18 other shootings were of more questionable justification. The more questionable  
19 cases generally involved shootings that took place through the IBF [International  
20 Border Fence] at subjects who were throwing rocks at agents from Mexico.”  
21 (Report at 8).

22 31. In September 2013, a report by the Department of Homeland Security  
23 Office of Inspector General noted that “many agents and officers do not understand use  
24 of force and the extent to which they may or may not use force.” Department of  
25 Homeland Security, Office of Inspector General, *CBP Use of Force Training and*  
26 *Actions to Address Use of Force Incidents* (Redacted) 17 (2013).

27 32. Upon information and belief, Defendant Swartz is still employed by CBP.  
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1 **Harm Suffered by Plaintiff Because of Defendant's Actions**

2 33. There is a real and actual controversy between Plaintiff and Defendant,  
3 and Defendant's actions were the proximate cause of the death of Plaintiff's son.

4 34. Plaintiff and her son have suffered significant damages, in an amount to  
5 be proven at trial.

6 **CAUSES OF ACTION**

7 **COUNT ONE**

8 **VIOLATION OF THE FOURTH AMENDMENT**

9 35. The foregoing allegations are re-alleged and incorporated herein by  
10 reference.

11 36. At the time J.A. was fatally shot, Defendant was not in danger of fatal or  
12 bodily harm from J.A. or anyone else.

13 37. In fatally shooting J.A., Defendant acted intentionally and used  
14 unreasonable and excessive force with the purpose of causing harm to J.A. without  
15 legal justification.

16 38. Defendant's actions violated the Fourth Amendment's prohibition against  
17 seizures with excessive and unreasonable force.

18 **COUNT TWO**

19 **VIOLATION OF THE FIFTH AMENDMENT**

20 39. The foregoing allegations are re-alleged and incorporated herein by  
21 reference.

22 40. At the time J.A. was fatally shot, Defendant was not in danger of fatal or  
23 bodily harm from J.A. or anyone else.

24 41. In fatally shooting J.A., Defendant acted intentionally, maliciously, and  
25 used unreasonable and excessive force, with the purpose to cause harm to J.A. without  
26 legal justification. Defendant's actions were unnecessary to achieve any legitimate law  
27 enforcement objective.  
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