

A barrage of rocks and then bullets: When the Border Patrol kills Mexican teens

By NIGEL DUARA DEC 15, 2015 | 3:00 AM | NOGALES, MEXICO



An image of Jose Antonio Elena Rodriguez is displayed at his memorial Mass. The 16-year-old was fatally shot by a U.S. Border Patrol agent in 2012. (Valeria Fernandez / Associated Press)

Every other day, something large and heavy flew over the rusted 20-foot tall border fence and crashed in the U.S. Chunks of concrete pulled from a crumbling sidewalk. A 3-pound piece of quartzite. Sometimes they came in barrages.

Border Patrol agents on the U.S. side of the fence called the incidents "rockings," and when rocks hit their targets, they opened gashes on agents' heads, split the skin above their eyes and left their uniforms a bloody mess.

In the last five years, three Mexican teenagers have been shot dead by Border Patrol agents who, according to the agency, were under assault by rocks thrown over the fence. The Border Patrol deemed two shootings justified, but in the third case, an agent stands accused of second-degree murder.

Allegations of rock assaults — and the Border Patrol's response to them — are likely to play a key role in the murder trial, as well as two civil suits that could affect how the nation's largest law enforcement agency operates in its hottest zones for years to come.

Bullets cross a border

On Oct. 10, 2012, 16-year-old Jose Antonio Elena Rodriguez was on Mexican soil when he was killed by shots fired through the border fence in Nogales, Ariz.



Sources: Times reporting; Google Earth

@latimesgraphics

The agency has not publicly released the number of rock assaults by year, but the Los Angeles Times obtained data showing that between Oct. 1, 2011, and Sept. 30, 2012, Border Patrol agents reported 188 rock assaults in the agency's Tucson sector, which covers the border from Yuma County, Ariz., to New Mexico. The section of fence separating Nogales, Ariz., and Nogales, Mexico, represented the most active "rocking" region along the U.S.-Mexico border.

Some Border Patrol agents, evading the rockings behind the fence wall in Nogales and elsewhere, forged a siege mentality. "We were up against it," said one agent who was not permitted to speak publicly. "Everywhere, from every side."

That was the backdrop for events that played out on Oct. 10, 2012, when Border Patrol agents responded to a call from Nogales, Ariz., police.

Two suspected marijuana smugglers were attempting to cross into Mexico, possibly to avoid capture. The next few moments would lead to days of heartbreak and years of legal maneuvering while calling into question a decade's worth of U.S. policy on lethal force at its southern border.

At 11:30 p.m., Jose Antonio Elena Rodriguez was on Calle Internacional just south of the border fence, but what he was doing there is still a matter of debate.

His mother said the boy was headed home, basketball tucked under his arm, after a late game.

The Border Patrol says Jose was among a group of rock-throwers who sought to distract agents from the marijuana smugglers. Buenos Aires, the neighborhood that abuts the border, is rumored to be controlled by the drug cartels, and agents say the rock-throwing is a regular distraction tool used by smugglers.

A few days from his 17th birthday, Jose was a basketball fan and, one day, aspired to be a soldier, aiding in northern Mexico's ongoing war against drug cartels, according to his family. On the Arizona side of the border was Border Patrol Agent Lonnie Swartz.

Swartz, then 37, was armed with a .40-caliber P2000 semiautomatic pistol. It's unclear whether he had any nonlethal weapons, but Border Patrol agents have turned to rubber bullets and guns that fire rounds of "pepper balls" in response to previous rock-throwing incidents.

On one side of Calle Internacional is a row of one-story buildings; on the other is a 20-foot-tall dirt embankment, topped by the border fence that is another 20 feet tall.

Striking a target far away from the fence with a rock is possible if the thrower has the strength to hurl the object a good distance. But throwing a rock over the fence to hit a target close to the barrier is far more difficult, requiring a narrow, perfect parabola, delivered with incredible precision or incredible luck. To send a rock through the fence would require throwing the object between bars that are just inches apart.

The Border Patrol would later report that its agents were under assault that October night. Swartz fired his pistol through the bars of the fence, which are approximately 3.5 inches apart. He fired an unknown number of times, reloaded and emptied his pistol again.

At least 10 rounds struck Jose. According to an autopsy conducted by the Sonoran State Medical Examiner and obtained by the Los Angeles Times, at least one of the bullets hit Jose in the front of his body, and the rest entered back-to-front, right-to-left. Most followed an upward trajectory, meaning they entered his body

Should noncitizens be protected from excessive force at border? Supreme Court to consider case

NOV 06, 2015 | 3:00 AM

from a lower point and exited at a higher point.

At first, the trajectory of the bullets is confusing — since they were fired from the high embankment, it would appear the trajectory of the bullets should point to the ground.

But assuming the autopsy was properly conducted, according to Pima County Medical Examiner Greg Hess, the only explanation for the bullets' upward trajectory was simple: Jose was falling or lying on the ground when he was struck.

"That would explain it," Hess said.

Given that the bullets were fired in quick succession, it's impossible to tell which struck Jose first, one in the front or one in the back.

Just hours after his death, a memorial of flowers, candles and rosaries appeared at the spot where he died on the sidewalk of Calle Internacional.

Along with the memorial appeared graffiti demanding justice. Nearly three years passed while Jose's mother, Araceli Rodriguez, and the American Civil Liberties Union sought the right to sue Swartz in an American civil court.

In May, ACLU attorney Lee Gelernt stood in a federal courthouse in Tucson, trying to convince U.S. District Judge Raner Collins that Rodriguez had standing to sue Swartz.

Swartz deprived Jose of the most fundamental right, Gelernt said, "the right to not be killed," a violation of the 4th Amendment. Swartz's private attorney, Sean Chapman, argued that Swartz did not deprive Jose of his constitutional rights because, as a Mexican national standing on Mexican soil, Jose had no rights in the U.S.

[See more of our top stories on Facebook >>](#)

Gelernt said that Chapman was asking the judge to "write an opinion that says a Border Patrol agent can put his gun up to the fence, shoot through the fence without justification, and kill a teenager, a civilian teenager 20 feet over the fence and the Constitution has nothing to say about it."

"The facts are horrible and they're tragic," Chapman replied, but he said Collins should consider what the U.S. 5th Circuit Court of Appeals ruled about another Border Patrol shooting that left a Mexican teenager dead; the court decided that the family of a Mexican national did not have the right to sue the agent who shot him from the Texas side of the border, a case that has been appealed to the Supreme Court.

During the May hearing, Chapman made a surprising revelation: Swartz was the subject of a criminal investigation by the Justice Department. He has since been charged with second-degree murder, and pretrial motions are underway.

The history of "rocking" incidents had suggested that an indictment was unlikely.

Border Patrol internal affairs said an agent who fatally shot an unarmed 15-year-old Mexican boy in the face after a rock assault on a bridge to El Paso in 2010 did nothing wrong. The agency also cleared an agent who shot and killed a 17-year-old Mexican at the Nogales fence, also after a rock assault.

Meanwhile, a Border Patrol internal report found that agents sometimes fired in frustration at people throwing rocks over the border. Last year, R. Gil Kerlikowske was introduced as the head of Customs and Border Protection, and he pledged a new era of transparency. The Border Patrol undertook a review of its lethal-force policies.

The review advised agents to seek cover when facing rock-throwers but did not place any new restrictions on their ability to use lethal force.

nigel.duara@latimes.com

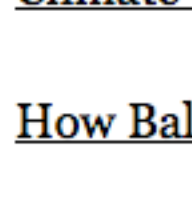
Twitter: [@nigelduara](#)

ALSO

[Climate change activists are just warming up](#)

[How Baltimore's prompt prosecution of police in death of Freddie Gray might backfire](#)

[Who bought the Las Vegas Review-Journal? It's anybody's guess](#)



Nigel Duara

CONTACT [Twitter](#) [Facebook](#) [Email](#)

Nigel Duara covered the border for the Los Angeles Times, based in Tucson, until 2017. A Miami native, Duara was previously a reporter for the Associated Press in Portland, Ore. He is also a veteran of the American Middle West, with stints in Iowa City and Des Moines, Iowa. He graduated from the Missouri School of Journalism.