

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ERNESTINA CAZARES SANTILLAN, §
Individually and as the Surviving Mother §
of JUAN PABLO PEREZ SANTILLAN, §
and as Successor-In-Interest to the Estate §
of JUAN PABLO PEREZ SANTILLAN; §
AMADA CAROLINA MARTINEZ MORALES, §
as Mother and Next Friend of §
*J*** C***** P**** M***** and* §
*N***** D***** P**** M*****,* §
Surviving Minor Children of JUAN PABLO §
PEREZ SANTILLAN, and as Successors-In- §
Interest of the Estate of JUAN PABLO §
PEREZ SANTILLAN; and §
CLAUDIA ELIZABETH TORRES ORANTES, §
as Mother and Next Friend of §
*D**** P**** P**** T***** and* §
*J*** P**** P**** T*****,* §
Surviving Minor Children of JUAN PABLO §
PEREZ SANTILLAN, and as Successors-In- §
Interest of the Estate of JUAN PABLO §
PEREZ SANTILLAN, §

CIVIL ACTION NO. 1:12-cv-213

PLAINTIFFS

VS.

JURY TRIAL DEMANDED

THE UNITED STATES OF AMERICA; §
Unknown Named Agents of the United §
States Border Patrol; United States §
Department of Homeland Security; §
United States Bureau of Customs and §
Border Protection; United States Border §
Patrol; United States Immigration and §
Customs Enforcement Agency; and United §
States Department of Justice, §

DEFENDANTS

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Plaintiffs, ERNESTINA CAZARES SANTILLAN, Individually And As The Surviving Mother of JUAN PABLO PEREZ SANTILLAN, And As Successor-In-Interest To The Estate of JUAN PABLO PEREZ SANTILLAN; AMADA CAROLINA MARTINEZ MORALES, As Mother And Next Of Friend of J*** C***** P**** M***** and N***** D***** P**** M*****, Surviving Minor Children of JUAN PABLO PEREZ SANTILLAN, And As Successors-In-Interest Of The Estate of JUAN PABLO PEREZ SANTILLAN; and CLAUDIA ELIZABETH TORRES ORANTES, as Mother and Next Friend of D**** P**** P**** T***** and J*** P**** P**** T*****, Surviving Minor Children of JUAN PABLO PEREZ SANTILLAN, and as Successors-In-Interest of the Estate of JUAN PABLO PEREZ SANTILLAN, (hereinafter “Plaintiffs” except as to JUAN PABLO PEREZ SANTILLAN who is hereinafter collectively referred to as “Decedent” or “Mr. Santillan”), complain and allege as follows:

A. PRELIMINARY STATEMENT AND NATURE OF CASE

1. Decedent, Mr. Santillan, was murdered by an Unknown Named Border Patrol Agent (hereinafter sometimes referred to as “Agent Doe”) (one of the defendants sued herein) who - - after positioning himself on higher ground and a substantial distance from Mr. Santillan - - used a long-range rifle, with a high-power scope, to shoot and kill Mr. Santillan. Immediately following the incident, Agent Doe fabricated a justification for his murderous act by falsely reporting and otherwise stating that Mr. Santillan had a gun in his hand at the time of the incident. However, Mr. Santillan did not have a gun, or any other weapon, in his hand at the time of the incident, and Agent Doe knew this when he took aim at Mr. Santillan by use of his rifle’s high-power scope and then fired the weapon. In fact, the only thing that Mr. Santillan had in his hand at the time of the incident

was an item of clothing, or sweat rag. It is significant to note that there is no allegation that Mr. Santillan had been throwing, or was about to throw, anything at the time of the incident, and even had that been the intention of Mr. Santillan, the distance between Mr. Santillan (who stood on or near the bank of the Rio Grande River on Mexican soil) and Agent Doe (who was positioned in a protected way on higher ground on American soil) at the time of the incident kept Agent Doe out of harm's way. In other words, Agent Doe was obviously and patently not within the range of striking distance with respect to any object which Mr. Santillan could have hurled at him at such time; nor was anyone else. In fact, at the time of this incident, Mr. Santillan was doing or saying nothing that constituted or could reasonably be perceived as a threat or danger to anyone. Unfortunately, Agent Doe, a trigger-happy and improperly trained agent of the U.S. Border Patrol, took advantage of the circumstances which existed shortly before the incident, which reportedly included some rock throwing by other Mexican nationals further down the river (unrelated to and having nothing to do with Mr. Santillan) to shoot a human being whose life apparently had no value to Agent Doe. This heinous act was apparently also the result of the "corporate culture" or general mentality of the U.S. Border Patrol - - which the United States of America and its agencies have allowed to develop and go unchecked - - regarding its unofficial "open season" policy concerning the use of excessive and deadly force against Mexicans and other Latinos in the area of the Mexican-American border.

2. Plaintiffs bring this action pursuant to, among other grounds, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Unknown Named Border Patrol Agent ("Agent Doe"), employee of the United States of America, for violation of individual

constitutional rights of Plaintiffs' Decedent guaranteed by the Fourth and Fifth Amendments of the United States Constitution, and the Laws of Nations and treaties of the United States, which occurred when Agent Doe, while acting within the course and scope of his employment for the other defendants herein, used unlawful and deadly force in shooting and killing Decedent on July 7, 2012, at a time when Decedent was defenseless, was offering no resistance, had no weapon of any kind, and had not threatened, nor was he threatening, Agent Doe, or any third party, with harm, deadly or otherwise.

3. At all times relevant hereto, Defendant the United States of America, is a sovereign governmental entity, which has been engaged in, among other things, controlling access into its sovereign territory, and preventing entry of undocumented individuals. Defendant the United States of America, performs these activities by and through its agencies, Defendants the United States Border Patrol, the United States Department of Homeland Security, the United States Bureau of Customs and Border Protection, and/or the United States Department of Justice, an agency of the United States, acting within the course and scope of their employment with the United States of America. United States Border Patrol Agent Doe is sued herein in his individual capacity for violations of Decedent's rights guaranteed by the Fourth and Fifth Amendments to the United States Constitution.

4. Defendant Agent Doe has been, at all relevant times, an investigative or law enforcement officer - - as defined in 28 U.S.C. §2680(h) - - of Defendants United States Bureau of Customs and Border Protection, United States Border Patrol, and/or the United States Immigration and Customs Enforcement Service, a subdivision of the United States Department of Homeland Security, an

agency of the United States, and was acting within the course and scope of his employment with the United States of America and other defendants at all relevant times.

5. Plaintiffs herein comply with the pleading requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure, and the requirements of Ashcroft v. Iqbal, 556 U.S. ____, 129, S. Ct. 1937, 1949, (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”)

B. PARTIES

6. Although not a party herein, it is noted that, Decedent, Juan Pablo Perez Santillan, was a citizen of the Republic of Mexico at all relevant times.

7. At all times relevant hereto, Plaintiff Ernestina Cazares Santillan was, and now is, a citizen of the Republic of Mexico. Plaintiff Ernestina Cazares Santillan individually as the surviving mother of Decedent, and as Successor-in-Interest to the Estate of Decedant, may maintain a federal wrongful death and survival action and recover damages for the value of the Decedent’s life and the Decedent’s pain and suffering.

8. At all times relevant hereto, Plaintiffs Amada Carolina Martinez Morales, as mother and next friend of J*** C***** P**** M***** And N***** D***** P**** M*****, Decedent’s minor children, were, and now are, citizens of the Republic of Mexico. Plaintiffs Amada Carolina Martinez Morales, as mother and next of friend of J*** C***** P**** M***** And N***** D***** P**** M*****, Decedent’s minor children, and as Successor-In-Interest to the Estate of Decedent, may maintain a federal wrongful death and survival action and recover damages for the value of the Decedent’s life and the Decedent’s pain and suffering.

9. At all times relevant hereto, Plaintiffs Claudia Elizabeth Torres Orantes, as Mother and Next Friend of D**** P**** P**** T***** and J*** P**** P**** T*****, Decedent's minor children, were, and now are, citizens of the Republic of Mexico. Plaintiffs Claudia Elizabeth Torres Orantes, as Mother and Next Friend of D**** P**** P**** T***** and J*** P**** P**** T*****, Decedent's minor children, and as Successor-In-Interest to the Estate of Decedent, may maintain a federal wrongful death and survival action and recover damages for the value of the Decedent's life and the Decedent's pain and suffering.

10. At all times relevant hereto, Defendant Agent Doe was, and is, an investigative or law enforcement officer as defined in 28 U.S.C. §2680(h) of the United States Customs and Border Protection, the United States Border Patrol, and/or Immigration and Customs Enforcement Service, an agency of the United States, acting within the course and scope of his employment with the United States of America.

11. Plaintiffs believe and thereupon allege that, at all times relevant hereto, the United States Customs and Border Protection was, and is, a subdivision of the United States Department of Homeland Security - a United States Federal Governmental entity with headquarters in Washington, D.C. and various branch offices throughout the country including this judicial district.

12. Plaintiffs believe and thereupon allege that, at all times relevant hereto, Agent Doe was acting within the course and scope of his employment with the Defendant the United States of America and other Defendants on July 7, 2012, when Decedent was wrongfully shot to death.

13. Plaintiffs will effectuate service of process on Defendants, pursuant to Fed. R. Civ. P. 4(1)(2), by sending a copy of this summons and Complaint, via certified mail, return receipt

requested, to the following persons and entities, which may be served as follows:

- a. The United States of America:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002
 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
- b. Unknown Named Agent of the United States of America:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002
 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
 - iii. Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528
 - iv. Office of the Principal Legal Advisor
Immigration and Customs Enforcement
U.S. Department of Homeland Security

500 12th Street S.W.
Washington, D.C. 20024

- v. United States Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

- c. United States Department of Homeland Security:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002

 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

 - iii. Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

- d. United States Bureau of Customs and Border Protection:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002

 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

- iii. United States Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229
- iv. Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528
- e. United States Border Patrol:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002
 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
 - iii. United States Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229
 - iv. Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528
- f. United States Immigration and Customs Enforcement Agency:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300

Houston, Texas 77002

- ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
- iii. Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528
- iv. Office of the Principal Legal Advisor
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street S.W.
Washington, D.C. 20024
- g. United States Department of Justice:
 - i. *****
Civil Process Clerk
Office of the United States Attorney,
Southern District of Texas
1000 Louisiana
Suite 2300
Houston, Texas 77002
 - ii. United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

C. JURISDICTION AND VENUE

14. The jurisdiction of this Court, as to the Plaintiffs' claim against Agent Doe in his individual capacity for violation of Decedent's constitutional rights is based on 28 U.S.C. §1331, 1332 and 1367(a), *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and its progeny.

15. As more fully set forth herein, Plaintiffs contend that Agent Doe's acts occurred on the United States' side of the Rio Grande River in Brownsville, Texas, in Cameron County, located on the border of the United States and Matamoros, Tamaulipas, Mexico. To the extent that the acts and occurrences forming the basis of this Complaint occurred in Brownsville, Texas, jurisdiction is invoked by 28 U.S.C. §§ 1391(a)-(e); and 28 U.S.C. §1402(b).

16. Alternatively, to the extent that the acts and occurrences forming the basis of this Complaint occurred in the Territory of Mexico, jurisdiction is invoked by 28 U.S.C. §1350.

D. STATEMENT OF FACTS

17. On July 7, 2012, Juan Pablo Perez Santillan, at approximately 7:00 a.m., was giving directions to a group of ten people on how to swim across the Rio Grande River located in Brownsville, Texas. On this morning, Mr. Santillan instructed that they would be swimming across the river in groups of five when he gave them the signal.

18. The first group was already in the United States territory when Mr. Santillan instructed the second group to start swimming across the river. Mr. Santillan's brother was in the second group. When the second group reached the bank of the Rio Grande River, in the United States, Mr. Santillan started yelling and waving his hands in the air at the second group in order to warn them that the U.S. Border Patrol was approaching. The second group immediately went back into the Rio Grande River in order to cross the river, back into Mexico.

19. Suddenly, United States Border Patrol agents, particularly, Agent Doe, aimed his long-range rifle at Mr. Santillan, using the rifle's high-power scope to sight Mr. Santillan, and fired the rifle at least five times, fatally wounding Mr. Santillan with at least one gunshot wound to the chest. Mr.

Santillan, who had been standing safely and legally on his native soil in Mexico, unarmed and unthreatening, was fatally wounded. Mr. Santillan was thirty years old at the time of his death.

20. Once Mr. Santillan's brother, Damian Perez Santillan, arrived back on the Mexican shore of the river, he saw that his brother was lying in a pool of blood coming from the gunshot wound to his chest. He yelled for help while looking at the Border Patrol Agents who were still pointing the guns at them, and one or more of the Border Patrol Agents responded by saying "que se muera el perro" or "let the dog die." Damien Perez Santillan, along with two others, carried Mr. Santillan to his truck and transported him to the hospital where he died.

21. This litigation arises from the acts and omissions of the named and unnamed Defendants acting in concert in their individual capacities, as appropriately pled herein.

22. Plaintiffs further contend that Defendants are individually, jointly, and/or severally liable for those violations of Decedent's constitutional rights, referenced above and below, in that Defendants have:

- a. tolerated, condoned, and encouraged a pattern of brutality and use of excessive force by members of the United States Border Patrol, the United States Bureau of Customs and Border Protection, and/or the United States Immigration and Customs Enforcement Service against citizens from Mexico and other Latinos;
- b. systematically failed to properly and adequately monitor and investigate such incident and to supervise and discipline the officers involved;
- c. created an environment and culture in which officers and agents are

encouraged to shield the misconduct of fellow officers, whereby officers and agents believe they can violate without legal consequence and with impunity the rights of persons such as Decedent;

- d. inadequately trained officers and agents regarding the improper restraint and use of firearms as weapons; and
- e. inadequately elected, trained, monitored, and supervised officers and agents on a systematic basis.

E. CAUSES OF ACTION

COUNT 1: ADOPTION OF POLICIES THAT VIOLATED DECEDENT'S FOURTH AND FIFTH AMENDMENT RIGHTS

23. Plaintiffs restate the facts described above and complain as follows: At all times relevant hereto, the United States of America and Unknown Named Defendants, while acting in their respective official capacities, exercised supervision and control over Defendant Agent Doe. Such Defendants were acting under color of law as law enforcement officers and employees of the United States Government.

24. Plaintiffs allege that such supervisory Defendants, acting in their respective individual capacities, were authorized final policy-makers. In such capacities, they adopted, acquiesced to, or ratified official customs, policies, procedures, and decisions, including training programs, which they knew or should have known, were inadequate regarding the use of deadly force. The inadequacy of such official customs, policies, procedures, and decisions, including training programs, directly and proximately caused Defendant Agent Doe to use unreasonable,

unconstitutional, and excessive force, i.e., deadly force, in dealing with Decedent and/or in connection with attempting to arrest Decedent or otherwise exercise dominion or control over Decedent. The use of such force deprived Decedent of his Fourth and Fifth Amendment rights to be free from unreasonable search and seizure. The inadequacy of such customs, policies, procedures, and decisions, including training programs, manifested a deliberate indifference to the protection of Defendant's constitutional rights and was the moving force which resulted in the deprivation of Decedent's constitutional rights.

25. As a direct and proximate result of the acts or omission of such Defendants, Decedent was wrongfully killed, giving rise to the injuries and damages for which Plaintiffs now complain.

COUNT 2: FAILURE TO ADOPT POLICIES THAT RESULTED IN THE VIOLATION OF DECEDENT'S FOURTH AND FIFTH AMENDMENT RIGHTS

26. Plaintiffs restate the facts described above and complain as follows: "At all times relevant herein, the United States of America and Unknown Named Defendants, while acting in their respective official capacities, exercised supervision and control over Defendant Agent Doe. Such Defendants were acting under color of law as law enforcement officers and employees of the United States Government.

27. Plaintiffs allege that such supervisory Defendants, acting in their respective individual capacities, were authorized final policy-makers who failed to adopt or ratify official customs, policies, procedures, and decisions, including training programs, regarding the use of reasonable force in effecting arrests or in using self defense. Such failure directly and proximately caused Defendant Agent Doe to use unreasonable, unconstitutional, and excessive force, i.e. deadly force,

in effecting the arrest of Decedent, or in otherwise exercising dominion and control over Decedent. The use of such force deprived Decedent of his Fourth and Fifth Amendment rights to be free from unreasonable search and seizure. The failure to adopt such customs, policies, procedures, and decisions, including training programs, directly and proximately resulted in Decedent being shot by Defendant Agent Doe. The failure to adopt such customs, policies, procedures, and decisions, including training programs, manifested a deliberate indifference to the protection of Decedent's constitutional rights and was the moving force, which resulted in the deprivation of Decedents' constitutional rights.

28. As a direct and proximate result of the acts or omission of such Defendants, Decedent was killed, giving rise to the injuries and damages for which Plaintiffs now complain.

COUNT 3: VIOLATIONS OF FOURTH AND FIFTH AMENDMENT RIGHTS BY UNNAMED AGENT DOE

29. Plaintiffs restate the facts described above and complain as follows: Defendant Agent Doe shot Decedent on July 7, 2012, while acting individually under color of law as an employee of the United States Border Patrol, the United States Bureau of Customs and Border protection, and/or the United States Immigration and Customs Enforcement Service while attempting to apprehend him in Brownsville, Texas on suspicion of illegal entry into the United States.

30. Plaintiffs allege that in shooting Decedent, Defendant Agent Doe acted unreasonably by using excessive, deadly force against Decedent in violation of the Fourth and Fifth Amendments of the United States Constitution. At the time of the shooting, Decedent was unarmed and presented no physical threat to Defendant Agent Doe.

31. Plaintiffs allege that Defendant Agent Doe's shooting of Decedent evidences Defendant Agent Doe's callous disregard for, and deliberate indifference to, Decedents' constitutional rights.

32. As a direct and proximate result of the acts or omissions of Defendant Agent Doe, Decedent was killed, giving rise to the injuries and damages for which Plaintiffs now complain.

F. DAMAGES

33. As a direct and proximate result of the Defendants' violations of Decedents' constitutional rights, Plaintiffs have suffered the following injuries and damages:

- a. Past and future loss of companionship, consortium, support, and any other intangible wrongful death damages;
- b. Past and future mental anguish;
- c. Burial expenses for Decedent; and
- d. Physical pain and suffering, and mental anguish, which was experienced by the Decedent prior to the moment of death, the damages for which inured to the benefit of his Estate at the time of his death.

G. ATTORNEYS FEES

34. Plaintiffs are entitled to an award of attorneys fees and costs under 42 U.S.C. §1988(b).

H. JURY TRIAL

35. Plaintiffs hereby respectfully demand a trial by jury, pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

I. PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that upon trial of the merits, they recover compensatory damages against Defendants, jointly and/or severally; that Plaintiffs also recover punitive damages against Defendants; and that Plaintiffs recover against each Defendant all reasonable and necessary attorneys fees, court costs and expenses in regards to the present suit in litigation. Moreover, Plaintiffs pray for all pre-judgment and post judgment interest that can be assessed against the Defendants in the event of any recovery; and that Plaintiffs recover against each Defendant any and all other general or specific relief to which they may show themselves justly entitled.

