

## Rediscovering: Killed through the border fence

### Episode 2: An identity revealed

**KOLD:** *“People in Mexico and here in the United States want to know the names of the Border Patrol agents in last month's deadly shooting of 16-year-old José Antonio Elena Rodríguez.”*

It did not take long for the family of 16-year-old José Antonio Elena Rodríguez to start putting pressure on U.S. authorities.

They demanded that the U.S. Border Patrol release the name of the agent who had fired his gun from Arizona into Mexico in Ambos Nogales. 10 bullets struck and killed José Antonio the night of October 10, 2012.

Until that point, what the public knew about the agent was that he had fired his weapon after the Border Patrol said rocks were thrown at him from Mexico. Here's what Nogales Police department Lieutenant Carlos Jimenez told KOLD, a local Tucson news station.

**KOLD:** *“It was around this time that they started hearing thumps and started noticing rocks were being thrown from the Nogales Sonora Mexico side.”*

Right away, Border Patrol officials refused to release the agent's identity, saying the shooting was under investigation by the FBI.

But the family didn't give up. Distraught over José Antonio's death, his grandmother, Taide Elena, decided to make a phone call the day after the shooting.

**Taide Elena:** *“Agarré el teléfono y le hablé al Señor Montiel, y le dije: ‘Qué tiene?’ Me dice el Bobby. ‘Por qué llora?’ ‘Bobby, me mataron al Toñito.’ Le dije ‘me lo mató un Border Patrol y no quiero que esto se quede así.’ Y me dijo ‘no se va a quedar así,’ me dijo. ‘Se lo prometo,’ me dijo.”*

She called Roberto Montiel, an attorney in Nogales, Arizona. Through tears, she told him that José Antonio was killed by a Border Patrol agent, and that she wanted answers. Montiel promised her he would help her.

Taide had been close friends with Roberto's mother, and they, too, had built a friendship forged over many years. Roberto met with Taide and José Antonio's mother, Araceli Rodríguez, and agreed to help them find out what happened the night of the shooting.

**Roberto Montiel:** *“And we started looking here, you know, and inquiring at the police station, inquiring at the Border Patrol to see what had happened. And, you know, we got different stories from different people. And it was kind of hard to find out what happened.”*

Faced with a lack of answers, the family started building up a case. It would take them almost two years to gather enough evidence.

Then in July 2014, attorneys for the family filed a lawsuit in the United States on behalf of Araceli. The lawsuit accused the unnamed Border Patrol agent of violating José Antonio's civil rights.

One of the attorneys' first actions was to petition the court to release the name of the agent to the public.

***(cue theme music)***

Welcome to season three of Rediscovering, a podcast from The Arizona Republic and azcentral dot com. This time, we're focusing on a cross border shooting that would change the way the U.S. patrols its southern boundary with Mexico.

It involves a U.S. border agent, a Mexican teenager, and the firestorm that erupted after he was killed through the border fence.

I'm Rafael Carranza. I write about border and immigration issues and have been covering the U.S.-Mexico borderlands for more than a decade.

***KPNX-Ch.12*** - *"New tonight, a federal judge has ordered the name of a Border Patrol agent involved in a border killing to be released to the public. That agent's name is Lonnie Swartz"*

It took more than two years after his death for the family of José Antonio to learn the name of the Border Patrol agent who killed him.

Three months earlier, the family had filed the civil rights lawsuit against Lonnie Swartz. Even though José Antonio died in Mexico, their attorneys opted to go after Lonnie in the U.S. courts, rather than through the Mexican legal system.

***News clip:*** *"A judge ordered that previously sealed court papers filed by the agent's attorney be revealed, saying that the public has a right to know."*

But, José Antonio's death at the hands of Agent Lonnie Swartz in October 2012 was not an isolated case...

***(cue music)***

The year before, at least two other Mexican teens were killed by Border Patrol agents at the border fence in southern Arizona. On January 5th, 2011, agents shot and killed 17-year-old Ramses Barron Torres, who was standing on the Mexican side of the fence in Nogales.

Three months later on March 21st, agents shot and killed 19-year-old Carlos LaMadrid as he climbed a ladder up the border fence near Douglas, another border town in southeastern Arizona.

***Gabriela López:*** *"These Border Patrol agents think that they just, you know, 'Ah they throw a rock at me so I shot them to death.' It's... it's OK for them to put that as an excuse to shoot us."*

This is Gabriela López- José Antonio's aunt....

**Gabriela López:** *“And it's not. It's not. Our lives matter just as anybody else's lives matter”*

For more than a decade, whenever a Border Patrol agent is accused of wrongdoing or misconduct in Arizona, Jim Calle is one of the first people to find out.

Since 2008 he has served as general counsel for the Border Patrol union representing agents in the Tucson Sector, in southern Arizona.

**Jim Calle:** *“The belief in the community, which I know still persists, that agents can fire their weapon, kill people. And... and, you know, there's... there's no investigation and no repercussions is just absolutely wrong.”*

Agents shot and killed Barron Torres and LaMadrid during drug smuggling attempts.

According to the U.S. Department of Justice, Barron Torres and three other people had been throwing rocks at the border agents from the Mexican side, despite their warnings in Spanish to stop.

LaMadrid was caught in the crossfire as he fled a pursuing border agent. Another man on the Mexican side began throwing brick-sized rocks. The agent fired as LaMadrid climbed up a ladder.

**Jim Calle:** *“If an agent employed deadly force, they're under investigation often for months at a time. The FBI is involved, the Office of the Inspector General is involved, the Office of Professional Responsibility is involved. The local jurisdiction is involved. You have multiple agencies that are looking at the propriety of the use of deadly force.”*

After completing a two-year investigation, the Department of Justice declined to prosecute the Border Patrol agents involved in both of these shootings.

They determined that in both cases, there was insufficient evidence to prove that the agents were not acting in self-defense.

Prosecution of federal agents remains very rare. Republic investigative reporter Rob O'Dell looked into it after José Antonio's shooting.

He found that in 40 cases of federal agents using deadly force, almost none were held accountable.

**Rob O'Dell:** *“We couldn't find any evidence that any of these people were disciplined in any way. That sort of ‘no consequences’ culture is what, you know, a lot of activists believe led to these shootings is that, well, if we're going to shoot people and there's no consequences. What's the barrier to shooting people?”*

So... was José Antonio throwing rocks?

**(music cue)**

That question has been central to this case to determine whether the shooting was justified.

From the start, Customs and Border Protection said the agent, Lonnie Swartz, had fired his gun

in response to several individuals in Mexico pelting other agents with rocks the night of October 10, 2012.

But they never identified José Antonio as one of them. The site of the shooting was also cloaked in darkness and accounts differ as to whether José Antonio was actively participating or simply walking by.

José Antonio's family continues to assert that he was not throwing rocks at agents. They also point to the geography of the site as proof that agents were at little risk of harm.

This is how Roberto Montiel describes the geography.

**Roberto Montiel:** *"And the cop would have been on top of the hill, because on the American side, there is a huge hill on International Street. And international street on the Mexican side is flat."*

True to their shared identity as Ambos Nogales, International Street on the Arizona side runs parallel to Calle Internacional in Sonora.

The two roads are divided by the border fence, measuring 18 feet tall. But at the site of the shooting, the neighborhood on the American side rises about 14 feet higher than the neighborhood in Mexico, according to the federal prosecutors who began working on this case.

Simply put, the Arizona side is on a hill that drops off vertically into Mexico.

The border fence sits on a four-foot concrete base at the edge of the hill. That's a height of at least 36 feet that any rock coming from Mexico would have to clear.

**Roberto Montiel:** *"Because had he thrown them with a trajectory like you usually throw a rock, he would have missed everybody, assuming you can get a rock up that far."*

**(cue music up)**  
**(music fades to end)**

**CBP Training video:** *"So when you arrive here at the border patrol academy we're going to be tough on you. It's not going to be an easy task to get through this academy."*

The U.S. Border Patrol is the largest law enforcement agency in the United States, with nearly 20,000 agents.

Working as a border agent has always carried risks and that was especially true in Arizona in 2010.

Michael Fisher, the chief of the Border Patrol back then, described meeting his new boss around that time. This is from a podcast he did for the Border Patrol's training academy.

**Michael Fisher:** *"I remember he looks at everybody, he pounds the table, and he said CBP has two priorities this year: we're going to fix Arizona, and the Border Patrol is going to tell us where the next Arizona is going to be when it moves."*

CBP is the acronym for U.S. Customs and Border Protection, the parent agency for the Border

Patrol. CBP is responsible for securing the borders, including at the nation's land, air and sea ports.

By 2010, the U.S. government was at the tail end of a border security spending blitz to upgrade border barriers. The nonpartisan think tank American Immigration Council found that CBP and the Border Patrol's budgets had tripled over the past ten years.

And it wasn't just barriers. They also hired more people.

The number of Border Patrol agents at the southern border doubled in that same 10-year period. Alan Bersin, the acting commissioner for CBP, said back in 2011 that those investments had been paying off.

***Alan Bersin:*** *"The combination of an increase in enforcement together with the decrease in apprehension actually suggests the smaller number of people trying to enter illegally"*

Even though migrant apprehensions had decreased, the Tucson sector, which is where Nogales is located, was still the main gateway. This is where most illegal crossings along the entire U.S.-Mexico border happened. Increased enforcement pushed migrants to more remote areas of the border, with deadlier consequences.

Tony Estrada served as the Santa Cruz County sheriff from 1992 until 2020. Shortly after he took office, the U.S. began to crack down on illegal immigration.

***Tony Estrada:*** *"We started seeing people being sent to rough areas of the deserts, the mountains, and the valleys of Santa Cruz County. And all of a sudden, the things that we were not dealing with as a county, we started seeing, we started seeing people get sick. We started seeing people die. We started seeing people be victimized. We saw women being raped."*

Enforcement, largely centered along the California border, funneled drugs and people into Arizona. That led to an increase in the number of migrant deaths in the desert.

Estrada said that once the government began to tighten restrictions in Arizona, it made border crossings more difficult. That incentivized criminal groups to get involved.

***Tony Estrada:*** *"We also created the cartels with human smuggling because that made it more difficult, more dangerous and more expensive. They got involved. So now they control more human smuggling and the drugs."*

But it also meant that agents had to patrol and to pursue more migrants and smugglers through these remote areas of the Arizona desert.

And that made agents more likely to get hurt or injured on the job. Or worse yet...

***KGUN:*** *"Last night Border Patrol Agent Brian A Terry was shot and killed in the line of duty."*

***Associated Press:*** *"Border Patrol Agent Nicholas J. Ivie unfortunately sustained fatal injuries."*

The deaths of Barron Torres in Nogales and LaMadrid in Douglas, the two Mexican teenagers shot in rock-throwing incidents, happened around the same time that two Border Patrol agents were killed while on the job.

In December 2010, Agent Brian Terry died in an overnight shootout with cartel rip crews in a canyon north of Nogales

***Associated Press:*** “Terry’s job was to turn back illegal border crossers but he was apparently killed by bandits who prey on those same migrants.”

The weapons used in the shootout were later traced to a failed gun-tracing program by the U.S. government. Agent Nicholas Ivie was killed by friendly fire in October 2012 in a case of mistaken identity.

The two agents had responded to a sensor activation at night near Bisbee.

***ABC15:*** “The FBI at this point ruling the shooting accidental.”

Agent Lonnie Swartz, the man that shot and killed José Antonio, joined the Border Patrol in September 2010. He was part of a surge in staffing at the Tucson sector.

The number of agents peaked in 2011 to deal with increased flows of drugs and people.

We tried calling Lonnie Swartz several times, but he did not pick up.

***Swartz call:*** “Your call has been forwarded to an automatic voice message system... at the tone please record your message... ‘Goodafternoon Mr. Swartz, my name is Rafael Carranza... I’m a reporter with the Arizona Republic (fades out)”

He didn’t return our calls. And he turned down our request for an interview through his attorneys. CBP and the president of the Border Patrol union in southern Arizona also declined our interview requests.

Before joining the Border Patrol, Swartz had been working in construction. After he signed up to become a border agent, he immediately went into the training academy in New Mexico.

***Academy training video:*** “We’ve designed the United States border academy based upon actual events that have happened in the field.”

Training at the Border Patrol Academy back then lasted 51 days, plus an additional eight weeks of mandatory Spanish instruction.

Paco Cantú is a former Border Patrol agent and wrote a book documenting his experience.

***Paco Cantú:*** “You would spend some time in the classroom, you would spend some time either at the driving range or the firing range. Um, and, uh, and you would spend time every day, you know, doing physical training.”

All agents received two hours daily of firearms training and safety. They were required to take marksmanship tests. Agents also had to learn about the appropriate use of force while on duty.

That information comes from the border agency’s Use of Force Policy Handbook, which details when it’s justified to use lethal force to stop a threat.

It boils down to two key words: reasonable and necessary. In other words, that it's the very last resort.

But Paco said the training also normalized this type of violence, especially given the agency's highly militarized training.

**Paco Cantú:** *"You know, you're being trained to think of all your encounters as violent encounters, and you're being trained to see everyone that you encounter as a threat. Whereas the, you know, in actuality, most of these people are in the most vulnerable situation that they've ever been in in their lives, right?"*

He grew disillusioned and after three and half years, he decided to leave.

**(music fades)**

High turnover among agents continues to be a challenge to this day.

Along the border with Mexico, especially in uneven terrain like in Nogales, agents were commonly pelted with rocks from across the border.

There have been numerous examples. So many in fact, that my colleague Rob O'Dell said the Border Patrol's training covered how to respond to them.

**Rob O'Dell:** *"And under their use of force policy, it was okay. It was determined to justify shooting, if you could just say someone was throwing a rock."*

The handbook outlined three criteria to determine if an agent was in jeopardy and was therefore justified to use force: the person throwing rocks at them must have had the ability to cause serious harm or death, they had to be close enough to cause injury with the rock, and there was a manifested intent to cause harm.

Sean Chapman was Lonnie Swartz' lead attorney.

**Sean Chapman:** *"The fundamental issue is this: if you train agents that a rock is a deadly force instrument, then agents are trained to shoot and kill people throwing rocks at them, and that means that occasionally somebody that is throwing a rock is going to get killed."*

He specialized in the defense of federal agents in criminal proceedings.

**Sean Chapman:** *"I got called the night of the shooting...I was at the scene within eight hours and met Lonnie Schwartz for the first time."*

By that point, Lonnie had been in Nogales for nearly 18 months. When he first arrived he was given field training to familiarize himself with the area.

A few months after arriving in Nogales, Lonnie applied to become a firearms instructor, even though he was a junior agent.

But in court records Lonnie said not enough people applied so he was selected.

His instructor training lasted two weeks. He took the course at the Nogales patrol station, taught

by a visiting instructor from the Border Patrol Academy.

Despite his brief time at the Border Patrol, Lonnie was now allowed to teach other agents about when to use force. His quarterly marksmanship scores showed that his shooting accuracy rates ranged between 91 and 96 percent that year.

***(cue music)***

The night of October 10, 2012, Lonnie Swartz was stationed at the Dennis DeConcini port of entry, that's the main border crossing in downtown Nogales.

Just past 11 p.m, they began to hear chatter on the radio from the Nogales police channel about a smuggling attempt along International Street about 800 feet away, almost the length of three football fields.

After a few minutes, Swartz and several other agents stationed at the crossing ran over. They exited the border crossing complex, cut through a parking lot next to the fence, and then headed west along International Street.

As they approached the top of the hill on the Arizona side, Lonnie and the other agents saw two figures at the top of the border fence. They were the suspected smugglers they had heard about through the radio.

International Street was partially illuminated by street lights. Several police and Border Patrol cruisers were already there too.

Once they got close to where the smugglers had climbed to the top of the fence, the agents began to hear the clanking sound of objects hitting metal.

***Sean Chapman:*** *"When he fired his weapon. He was scared to death and he felt sick and horrible."*

***Taide Elena:*** *"Le dio donde le quiso dar y lo mató, cuando lo quiso matar, lo hizo sufrir."*

Taide is convinced Lonnie intended to shoot him.

After the shooting happened, U.S. and Mexican officials handled releasing details differently.

CBP said in its initial statement that several individuals on the Mexican side had assaulted agents with rocks, and that one of the agents fired his weapon at them.

At first, they did not identify the agent.

Meanwhile, Mexican officials named the person killed as 16-year-old José Antonio Elena Rodríguez, but there were mixed reports about the number of shots fired.

Here's Tony Estrada once again:

***Tony Estrada:*** *"I think the community was in disbelief. They couldn't understand what was happening and why. They wanted answers. They wanted transparency before they said any judgment."*



Over the next few years, more information would surface.

Chapman would stay on the case.

**Sean Chapman:** *“And then we had to monitor the investigation and wait for the prosecution authorities to make some sort of decision.”*

A year later, in September 2015, federal prosecutors had gathered enough evidence to charge Swartz with second degree murder.

This is when Jim Calle, the other border patrol union lawyer, teamed up with Chapman to be a part of Lonnie’s defense.

He said it had immediate repercussions for Lonnie.

**Jim Calle:** *“He was, I think, the primary income earner in the family. And upon indictment, within seven, 10 days, you are now placed on suspension without pay. And I always have to advise the agents that there is no real appeal to that decision. And as a result, you’re on your own. You know, you’re on your own in terms of income, terms of taking care of your, yourself, your family.”*

The grand jury indictment would set off a historic legal showdown. Never before had a federal agent been prosecuted in a U.S. court for a cross-border shooting.

As the case appeared destined for trial - a clearer picture of what happened that night would also emerge.

And the key to piecing that together would be Lonnie Swartz, in his own words.

**(cue music)**

Next time on Rediscovering...

**Sean Chapman:** *“He was afraid for himself and his family”*

**Perla Trevizo:** *“So you had a lot of the advocates. You had Border Patrol agents, especially from the union, in support of Lonnie Swartz. You had a TV and print reporters from all over the place.”*

**Gabriela López:** *“It was the heart tearing every time you would see the images of José Antonio’s body laying there with all those gunshots to his chest the autopsy, the pictures, the autopsy were were horrifying.”*

As a note to our listeners, we interviewed Sean Chapman, Lonnie’s attorney, a year before he died. He passed away from cancer in June 2020.

This podcast was edited and produced by Maritza Dominguez and Amanda Luberto. Reporting by myself, Rafael Carranza and Martiza Dominguez. Script supervision came from News Director Kathy Tulumello.

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Thanks so much for listening to Rediscovering: Killed through the Border Fence, a podcast from The Arizona Republic and azcentral.com.