



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA
December 23, 2015

Mr. Christof Heyns
Special Rapporteur on extrajudicial, summary
or arbitrary executions
Geneva, Switzerland

Mr. François Crépeau
Special Rapporteur on the human rights of
migrants
Geneva, Switzerland

OHCHR REGISTRY

28 DEC 2015

Recipients :.....*SPB*.....
.....
.....
.....

Dear Mr. Heyns and Mr. Crépeau:

Thank you for your letter dated May 7, 2015 concerning the death of Antonio Zambrano-Montes in Pasco, Washington, of Ernesto Javier Canepa in Santa Ana, California, and of Rubén García Villalpando (referenced in your letter as a “31-year-old Mexican national”) in Grapevine, Texas, each killed in officer-involved shootings in separate incidents in February 2015. The United States fully supports the mandates of the Special Rapporteurs on the human rights of migrants and on extrajudicial, summary or arbitrary executions. We appreciate the opportunity to respond to this inquiry.

Federal, state, and local government authorities take vigilant action to prevent unlawful killings or use of excessive force by law enforcement personnel and to hold accountable any person responsible for such acts. We know that effective, accountable police departments are fundamental to the infrastructure of democracy. The vast majority of police officers and police departments work tirelessly to protect the civil and constitutional rights of those they serve. But, when federal, state, local, or tribal officials willfully use excessive force that violates the U.S. Constitution or federal law, we have authority to prosecute them.

In the last six years, the U.S. Department of Justice (DOJ) has brought criminal charges against more than 400 law enforcement officials. Under our criminal laws, the successful prosecution of law enforcement personnel depends on the availability of evidence that will support conviction beyond a reasonable doubt. In addition, due process requires that the investigation and prosecution of such allegations be conducted in accordance with the same legal standards applied to the investigation and prosecution of any criminal offense. This is true for any prosecution in the United States, whether at the federal, state, or local level, under U.S. constitutional guarantees and consistent with international obligations.

The United States government transmitted your inquiry directly to local officials in the cities in which these incidents occurred. The relevant portions of their responses are excerpted below, and are followed by information about subsequent developments announced by these and other officials involved in their investigation and prosecution.

The death of Antonio Zambrano-Montes in Pasco, Washington

In response to your inquiry, the City Manager of Pasco City provided information regarding the incident on February 10, 2015 that resulted in the death of Antonio Zambrano-Montes. We have excerpted the relevant portions below:

“ . . . [A]n independent investigative report on this matter was recently completed and submitted to Franklin County Prosecutor Shawn Sant. . . . The report is voluminous and can best be accessed from the Franklin County Prosecutor’s website at www.co.franklin.wa.us. The report materials released thus far seem to indicate that during a minutes-long confrontation with Mr. Zambrano, he endangered officers and, prior to the officers’ arrival on scene, the public, by aggressively throwing significantly-sized rocks at vehicles, then upon their arrival to the scene, at law enforcement officers. Attempts by officers to subdue Mr. Zambrano-Montes had failed including verbal de-escalation techniques, physical take down attempts and multiple tasings. Witness accounts and officer observations that Mr. Zambrano-Montes was clearly under the influence of drugs are confirmed in the toxicology report. Also outlined in the report was the fact that after having thrown multiple rocks at officers, of varying sizes, immediately before the shots that led to Mr. Zambrano-Montes’ death, he turned toward the officers, with a rock in his hands as his arms appeared to be raising [sic] up. The aforementioned rock, which was recovered at the scene, weighed approximately three pounds. . . .

From the very first day, through different methods and forums, the city has engaged with the Zambrano family for the purpose of providing condolence and to facilitate the exercise of their first amendment right to demonstrate. The City and its Police Department have worked closely with the family and other Latino civic leaders in organizing the large demonstration and march held on February 14 of this year, and numerous smaller events over the past four months.

In addition, over the past months, the City has met with numerous organizations to strengthen relations between police and Hispanic community, including the ACLU, the Washington State Commission on Hispanic Affairs and the Latino Civic Alliance of Washington State. Further, we are currently engaged with several community groups and community members in a meditation process through the USDOJ Conciliation and Mediation Service. Chief Metzger has also invited

assistance from USDOJ's Community Oriented Policing Services (COPS) program and from the Police Executive Research Forum (PERF)."

Since our correspondence with the City of Pasco, on September 9, 2015, the Office of the Prosecuting Attorney for Franklin County, Washington announced his decision not to file criminal charges against the officers involved in the shooting. That announcement contained a more detailed account of the sequence of events and of the evidence compiled by an investigation completed in May. The prosecuting attorney's statement may be found at <http://siu15-05491.com/index/Release%2009-09-2015/Media%20Release/NEWS%20MEDIA%20RELEASE%20SEPTEMBER%2009%202015.pdf>.

The City of Pasco has also established an official website as a clearinghouse to make available updated information and resources on the incident, including the final report of the Special Investigations Unit (SIU) conducted by investigators from neighboring city, county, and state law enforcement agencies. See <http://www.pasco-wa.gov/policeshooting>.

In addition to these actions taken at the city and county level, the Governor of the State of Washington has directed the Washington State Attorney General's Office to review the charging decision and investigation, and that review is ongoing. See <http://www.atg.wa.gov/news/news-releases/statement-ag-ferguson-pasco-police-involved-shooting-investigation>. Federal authorities are also conducting an independent review and analysis of the investigative materials provided by state authorities.

On May 27, 2015, the U.S. Department of Justice announced that the Office of Community Oriented Policing Services (COPS) was providing technical assistance and training to the Pasco Police Department in response to the Police Chief's request. See the Department of Justice Press release at <http://www.cops.usdoj.gov/Default.asp?Item=2803>.

In terms of remedial action, on September 3, 2015, Mr. Zambrano's widow, Teresa de Jesus Meraz, filed a civil rights lawsuit in the U.S. District Court for the Eastern District of Washington against the City of Pasco, the Police Chief and his wife, the three police officers involved in the shooting and their wives, as well as 12 unknown employees of the police department. The suit seeks compensatory and punitive damages for Mr. Zambrano's widow and two daughters. It is captioned *Meraz, et al. v. City of Pasco, et al.*, Civil Action No. 4:15-CV-05088.

The death of Ernesto Javier Canepa in Santa Ana, California

In response to your inquiry, the Santa Ana Chief of Police provided preliminary information regarding the incident on February 27, 2015 that resulted in the death of Ernesto Javier Canepa. We have excerpted the relevant portions below:

“ . . . As a point of clarification, I would like to let you know that this case involved the use of deadly force by one officer and not three as mentioned in your letter. At this time, the case remains under investigation by the Santa Ana Police Department to determine if the use of force was consistent with department policies and procedures. . . .

The case is also under investigation by the Orange County District Attorney's Office to determine whether the officer who used force was legally justified in doing so. Both of these investigations are routinely done when an officer uses deadly force whether or not that force results in death. The District Attorney's Office will provide the department with a letter once the investigation is complete and this letter will be publically available on the District Attorney's Office website. . . .

Specifically, as to questions 2 and 3 in the letter from Special Rapporteurs Mr. Crépeau and Mr. Heyns, the case remains under investigation as noted above. No discipline has been given or criminal charges filed at this time. No determination as to discipline or criminal charges will be made until the investigations are complete. As for any remedial action taken, I have been in contact with the Mexican Consulate in Santa Ana, California and have provided the information that I am legally able to share. I have not had contact with the family due to the fact that they have filed a lawsuit against the City of Santa Ana as a result of this incident.

In summary, Mr. Canepa, a suspect in a robbery, was contacted by officers of this department during their investigation. An altercation occurred between Mr. Canepa and the officers shortly before he was shot and killed. Due to the ongoing investigations and the lawsuit, there is very little beyond the factual summary above and the fact that investigations are on-going which I can relay to you at this time. . . .”

At present, local law enforcement and the District Attorney's office are conducting an ongoing investigation, which federal authorities are monitoring.

The death of Rubén García Villalpando in Grapevine and Euless, Texas

In response to your inquiry, the Police Chief for the City of Grapevine Police Department provided the information on the events of February 20, 2015 in the cities of Grapevine and Euless, Texas that led to the death of Rubén García Villalpando. We have excerpted the most relevant portion of that response below:

“The Incident occurred within the City Limits of the City of Euless (“Euless”) on February 20, 2015. The Grapevine Police Department was involved as the events began in the City of Grapevine with an effort to conduct a traffic stop to investigate a call for service initiated by a burglar

alarm. In response to that attempt, the subject fled leading Grapevine Police on a pursuit through rush-hour traffic. Eventually the subject pulled over in Euless. At that point, the Grapevine Officer (the "Officer"), who was alone at the time, conducted a felony stop procedure with the goal of maintaining the safety of both the subject and the Officer until such time as a backup Officer could join the scene. For unknown reasons, the subject repeatedly violated clear verbal commands from the Officer even while the Officer's service weapon was drawn and held on the subject. Eventually, the subject began to approach the Officer over repeated commands by the Officer to "stay right there." Finally the subject closed the distance between himself and the Officer so as to jeopardize the safety of the Grapevine Officer and the subject was shot twice by the Officer.

Because the incident occurred in Euless, the Euless Police Department led an independent investigation of the shooting. The Euless Police Department submitted the results of its investigation to the Tarrant County District Attorney's office. The Tarrant County District Attorney's Office convened a grand jury on May 6, 2015 to determine whether to indict the Officer for the shooting. Over the course of more than a week, the grand jury was given complete access to all evidence. On May 18, 2015, the Tarrant County grand jury announced its decision not to indict the Officer."

Following the grand jury announcement, the Criminal District Attorney's Office released a statement that included the following remarks from the prosecutor who led the State's presentation:

"The grand jurors were given complete and open access to all the evidence in this case, included cell phone videos, the dash cam video from Officer Clark's vehicle, witness statements, police records and reports, and any additional information that they requested," said Larry Moore, Chief of the CDA's Criminal Division, who led the state's presentation. "They heard testimony from witnesses representing both Mr. Villalpando and Officer Clark. The attorneys representing Officer Clark and the Villalpando family were also given the opportunity to directly address the Grand Jury, should they wish to do so."

At the same time, the District Attorney's Office also released the video of the events filmed from the dashboard of the officer's patrol car ("dash-cam video") which had been presented to the grand jury. A copy of that video, together with comments by the Grapevine Chief of Police Department, can be viewed at the following web address: <https://www.youtube.com/watch?v=EAmDqck89yM>.

The U.S. Department of Justice is assessing the matter and will determine if federal action is appropriate.

We further note that on September 23, 2015, Mr. Villalpando's widow, Martha Anjelica Romero, filed a wrongful death and civil rights lawsuit in the U.S. District Court for the Northern District of Texas against the City of Grapevine, its Police Chief, and the police officer involved. The suit seeks actual and punitive damages for Mr. Villalpando's wife, children, parents, and estate. It is captioned *Romero, et al. v. City of Grapevine, Texas, et al.*, Civil Action No. 3:15-CV-03101-N.

The United States is committed to protecting the human rights of all persons in the United States, including of migrants, regardless of their immigration status. Please be assured that the U.S. government will continue to give the fullest consideration to your concerns expressed herein.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith M. Harper', with a long, sweeping horizontal line extending to the right.

Keith M. Harper
Ambassador
U.S. Representative to the Human Rights Council