

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)
V.) CASE NO. H-09-296
MARY JESSE CUADROS (2))

MOTION TO DISMISS PORTION OF INDICTMENT
FOR FAILURE TO STATE AN OFFENSE

TO THE HONORABLE LEE H. ROSENTHAL, UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION:

Comes now, Defendant Mary Jesse Cuadros by and through her undersigned counsel and moves this Honorable Court to Dismiss a portion of the Indictment for Failure to State an Offense pursuant to Federal Rule for Criminal Procedure 12.

I.

On April 21, 2010, Mary Jesse Cuadros was indicted for one count of conspiracy to violate 8 U.S.C. § 1324(a)(1)(A)(v)(I). Ms. Cuadros was arraigned on April 27, 2010.

II.

The last paragraph of the indictment in this cause states: “The death of Edy Joel Jimenez-Ulloa resulted during and in relation to the above described offense.” The issue in this case is whether some level of causation is required to prove this element of the offense which is a violation of 8 U.S.C. § 1324 (a)(1)(B)(iv). The prosecutor in his response to the defense motion for bill of particulars states that he need not prove any causation at all in order to prove this element of the charge. The prosecutor further confirms in his Response to the Motion for Bill of Particulars that “there is no dispute ...

that the cause of death is undetermined.” Also, attached to this pleading is an Affidavit from the medical examiner affirming that he performed every possible test to assist him in determining the cause of death, and he cannot determine the cause of death or recommend a manner of death. See attached Exhibit A. With no cause of death determination, there can be no causal link at all to anyone’s conduct.

III.

It is the defense position that it is clear from the statutory language and the case law that some level of causation is required to prove that a death resulted from harboring undocumented aliens. The 5th Circuit has not yet decided what level of causation is required. However, in this case, the government admits it has absolutely no evidence of causation; therefore, it is not necessary to know what level of causation is required by the 5th Circuit in interpreting the language “resulting from.”

IV.

Webster defines result as “to proceed or arise as a consequence, effect, or conclusion (death _ed from the disease).” The definition very clearly calls for some causation even using an example that shows causation. The 5th Circuit recently addressed the words “death resulting from” in *United States vs. Tiofila Santillana*. No. 09-50298, (5th Circuit 4/14/2010). *Santillana* was convicted by a jury of distributing methadone resulting in the death of Brandon Moore. *Santillana* sold methadone to Moore. *Id* at 2. Later in the night, Moore was admitted to the emergency room and ultimately died. *Id* at 2-3. Three experts testified at trial regarding the cause of death. All of them identified methadone as either the chief cause of death or one of the causal agents. *Id* at 3-5. The

first important point is that the Court states that “it is thus an essential element of the conviction that Moore died as a result of the specific methadone distributed by Santillana.” *Id* at 6. The dispute in the 5th Circuit was not whether there needed to be some type of causal link, but rather what degree of causation is necessary. *Santillana* argued that the degree of causation should be heightened and require more than a mere contribution. *Id* at 7. The Court finds that “there was sufficient evidence for a reasonable jury to conclude that Moore’s death resulted from his use of methadone under a heightened standard of causation.” *Id* at 8. The Court does not decide if that heightened standard of causation is required, but makes it clear that there must be some causation at the very least “mere contribution.”

V.

Santillana does not contradict the cases cited by the government. It just provides some further clarification. In all of the cases raised by the prosecutor, there is in fact some level of causation.

VI.

The government seems to make two arguments in its response to the Defense Motion for Bill of Particulars. First, the government is linking the issues of intent and causation and noting that intent is not required. The defense agrees that intent is not required, but disagrees that the concept of causation requires intent. Second, the government reviews the cases that discuss causation.

VII.

The government cites *United States vs. Herrera-Rojas*, 243 F.3d 1139, 1144 (9th Cir.

2001). In *Herrera-Roja*, aliens were arrested on the side of the highway. Herrera-Rojas told the agents that one member of the group, Adrian Rogel Jaimes, was left behind on the trail when he became too weak to continue with them. This alien died from exposure. “The weather was windy and cold, with temperatures in the low thirties and some rain.” *Id* at 1141. Herrera-Rojas objects to an enhancement for resulting in the death alleging that he did not intend the death. The Court holds that intent is not required. *Id* at 1144. The Court does not hold that causation is not required. The result must still be tied to the defendant’s conduct. It just doesn’t require that by his conduct he intended someone to die. Herrera-Rojas also objected to cumulating enhancements for both creating a risk of serious bodily injury and causing a death. In addressing this objection, the Court confirms that causation is required when it notes that punishing someone for the death is punishing for “degree of harm *caused* by the defendant’s conduct.” *Id* at 1145. This is not mere dicta.

VIII.

In the Herrera-Rojas case, the death was related to the defendant’s conduct. Although the defendant did not intend for the death to occur, the conduct in leaving the man in the cold contributed to his death. The Fifth circuit supported the concepts in *Herrera-Roja* in the next case cited by the government, *United States vs. Garcia-Guerrero*, 313 F.3d 892 (5th Cir. 2002). In *Garcia-Guerrero*, the Fifth Circuit did not decide what type causal connection was needed, because there was a significant causal connection in that case. In that case, “the autopsy report, the weather conditions, the lack of water and food, the manner of death, and the need for two other group members to also receive

rather extensive medical treatment as a result of the extreme heat, all support the district court's finding that Simon-Fernandez died from conditions encountered during the dangerous journey." *Garcia-Guerrero* at 899.

IX.

Lastly, the government cites a 10th circuit case to allege that "resulting from" does not require any causal link: *United States v. Cardena-Garcia*, 362 F.3d 663 (10th Cir. 2004). In *Cardena-Garcia*, six deaths and other injuries occurred in a traffic accident. The Court found that the van's slow speed amounted to reckless conduct, which clearly played a factor in the collision. *Id* at 666. The defendants in that case were also responsible for gross overcrowding of the vehicle and both had knowledge of alterations to the vehicle which made it unsafe and its poor mechanical condition. *Id*.

X.

Cardena-Garcia again in reality addresses the level of causation required although it is understandable how the government could read the lone sentence it withdrew from the opinion to mean that no causation is required in the 10th Circuit. Looking closely at the opinion in *Cardena-Garcia*, Cardena-Garcia objected to the enhancements for six deaths and other injuries, because they "were not the proximate and direct result of foreseeable harm created by their conduct," citing *Herrera-Rojas* for support. *Id* at 665. The Court states, "Appellants read too much into the footnote. In any event, we disagree that proof of direct or proximate cause is required." *Id*. The Court notes that the language of the statute clearly allows an enhancement if the death "resulted from" the transportation. *Id*

at 665-666. “Resulting in death and causing death are not equivalents.” *Id* at 666.

XI.

The Court then points out that the Defendants plead to the charge with this resulting in death element in it, and only complained at sentencing. The Court wisely notes that the Defendants thought there was sufficient evidence of the resulting relationship to plead guilty, but wanted to complain about that same relationship on sentencing. The Court states, “when resulting death is such an element, requiring proof of even more for sentencing purposes would be a striking anomaly.” *Id*. Most importantly, the Court explains that had the Defendants not already admitted to a resulting from connection, then the Court would be examining the issue for some causal link. *Id*. “The causal link would need not be that commonly associated with tort negligence—proximate or direct cause. For example, sufficient “cause” exists if the defendant simply arranged for the overcrowded conditions in the van, as it is foreseeable the driver would be distracted in an attempt to avoid detection. A sufficient nexus would exist if the death or injury was reasonably foreseeable and Appellant’s conduct was a contributing factor.” *Id*.

XII.

Using the prosecutor’s argument, any death of an alien would increase the punishment no matter what the cause. If an alien dies of cancer that was in its last stages of destruction when the alien departed his country, the prosecution would attribute the death to the defendant. If Al-Qaeda bombed the city of Houston and everyone was killed, the prosecution would attribute the death to the defendant. This position is nonsensical

and not supported by the plain language of the statute or the case law.

WHEREFORE, Defendant prays that the Court hear and consider this Motion.

Defendant prays for such other relief as this Honorable Court may deem meet and proper.

Respectfully submitted,

Mary Jesse Cuadros

/s/ Daphne L. Pattison

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CERTIFICATE OF SERVICE

I, Daphne L. Pattison, do hereby certify that on this the 20th day of May 2010, a true and correct copy of the forgoing pleading was served on all parties of record specifically including Assistant United States Attorney Doug Davis, via electronic filing.

/s/ Daphne L. Pattison

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