



Court Hid Evidence From Jury in Border Agent Jesus Diaz Case

On November 22, the non-profit Law Enforcement Officers Advocate Council (LEOAC) released official documents related to the case that were obtained during discovery process — when the defense is allowed to review the evidence against the defendant. The judge in the case had issued an order prohibiting defense attorneys from releasing the information, but LEOAC and its legal counsel obtained the documents well before the order was given. They do not believe the restriction applies to third parties.



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Among the trove of documents sent to *The New American* and posted online were interviews with trainee agents who claimed to have witnessed the alleged excessive use of force. Also included were interviews with agents who were in the area but did not see agent Diaz engaging in any improper behavior. A complaint from the Mexican Consulate was made available as well.

According to experts, the picture that emerges from a review of the documents is troubling. And more than a few prominent individuals have expressed deep concerns about a possible miscarriage of justice. Longtime law-enforcer and use-of-force expert Dave Grossi, who testified at the trial on behalf of agent Diaz, said the court deliberately suppressed key evidence. If the jury had known the whole truth, he contends, the outcome of the case might have been very different.

“One can only guess what the jury’s findings might have been had they known about the ‘armed escort alert’ received by the agents 24 hours earlier that escalated their awareness level, or the presence of the gang [tattoos] all over the second smuggler’s face, head, neck and body,” Grossi [noted](#), referring to a warning received by the Border Patrol that drug traffickers crossing the border were employing heavily armed squads.

“Be that as it may, Agent Diaz is now doing time for what many feel was proper and reasonable force given the totality of the circumstances he faced,” he added. “It was 0300 hours in a dark pecan field, and Diaz knew he was dealing with violent, dope-smuggling gang members, one of whom was potentially armed and still at large somewhere in that field.”

Andy Ramirez, president of LEOAC, agreed with the assertions. “After reviewing trial transcripts and discovery, we concur with expert Grossi that key facts were filtered by the court to prevent the jury from learning the truth,” he said in a statement.

The evidence that was presented to the jury, on the other hand, was often highly dubious — even according to federal investigators. Consider, for example, the testimony of the drug smuggler who was allegedly deprived of his rights by agent Diaz.



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A U.S. government report created during one of the original investigations of the incident noted that the drug smuggler — who was ultimately given immunity to testify against Diaz — would be a witness whose “credibility is questionable at best.” Not only that, the smuggler admitted to lying in court.

“Diaz is in prison in part because he ‘allegedly lied’ to BP agents. The illegal drug smuggler gets total immunity for ‘admittedly lying’ about the same incident,” noted law-enforcement expert Grossi. “Justice? You tell me.”

But that is not all. Of the dozen agents and trainees who were there on the night of the incident, two testified in court that — in their opinion — Diaz’s use of force was “unnecessary.” But those same individuals offered often contradictory testimony — some of which was later shown to be inaccurate.

But instead of hiding the questionable testimony from the jury, the judge chose to admit it even while blocking access to other key facts. Critics like LEOAC, which has been advocating the Diaz family’s cause for months, are outraged about the apparent injustice.

“It is unconscionable that such statements be allowed as evidence against Agent Diaz given not only the amount of hearsay by government witnesses but also the repeated perjury and lack of credibility among witnesses,” noted LEOAC chief Ramirez. “This ruling is about suppression as the documents show a case that screams to be brought to public scrutiny given the inconsistencies in the statements by several government witnesses who contradict their own statements as well as each other.”

LEOAC and other Diaz supporters also contend that the five counts of “lying to investigators” were also bogus. “These charges were solely filed in retaliation for Agent Diaz’s refusal of the plea bargain offered by the USAO,” Ramirez argued.

And the reason the judge and the prosecutor worked to prevent the release of the documents was simply to stop Americans from discovering a travesty, according to critics such as Ramirez. “What is more clear is that such records as the discovery in the prosecution of Agent Diaz, as well as the file in the murder of Border Patrol Agent Brian Terry, which was also sealed as reported by the *Arizona Daily Star*, only further prove that transparency on the part of the Obama Administration means to hide or prevent such facts from being revealed to the American people, where it can be scrutinized by the Court of Public Opinion,” Ramirez said.

But despite government stonewalling, Diaz’s cause is gaining more and more traction as the media begins to reveal the details of his prosecution. Meanwhile, agent Diaz continues to pick up supporters, too. Last week, more than three dozen members of Congress signed a letter to Attorney General Eric Holder demanding a detailed explanation of the Justice Department’s prosecution.

“It is our belief that the prosecution of Agent Diaz by the U.S. Attorney’s Office for the Western District of Texas, also responsible for putting other agents behind bars, is a disservice to the men and women of the Border Patrol and the mission they undertake,” the Congressmen wrote.

“Despite claims of abuse by the smuggler, who was given full immunity in exchange for his testimony, photographic evidence and testimonies from other agents at the scene have testified that no such violence took place,” the letter states. The facts in this case do not indicate that the drug smuggler was harmed during the arrest or that excessive force was used.”

Of course, Holder has so far refused to cooperate on the issue, or on much else for that matter. But Congressmen are getting upset and do not plan to give in.

“In two separate letters, I’ve asked the Attorney General to provide information and take action on what



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has proven to be a serious miscarriage of justice,” said Congressman Duncan Hunter (R-Calif.), referring to the Diaz case. “The Attorney General has been silent so far, perhaps because he’s busy making excuses on why he should not be held accountable for Operation Fast and Furious.”

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