
LAW, RIGHTS & RELIGION PROJECT

 Columbia Law School

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Press Advisory:

Major Federal Court Victory for Religious Liberty Rights of Immigrants' Rights Activists

Federal court judge reverses lower court, granting religious liberty defense of No More Deaths defendants

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On Monday afternoon, February 3, 2020, U.S. District Court judge Rosemary Márquez issued a sweeping [opinion](#) in which she granted the religious liberty defenses raised by four activists working with the Southern Arizona group [No More Deaths/No Más Muertes](#). The opinion reversed an earlier ruling in the case by Magistrate Judge Bernardo Velasco in which he had found the activists guilty of violating federal law for leaving water and food in the desert for migrants in the Cabrieza Prieta National Wildlife Area, a federally controlled refuge in the Southern Arizona desert where human remains of migrants are frequently found. The lower court had dismissed the religious liberty defense by characterizing it as a “modified Antigone defense.”

Judge Márquez’s opinion today overruled every aspect of the lower court’s ruling, and offered a stinging defeat to the Trump Justice Department’s efforts to trivialize

religious liberty claims when raised by activists opposing the Administration’s immigration policies. At one point in the opinion the judge characterized the government’s arguments as being based upon a “gruesome logic.”

All four of the defendants raised defenses under the Religious Liberty Restoration Act (RFRA), a 1993 federal law that requires the government to accommodate a person’s religious beliefs when enforcing the law. The Trump administration, and the Department of Justice in particular, have prioritized the protection of religious liberty rights in their programmatic agenda. In October 2017, former Attorney General Jeff Sessions instructed attorneys working for the Justice Department: “to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity.” Yet in their briefing on the appeal and at the criminal trial in this case, the Justice Department lawyers mocked the defendants’ assertion that their actions were motivated by faith-based respect for the sanctity of life.

“Judge Márquez’s opinion marks a significant defeat for the Department of Justice in its effort to protect religious liberty rights only when they advance the White House’s political agenda,” said [Professor Katherine Franke](#), faculty director of the [Law, Rights, and Religion Project](#) at Columbia Law School. “This is now the second time in several months that a federal judge has granted a faith-based defense raised by immigrants’ rights activists who are being criminally prosecuted by the federal government for coming to the aid of people crossing the deadly Arizona desert. (Two months ago [a federal judge granted](#) the RFRA defense raised by No More Death’s volunteer Scott Warren.)

Franke [filed a friend of the court brief](#) in the case on behalf of seven scholars of religious liberty law, supporting neither party in the case, but rather providing the court with the proper framework within which to consider the defendants’ motion to dismiss grounded in the Religious Freedom Restoration Act. “We are quite pleased to see that Judge Márquez applied an analysis of the RFRA claim that mirrored the structure we provided in our brief,” she noted.

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