

NEWS

Parents of slain border agent seek to reinstate claims

SAN FRANCISCO — The parents of a border patrol agent killed with a gun obtained illegally in the federal government's botched Operation Fast and Furious scheme asked the 9th U.S. Circuit Court of Appeals on Thursday to let them sue officers implicated in the scandal for constitutional violations.

Brian Terry was shot to death in 2010 during a shootout in Arizona near the Mexico border. Guns at the scene had been purchased at a store that agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives had permitted to sell guns illegally as part of its effort to snag Mexican drug cartel members by tracing the gun sales.

Terry's parents sued the gun shop owner and several federal officials linked to Fast and Furious, alleging they violated Terry's due process right to be free from state-created danger.

The lower court threw out their case but the three-judge panel in the case did not clearly indicate how they would rule. *Terry v. Newell*, 14-15284 (9th Cir., filed Feb 18, 2014).

The case involves a so-called Bivens claim,

which refers to a 1971 U.S. Supreme Court decision. Bivens allows people to bring constitutional allegations against federal officials in limited circumstances — when there are no other laws in place that can address an aggrieved person's concerns.

In this case, U.S. District Judge David G. Campbell of Arizona ruled that because Terry's family received payments for their son's death under federal pension and other compensation benefits, they are precluded from bringing a Bivens claim.

Lincoln Combs, who argued for the Terrys before the 9th Circuit, told the judges that the laws do not include an opportunity to present constitutional grievances that only a Bivens claim would allow.

It also serves as a deterrent to federal officials to prevent a repeat of schemes such as Operation Fast and Furious, said Combs, a shareholder with Gallagher & Kennedy PA.

"Wouldn't we be hampering law enforcement ingenuity by allowing Bivens claims against" those accused of misbehavior, Judge Johnnie B.

Rawlinson asked Combs. While Fast and Furious was "ill-conceived," not all operations are, Rawlinson said.

"You need to punish egregious examples," Combs replied.

"But where would you draw the line?" Rawlinson asked.

Judge Andrew D. Hurwitz said he shared Rawlinson's concern. "You have a great case ... but if we apply a Bivens remedy it would apply to the not so good cases, right?"

Attorney Timothy P. Garren, who argued for the federal officials, told the court that the situation should be looked at as an employment matter.

Judge William A. Fletcher asked Garren, a solo, if a private citizen would have a valid claim if they had been killed instead of Terry.

Garren replied yes and Fletcher said it was "preposterous" and "crazy" that a federal employee would have fewer rights than a private citizen just because he has a federal pension and other benefits in the event of his death.

-The Record Reporter

Device

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health experts about why the device remains on the market. Neither the FDA nor Alere have yet said publicly that the device appears to malfunction.

"It very well may be an unsafe device," said Dr. Robert G. Hauser, a retired cardiologist and an advocate for improved safety of medical devices. "I think the FDA has to look at this device very seriously, and ask whether it's a safe device and should be used by patients for this purpose."

The device is almost certainly going to be a topic of debate, when the FDA is holding a workshop about the accuracy of it and similar devices. Jackie Lustig, a spokeswoman for Alere, declined to answer any questions about the INRatio.

The INRatio and other similar devices measure the blood's clotting ability and have been welcomed by many doctors and their patients who take the drug warfarin, a blood-thinning drug that requires careful monitoring. Instead of sending blood samples to an outside laboratory, doctors can learn with the prick of a finger if warfarin is working properly.

The stakes are high: Too little warfarin and patients could suffer a stroke, but too much and they could bleed to death.

"It's not like checking cholesterol," said Doug Patterson, chief executive of CoaguSense, which makes the Coag-Sense, a competing device. "Too much or too little, and you can end up with trouble."

Public records show that problems began to arise with the INRatio only a few years after it went on the market. In 2005 and 2006, the FDA issued two warning letters to HemoSense, the device's maker at the time. The letters argued that the company had failed to act on complaints that the devices were giving erroneous results.

The FDA was receiving thousands of reports of malfunctions and injuries. The INRatio was associated with 1,451 injury reports, according to an analysis of adverse-event reports to the FDA. By contrast, CoaguChek, the market leader that is made by Roche, logged 95 injury reports over the same period.

Such reports are voluntarily submitted to the FDA and can contain errors because they are not independently verified. Still, the difference between the products was significant, said Dr. Sidney M. Wolfe, founder and senior adviser to the Public Citizen Health Research Group.

In 2014, a year after Goldstein complained to Alere, the company announced it was recalling the strips for its INRatio2 device because they were providing erroneous readings. The company switched patients and doctors to its earlier system, the INRatio.

Later that year, Alere issued a new warning about that product, saying that customers of both the INRatio and INRatio2 should stop using the products if they had certain medical conditions, including the flu or other infections and chronic diseases like rheumatoid arthritis.

Then, last fall, new questions arose about the device after it was discovered that the INRatio was used in a large clinical trial that led to the approval of the drug Xarelto, an alternative to warfarin.

-New York Times News Service

Porter

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developed industrial country like the United States adjusts to import competition by moving workers into more advanced industries that can successfully compete in global markets.

They examined the experience of American workers after China erupted onto world markets some two decades ago. The presumed adjustment, they concluded, never happened. Or at least hasn't happened yet. Wages remain low and unemployment high in the most affected local job markets.

Nationally, there is no sign of offsetting job gains elsewhere in the economy. What's more, they found that sagging wages in local labor markets exposed to Chinese competition reduced earnings by \$213 per adult per year.

In another study they wrote with Daron Acemoglu and Brendan Price from MIT, they estimated that rising Chinese imports from 1999 to 2011 cost up to 2.4 million U.S. jobs.

"These results should cause us to rethink the short- and medium-run gains from trade," they argued. "Having failed to anticipate how significant the dislocations from trade might be, it is incumbent on the literature to more convincingly estimate the gains from trade, such that the case for free trade is not based on the sway of theory alone, but on a foundation of evidence that illuminates who gains, who loses, by how much, and under what conditions."

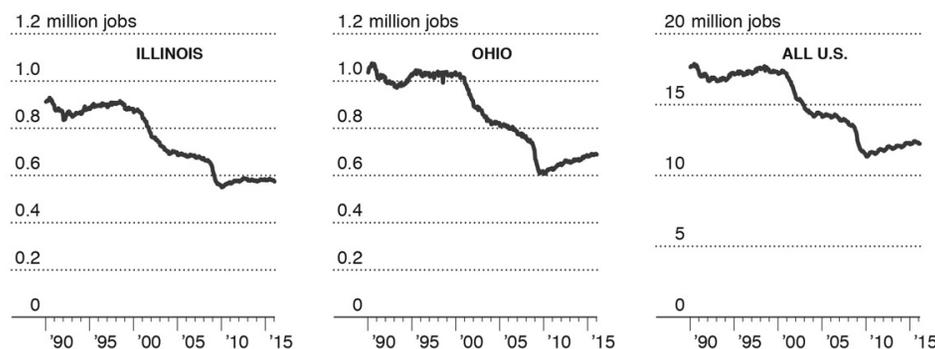
Global trade offers undeniable benefits. It helped pull hundreds of millions of Chinese out of poverty in a matter of a few decades, an unparalleled feat. It ensured Apple could benefit from China's ample supply of cheap labor. Consumers around the world gained better-priced, better-made goods.

The Chinese export onslaught, however, left a scar on the American working class that has not healed. That disproportionate effect sug-

Trade Shock

Manufacturing employment in the Rust Belt and elsewhere in the United States has been decimated by the rise of China as an industrial power and export-driven economy.

Total manufacturing jobs



Source: Bureau of Labor Statistics

THE NEW YORK TIMES

gests Washington officialdom might do well to reassess its approach to future trade liberalization. Most important, it points to reconsidering how policymakers deal with trade's distributional consequences.

It doesn't mean walling off the U.S. from the rest of the world, but it does mean learning from the experience of other nations that had a much healthier response to China's rise.

Germany, for example, not only received a surge of Chinese imports, but also experienced an onslaught of imports from Eastern European countries after the collapse of the Soviet bloc. But it managed to maintain a more balanced trade because German manufacturers increased their exports to all these countries too, offsetting the job losses from import competition.

Autor suggests that Americans' low savings rate was a big part, coupled with foreigners' appetite for accumulating dollar assets, which helped keep American interest rates low and the dollar strong, fueling a trade deficit.

But other factors were at work. Robert Gordon of Northwestern University suggested to me that Germany's highly skilled workers were harder to replace with cheaper Chinese

labor, limiting though not totally eliminating outsourcing. Germany's stronger labor unions also put up more of a fight.

Washington played its part, too. In their new book "Concrete Economics" (Harvard Business Review Press), Stephen S. Cohen and J. Bradford DeLong of the University of California, Berkeley suggest that ultimately, it was the fault of U.S. policy choices.

The United States might have leaned against China's export-led strategy, they argue, perhaps by insisting more forcefully that Beijing let its currency rise as its trade surplus swelled. It might have tried to foster the cutting-edge industries of the future, as government had done so many times before, encouraging the shift from textiles to jumbo jets and from toys to semiconductors.

What Washington did, instead, was hitch the nation's future to housing and finance. But Wall Street, instead of spreading prosperity, delivered the worst recession the world had seen since the 1930s. Even at best, they write, the transformation of banking and finance has "produced nothing (or exceedingly little) of value."