

Jose Guerena Killed: Arizona Cops Shoot Former Marine In Botched Pot Raid

By Radley Balko

On May 5 at around 9:30 a.m., several teams of Pima County, Ariz., police officers from at least four different police agencies armed with SWAT gear and an armored personnel carrier raided at least four homes as part of what at the time was described as an investigation into alleged marijuana trafficking. One of those homes belonged to 26-year-old Jose Guerena and his wife, Vanessa Guerena. The couple's 4-year-old son was also in the house at the time. Their 6-year-old son was at school.

As the SWAT team forced its way into his home, Guerena, a former Marine who served two tours of duty in Iraq, armed himself with his AR-15 rifle and told his wife and son to hide in a closet. As the officers entered, Guerena confronted them from the far end of a long, dark hallway. [The police opened fire](#), releasing more than 70 rounds in about 7 seconds, at least 60 of which struck Guerena. He was pronounced dead a little over an hour later.

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UPDATE: *An autopsy that was conducted later determined that Guereña was hit 23 times.*

The Pima County Sheriff's Department [initially claimed](#) (PDF) Guereña fired his weapon at the SWAT team. They now acknowledge that not only did he not fire, the safety on his gun was still activated when he was killed. Guereña had no prior criminal record, and the police found nothing illegal in his home. After ushering out his wife and son, the police refused to allow paramedics to access Guereña for more than an hour, leaving the young father to bleed to death, alone, in his own home.

I can now report a number of new details that further call into question the police account of what happened that morning. But first some context:

The Pima County Sheriff's Office has now changed its story several times over the last few weeks. They have [issued a press release](#) (PDF) scolding the media and critics for questioning the legality of the raid, the department's account of what happened, and the department's ability to fairly investigate its own officers. They have obtained a court order sealing the search warrants and police affidavits that led to the raids, and they're now refusing any further comment on the case at all. When I contacted Public Information Officer Jason Ogan with some questions, he replied via email that the department won't be releasing any more information. On Saturday, Pima County Sheriff Clarence Dupnik [told Arizona Daily Star columnist Josh Brodesky](#) that he may never release the search warrants and police affidavits. Dupnik rose to national prominence earlier this year after claiming combative political rhetoric contributed to Jared Loughner killing six people and wounding 19 others, including Rep. Gabrielle Giffords, last January.

The department's excuses for keeping all of this information under wraps make little sense. In his May 18 press release (PDF), for example, Ogan wrote, “The investigation that lead to the service of the search warrants on May 5 is a complicated one involving multiple people suspected of very serious crimes. Sometimes, law enforcement agencies must choose between the desire of the public to quickly know details, and the very real threat to innocent lives if those details are released prematurely.” Dupnik used the same line of reasoning with Brodesky. “Those are the real sensitive parts of why we are having difficulty with trying to put information out publicly—because we don’t want somebody getting killed,” Dupnik said.

The problem with that explanation is that the search warrants and affidavits weren’t sealed until four days after the raids were executed, right at about the time the troubling questions about Jose Guerena’s death began to make national headlines. If revealing the details of this investigation — which remember, was initially described by the Sheriff’s Department as a marijuana investigation — could endanger lives, why weren’t the warrants and affidavits sealed from the start? It isn’t difficult to understand why some would suspect a cover-up, or at least an attempt to suppress details until the department can come up with a narrative that mitigates the damage. In any case, it’s awfully audacious for a police agency to scold the media for not trusting them and for “spreading misinformation” just days after revealing they themselves released bad information.

There are other reasons to doubt the excuse that releasing the search warrants would jeopardize public safety. The raids on the other homes carried out that same morning, all part of the same operation, resulted in no arrests and turned up little if any actual contraband. (When police find illegal substances after these raids — especially raids that end badly — they usually quickly release that information.)

Moreover, if this was all about breaking up a dangerous home invasion ring, where are the suspects, and where is the evidence? According to an advocate for the Guerena family I spoke with this week, the police also mistakenly raided another home near Guerena’s the same morning, and have since replaced that home’s front door. Again, the Pima County Sheriff’s Department is refusing comment, so I can’t verify this allegation with them. But police officials have admitted that even the Guerena warrant was only for his residence, not for Jose Guerena personally; his name doesn’t appear anywhere on the

warrants. The police also concede they weren't aware that there was a child in the home at the time of the raid. Given all of this, it seems reasonable to question just how thorough this investigation really was.

[I've been reporting](#) on the overuse of SWAT teams and military police tactics for about six years now. You begin to see patterns in how police agencies respond to high-profile incidents like this one. One near-universal tactic is to lock down information once the media begins to grow skeptical. Another, often undertaken simultaneously, is to unofficially leak information that's beneficial to the police department. They're doing both in Tucson.

Michael Storie, the attorney for the Arizona police union, is apparently handling the smear campaign portion of the strategy. Storie points out [on the union's website](#) that under his watch, no union police officer "has ever been convicted on charges relating to on-duty conduct." That may be a boastworthy claim when it comes to Storie's lawyering prowess. But it isn't exactly a testament to his trustworthiness. (Police critic William Grigg [also points out](#) that the boast isn't entirely true — [Storie represented a cop convicted of a sexual assault and kidnapping](#) committed in 2005, despite Storie's best efforts to blame the victims.)

[On Friday](#), Storie told the *Arizona Daily Star* that Guerena was "linked" to a "home-invasion crew," and that police found rifles, handguns, body armor, and a "portion of a law-enforcement uniform" in Guerena's house. "Everything they think they're going to find in there, they find," Storie said. "Put it together, and when you have drug rip-offs that occasionally happen where people disguise themselves as law enforcement officers, it all adds up."

I asked Chris Scileppi, the attorney representing Guerena's family, about the "portion of a law enforcement uniform" allegation. "They're trying to imply that he was dressing up as a police officer to force his way into private homes," Scileppi says. But when police serve a search warrant they leave behind a receipt what they've taken from the residence. According to Scileppi, the only item taken from Gurena's home that remotely fits that description was a U.S. Border Control cap — which you can buy from any number of retail outlets, [including Amazon.com](#).

About the guns and body armor Scileppi says, “Is it really that difficult to believe that a former Marine living in Arizona would have guns and body armor in his home? Nothing they found in the house is illegal to own in Arizona.” In fact, Storie himself acknowledged in the *Daily Star* that had the SWAT team entered Guereña’s home peacefully, they wouldn’t have made an arrest.

And when you “put it together,” to borrow his own terminology, Storie’s comments thus far lead to a pretty astonishing conclusion: After violently breaking into Guereña’s home, the police found exactly the evidence they were looking for — yet none of that evidence merited an arrest. Storie is either shamelessly posturing, or he actually believes that the police are justified in violently forcing their way into a private home with their guns drawn, even if they have no expectation that they’ll find any evidence of a crime.

At his press conference last week, Storie also defended the SWAT team’s refusal to allow paramedics to access Guereña for more than an hour. “They still don’t know how many shooters are inside, how many guns are inside and they still have to assume that they will be ambushed if they walk in this house,” Storie said.

This is absurd. The entire purpose of using SWAT teams, dynamic entry, and like paramilitary-style police tactics is to subdue dangerous suspects and secure the building within seconds. If it took more than an hour to secure the Guereñas’ small home, this particular SWAT team was incompetent. By contrast, paramedics were tending to the wounded after the Jared Loughner shootings within 12 minutes, and that was a far more volatile crime scene.

Storie has offered up a number of other questionable allegations and explanations in recent days.

Last week, for example, Storie told the *Daily Star* that the investigation leading up to the raids was from the start about home invasions and “drug rip-offs” — not just marijuana distribution, as the Sheriff’s Department initially indicated. Storie also says the police vehicles ran their lights and sirens until they were parked in the Guereñas’ driveway, and that a police officer knocked on

the door and announced himself for a full 45 seconds before the SWAT team forced its way inside. He emphasized that the raid was “in no way” a “no-knock” operation.

Storie is laying groundwork for the argument that Guerena should have known that the men breaking into his home were police. That he still met them with his rifle meant he was intent on killing them, which of course would justify their rash of gunfire. For good measure, Storie added that just before they opened fire, several officers reported hearing Guerena say, “I’ve got something for you; I’ve gotten something for you guys.”

There are a number of problems here, beginning with the lights, the sirens, and the knocking. If these warrants were, as Storie claims, for suspected dangerous, well-armed members of a home invasion ring, why would they give a violent suspect such ample warning that they’re coming? Why *wouldn’t* the police have sought and obtained a no-knock warrant? This is precisely the scenario for which no-knock entry is warranted — to apprehend suspected dangerous people who may present an immediate threat to police and the public.

This week I also spoke with Ray Epps, a retired Marine sergeant from Mesa, Arizona and president of the Arizona chapter of Oath Keepers, [the controversial organization](#) of police and military personnel who have vowed not to enforce laws they believe are unconstitutional. After hearing about Guerena’s death, Epps drove to Tucson to investigate.

“We spoke with several of the neighbors,” Epps says. “And none of them — none of them — heard any sirens that morning. Every one of them told us they didn’t hear anything, no knocking, no shouting, until the shooting started. They didn’t hear anything until the shooting started.” Scileppi, who is conducting his own investigation, wouldn’t say if he had spoken to neighbors, but did say of the lights and sirens, “What we’ve found contradicts what they’re saying.” Epps added, “What I found disturbing is that none of the neighbors would give us their names. These people are terrified of the police, now. Another thing I found strange, they said the police didn’t evacuate them until *after* the shooting.”

If next-door neighbors didn't hear the sirens or police announcement at the door, it's plausible that Guerena, who was sleeping off the graveyard shift he'd worked the night before, didn't hear them either. Of course, the other possibility here is that the police are lying about the sirens and the announcement.

To buy what Storie is pitching, you would have to believe that Guerena — the father of two young boys, who was working a night job to save money for a new home, who had no criminal record, who served two tours of duty in Iraq and was honorably discharged — knowingly took on a team of armored, well-armed police officers, himself armed only with his rifle, and with his wife and young child still in the home. You'd also have to believe that the battle-tested former Marine forgot to turn off his weapon's safety before the shooting began.

The alternate explanation — and I think the more plausible one — is that Guerena thought the men breaking into his home were criminals, but held his fire until he was sure. (That's also the mark of someone well-trained in gun safety, and a stark contrast to the SWAT team, which despite never receiving hostile fire, unleashed a barrage of bullets that penetrated not only Jose Guerena but, according to sources I spoke with, also the walls of neighboring homes.)

If you're not actually a criminal and you wake up to the sound of armed men breaking into your home, your first thought isn't likely to be that you're being visited by the police. There may also have been something else on Guerena's mind: Last year, two of Vanessa Guerena's relatives were murdered by armed intruders. The intruders also shot the couple's children. What Guerena is alleged to have said — “I've got something for you; I've gotten something for you guys” — sounds damning if you assume he knew the men in his home were police, but there's nothing in that sentence indicating Guerena knew he was confronting cops. It also sounds like something a former soldier might shout out to intimidate armed intruders. And let's not forget, the same team of SWAT officers who reported hearing Guerena say those words also reported seeing a muzzle flash from Guerena's gun, which we now know couldn't have happened.

Storie also says police found a photo of Jesus Malverde in Guerena's home. Malverde is an iconic, probably mythical figure often described as the "narco saint". But as my former *Reason* magazine colleague Tim Cavanaugh [points out](#), while it's true that Malverde has been embraced by drug traffickers, he is also revered by the poor, by immigrants, and by people who feel they've been wronged. "That Guerena had a picture of Jesus Malverde tells us two things," Cavanaugh writes. "He had a family to worry about and he shared the belief of most Americans that a supernatural being or beings can influence earthly circumstances."

When *Daily Star* columnist Josh Brodesky [asked Sheriff Dupnik](#) if Storie's chats with the press about the details of the Guerena raid were hindering the investigation, Dupnik said, simply, "No." So while Dupnik's department is refusing to officially release any information about the raid or surrounding investigation due to "the real threat to innocent lives," he has no problem with the police union lawyer disclosing details that smear Guerena to the benefit of Dupnik and his department.

Perhaps we will at some point see convincing evidence that Dupnik and Storie are right — that Jose Guerena was in fact a drug dealer and violent criminal who dressed up like a cop to rob rival drug dealers and innocent citizens of Pima County. But at this point, all we have is a dead father and veteran, a violent series of raids that make little sense, and a police agency that over the last three weeks has put out incorrect information, insisted that it would be dangerous to release any further information, and, at the same time, allowed a police representative to release information favorable to the department.

The government of Pima County has killed one of its own citizens. This is the most serious, solemn, and severe action a local government can undertake. It demands complete transparency. The Pima County Sheriff's Department and other agencies involved in the raid ought to be doing anything and everything to make themselves accountable. Instead, they've shown arrogance, defiance, and obstinacy — all wrapped in an appeal to public safety.

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