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Press Advisory:

Columbia Law Professor Comments On Federal Court Conviction Of Four Migrants’ Rights Activists For Leaving Water And Food In The Arizona Desert, Ignoring Their Religious Liberty Defense

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On Friday afternoon, January 18, 2019, Magistrate Judge Bernardo Velasco found four activists with the group [No More Deaths/No Más Muertes](#) 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 case signals the Trump administration’s resolve to prosecute migrants’ rights activists as aggressively as possible, even in relatively minor cases such as this one where the activists were charged with what amounts to “littering.”

All four of the defendants raised defenses under the Religious Liberty Restoration Act, 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 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 Bernardo Velasco’s guilty verdict in the case mirrored the government lawyers’ trivialization of the defendants’ religious liberty claims, describing them as ‘a modified Antigone defense,’” said Professor Katherine Franke, faculty director of the Public Rights/Private Conscience Project at Columbia Law School. “He failed to undertake even a minimal legal analysis of the Religious Freedom Restoration Act, as the law required,” she continued.

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 (RFRA). “The Justice Department position in this case is much less protective of religious liberty than in cases where the underlying issues are more aligned with the administration’s political agenda,” said Franke. “Ironically, the judge’s ruling and the arguments made by attorneys working for the Justice Department in this case provide greater protection to bighorn sheep in Southern Arizona than to human beings, whether they be migrants at risk of death or people of faith coming to their aid,” she noted.

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