

August 15, 2022

Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F St NW
Washington, D.C., 20006
United States of America

RE: Request for hearing in Family members of Anastasio Hernandez Rojas vs. United States of America (Case No. 14.042)

Dear Ms. Reneaum Panszi:

We write to request that the Inter-American Commission on Human Rights (Commission) grant a hearing regarding the merits in *Family Members of Anastasio Hernandez Rojas v. United States* (Case No. 14.042) in accordance with article 37 of the Commission's Rules of Procedure ("ROP"). On May 28, 2010, agents with the U.S. Department of Homeland Security (DHS) detained and brutalized Anastasio while he was in custody, hog-tied, and in the prone position on the ground. His resulting death was ruled a homicide. Border agents concealed, destroyed, and tampered with evidence to obstruct the investigation of Anastasio's death. Nonetheless, U.S. federal prosecutors closed the investigation without pursuing criminal charges, and Anastasio's family members know of no disciplinary action taken against the agents involved in his death. This case, which is emblematic of the violence committed by state agents at the U.S.-Mexico border and of the structures of impunity shielding agents from accountability, is ripe for a hearing on the merits.

On March 30, 2016, the family members of Anastasio Hernandez Rojas (Petitioners) filed a petition against the United States (Petition) before the Commission alleging multiple serious violations of the American Declaration on the Rights and Duties of Man ("American Declaration"). On September 12, 2017, the United States responded to the Petition, but did not contest the allegations related to Anastasio's detention, mistreatment, beating, Taser, and killing by U.S. border agents.¹ Instead, the United States sought to justify federal agents' unnecessary and disproportionate use of force² and argued that the Hernandez family had

¹ Anastasio Hernandez Rojas and Family v. United States, Petition 524-16, Inter-Am. Comm'n H.R., Report No. 198/20, OEA/Ser.L/V/II, doc. 212 ¶ 6 (2020) [hereinafter "IACHR Admissibility Report"].

² Anastasio Hernandez Rojas and Family v. United States, Petition 524-16, Response by the United States, 2 (Sept. 2, 2017) [hereinafter "U.S. Resp."].

received “adequate and effective remedies,” referring to a monetary settlement that resulted from civil litigation.³ The United States also asserted that it was not bound by the American Declaration and urged the Commission to dismiss the case.

On July 29, 2020, Petitioners were notified that this Honorable Commission had issued its decision to admit the case, rejecting the United States’ objections.⁴ After requesting an extension, the Petitioners submitted their arguments in a merits brief in accordance with article 37(1) of the ROP on January 27, 2021.⁵ On April 13, 2021, the Commission notified and forwarded the Petitioners’ merits brief to the United States. The United States has shirked its obligation to respond to the Petitioners’ brief within six months in accordance with article 37 of the ROP and failed to respond to the Petitioners’ allegations regarding the merits.

Petitioners request a hearing on the merits at this time to provide: (1) additional evidence of the United States’ responsibility for violations of rights enshrined in the American Declaration; (2) family members with their first opportunity to be heard before an impartial and independent adjudicator; and (3) the Commission an opportunity to examine the systems and structures that foster state violence and impunity at the U.S.-Mexico border at a critical and urgent moment.

A. Petitioners will provide additional evidence of the United States’ responsibility for violations of its international obligations through new documentary evidence, oral arguments, and testimony by witnesses and experts.

Under article 64 of the ROP, hearings on petitions “shall have as their purpose the receipt of oral or written presentations by the parties relative to new facts and information additional to that which has been produced during the proceeding.”⁶ During the hearing, Petitioners will provide information related to “verification of the facts” and “the merits of the matter.”⁷

A hearing on this matter offers the Commission an opportunity to verify the facts alleged by Petitioners. Petitioners have submitted extensive evidence of the violations, including audio and video recordings of the incident, a copy of the approximately 700-paged police investigation, and depositions of medical experts and border agents involved in the torture of Anastasio taken during civil litigation.⁸ Petitioners also submitted statements by three senior federal officials with direct knowledge of the investigation of Anastasio’s death, as well as statements by the victim’s family members regarding the severe emotional, psychological, and economic harm they suffered as a result of the violence and impunity.⁹ Based on this factual record, expert testimony, and an analysis of relevant laws, policies, and practices, Petitioners argued that the United States is responsible for violations of Articles I, II, XVIII, XXV, and XXVI of the American Declaration. At the hearing, the Commission will hear directly from these experts and family

³ *Id.* at 4.

⁴ IACHR Admissibility Report, *supra* note 1.

⁵ *Anastasio Hernandez Rojas and Family v. United States*, Case No. 14.042, Additional Observations on the Merits (Jan. 27, 2021) [hereinafter “Merits Brief”].

⁶ Inter-Am. Comm’n. H.R., Rules of Procedure, Art. 64(1).

⁷ *Id.*

⁸ *Anastasio Hernandez Rojas and Family v. United States*, Petition 524-16, Complaint, Ex. 2 -9, 11-25, 27, 29-55 (March 2016) [hereinafter “Petition”]; Merits Brief, *supra* note 5, at Ex. D–F.

⁹ Petition, Ex. 26, 28; Merits Brief, at 53-57, 64, 66-68, 71-75; Ex. D–F.

members to gain a deeper understanding of the laws, policies, and practices that fostered violence and impunity in this case.

Recently, additional information has come to light that the actions taken by border agents to cover up their responsibility for Anastasio's death was part of a longstanding pattern and practice in the U.S. Border Patrol to shield agents from accountability. In October 2021, advocates informed Congress that since at least 1987, shadow police units, often referred to as Border Patrol's Critical Incident Teams (BPCITs) among other names, had investigated without legal authority use-of-force incidents involving border agents with the aim of mitigating and concealing agent responsibility.¹⁰ While Border Patrol has tried to keep BPCITs a secret, advocates discovered their existence through public record requests, media reports, agent disclosures, and litigation.¹¹ Without congressional authority, members of these units conducted investigations, and handled, tampered with, corrupted, and destroyed evidence in several cases.¹²

During the local police investigation of Anastasio's death, a BPCIT unit destroyed video evidence, altered government documents, and inappropriately used an administrative subpoena to acquire Anastasio's medical records, and then refused to give the records to the police for their criminal investigation of border agents.¹³ The BPCIT members and their superiors have not been investigated or held accountable for abuse of power, but instead were promoted to positions of power. For example, Rodney Scott, who as acting chief of the Border Patrol San Diego sector with oversight of the BPCIT team involved in unlawfully investigating Anastasio's death, went on to become national U.S. Border Patrol chief.

Mr. Scott, now retired, continues to wield his power to hinder the investigation of Anastasio's death. In September 2021, Scott, made a rape threat on social media against an investigator working with Anastasio's legal team, and said that he had "investigated" her and "found out a lot about [her]." ¹⁴ After being called to court locally for the threatening post, he promised to take it down,¹⁵ but the post is still up.¹⁶ Scott's high-level position in the government as chief of the

¹⁰ Letter from Vicki Gaubeca, Dir., Southern Border Communities Coalition and Andrea Guerrero, Exec. Dir., Alliance San Diego to S. Judiciary Committee, S. Comm. on Homeland Sec. & Gov't Affairs, Comm. on Homeland Sec., and House Comm. on Oversight and Reform, (Oct. 27, 2021), https://d3n8a8pro7vhm.cloudfront.net/alliancesandiego/pages/3292/attachments/original/1635367319/SBCC_letter_to_Congress_Final_10.27.21.pdf [hereinafter "SBCC Letter to Congress I"]. See also Exhibits, <https://www.dropbox.com/sh/4r5dzamxq8fjzon/AABmConSjaFosUR6BRgh88Ula?dl=0>.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ Merits Brief, *supra* note 5, at 18–20.

¹⁴ Plaintiff's Supplemental Briefing to the Request for Civil Harassment Restraining Order at 2, *Budd v. Scott*, Case No. 37-2021-00039246-CU-HR-CTL (Cal. Super. Ct. filed Sept. 30, 2021), https://d3n8a8pro7vhm.cloudfront.net/alliancesandiego/pages/208/attachments/original/1638300168/RO_CourtFiling_Budd-v-Scott_100721_web.pdf?1638300168; Plaintiff's Notice of Lodgment in Support of the Request for Civil Harassment Restraining Order, Ex. 2, *Budd v. Scott*, Case No. 37-2021-00039246-CU-HR-CTL (Cal. Super. Ct. filed Sept. 30, 2021) ("So what was for breakfast? I investigated all your allegations. Not a crumb of evidence could be found to support any of them. But I did find out a lot about you. Lean back, close your eyes and just enjoy the show.")

¹⁵ Transcript at 84, *Budd v. Scott*, Case No. 37-2021-00039246-CU-HR-CTL (Cal. Super. Ct. hearing Nov. 18, 2021) ("I'm taking it down no matter what"), https://d3n8a8pro7vhm.cloudfront.net/alliancesandiego/pages/208/attachments/original/1638291640/21-11-18_-_BUDD2.pdf?1638291640 [hereinafter "Scott Hearing Transcript"].

¹⁶ Rodney Scott (@RSScott_BP252), Twitter (Sept. 14, 2021), https://twitter.com/RSScott_BP252/status/1437820851445850113 (last visited Aug. 12, 2022). While the court dismissed the request for a restraining order filed by the member of Anastasio's legal team, the court noted that Scott's statement was a well-

U.S. Border Patrol until August 2021, his ongoing influence, and his lack of remorse are emblematic of the continuing impunity in Anastasio's case and of U.S. Border Patrol more generally.

In a letter sent in October 2021, advocates called on Congress to exercise its oversight powers and investigate BPCIT units.¹⁷ In response to this request, 10 House and Senate congressional committees urged the U.S. Government Accountability Office to investigate BPCIT units.¹⁸ The House Committee on Homeland Security and the House Committee on Oversight and Reform announced their own joint investigation into BPCITs' interference with investigations of use-of-force incidents to shield agents from accountability.¹⁹ Additionally, the DHS Office of Civil Rights and Civil Liberties opened an investigation.²⁰

CBP announced a decision to disband the Border Patrol's Critical Incident Teams in May 2022,²¹ and government investigations into allegations that BPCIT units obstructed the investigation of incidents of serious misconduct by border agents are on-going. On August 11, 2022, advocates sent a second letter to bring to the attention of Congress "new information relevant to [the congressional] investigation of what may be the largest and longest standing cover-up teams operating inside the federal government today."²²

known rape threat. Scott Hearing Transcript, *supra* note 15, at 55. In court, Scott also admitted under oath that he had spoken to numerous border patrol agents and officials to investigate claims made by the legal team's investigator. *Id.* at 63–64. Additionally, Scott did not deny knowledge of the BPCIT teams (*id.* at 69-70) or allegations of misconduct during the investigation of Anastasio's death, but instead sought to legitimize those actions. *Id.* at 37-38.

¹⁷ SBCC Letter to Congress I, *supra* note 10. *See, also*, Press Release, United States Congressman Juan Vargas Representing California's 51st District, Reps Vargas, Jacobs and Castro Requesting Department of Justice Investigation into U.S. Border Patrol "Shadow Units" (Nov. 4, 2021), <https://vargas.house.gov/media-center/press-releases/reps-vargas-jacobs-and-castro-requesting-department-of-justice>; "Shadow Units": How Secretive Border Patrol Teams Shield Agents from Accountability, Democracy Now! (Oct. 29, 2021), https://www.democracynow.org/2021/10/29/border_patrol_shadow_unit; San Diego Union-Tribune Editorial Board, *Opinion: Allegations of Border Patrol "Shadow Police Units" Must be Investigated*, San Diego Union Trib. (Oct. 29, 2021, 4:04 PM PT), <https://www.sandiegouniontribune.com/opinion/editorials/story/2021-10-29/opinion-allegations-of-border-patrol-shadow-police-units-must-be-investigated>.

¹⁸ Letter from 10 House and Senate Congressional Committees to U.S. Government Accountability Office (Jan. 24, 2022), <https://int.nyt.com/data/documenttools/2022-01-24-gao-critical-incident-teams/8faa9a705979fd5/full.pdf>. *See also* Eileen Sullivan, *Democrats in Congress Seek Review of Teams Within the Border Patrol*, NYTimes (Jan. 24, 2022), <https://www.nytimes.com/2022/01/24/us/politics/border-patrol-critical-incident-teams.html>.

¹⁹ Letter from Carolyn B. Maloney, Chairperson, House Comm. on Oversight and Reform, and Benny G. Thompson, Chairperson, House Comm. on Homeland Sec. (Jan. 24, 2022), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-01-24.CBM%20BGT%20to%20Magnus-CBP%20re%20Sector%20Evidence%20Teams.pdf>.

²⁰ Letter from Dana Salvano-Dunn, DHS Office of Civil Rights and Civil Liberties to Chris Magnus, Commissioner, U.S. Customs and Border Protection and Scott K. Falk, Chief Counsel, U.S. Customs and Border Protection (Feb. 4, 2022), https://www.dhs.gov/sites/default/files/2022-07/2022.02.04%20CRCL%20Retention%20Memo%20to%20CBP%20-%20USBP%20Critical%20Incident%20Teams%20%E2%80%93%20Redacted_508.pdf.

²¹ Memorandum from Chris Magnus, Commissioner U.S. Customs and Border Protection regarding Critical Incident Response Transition and Support (May 3, 2022), https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1651850948/Critical_Incident_Response_Signed_Distribution_Memo_%28508%29.pdf?165185094. *See also*, Joe Davidson, *Border Patrol Disband Units Accused of Covering Up Abuse*, WAPo (May 12, 2022), <https://www.washingtonpost.com/politics/2022/05/12/border-patrol-disbands-critical-incident-teams/>.

²² Letter from Vicki Gaubeca, Dir., Southern Border Communities Coalition and Andrea Guerrero, Exec. Dir., Alliance San Diego to S. Judiciary Committee, S. Comm. on Homeland Sec. & Gov't Affairs, Comm. on Homeland Sec., and House Comm. on Oversight and Reform, (Aug. 11, 2022), https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1660253686/Letter_to_Congress_re_BPCIT_Aug_2022_r1.pdf?1660253686. Additionally, in November 2021, Maria Puga, Anastasio's widow, called on the San Diego County District Attorney to bring obstruction charges against the border agents who interfered with the local police investigation.

During the hearing before the Commission, Petitioners will rely on facts already introduced into the record and new information that has emerged since the most recent pleadings were filed to argue “the merits of the matter.” Petitioners will demonstrate that state agents tortured and arbitrarily deprived Anastasio of his life and interfered with the investigation of his death. Moreover, Petitioners will argue that U.S. laws and policies regulating use of force by law enforcement and criminal investigations in effect at the time of Anastasio’s death violate the United States’ international obligations under the American Declaration, including Petitioners’ right to equality before the law. In support of these allegations, Petitioners will submit additional evidence and request that witnesses and experts testify during the hearing.

B. A hearing will provide family members with their first opportunity to be heard before an impartial and independent adjudicator.

The Commission represents the only available legal venue for Anastasio’s family members to seek clarification of the facts related to his death and pursue accountability and reparations for his killing. Border agents were shielded from accountability by a number of factors: the agents’ own actions to interfere with the investigation and conceal or destroy evidence, the disinterest of police and disciplinary investigators in uncovering the truth, the inaction of federal prosecutors, permissive use-of-force standards established in U.S. law, and secret criminal proceedings. The range of actors implicated in these structures of impunity has meant that all domestic investigations of Anastasio’s death have lacked impartiality, independence, and thoroughness.

As a consequence, Anastasio’s family have been deprived of the right to be heard before an impartial adjudicator. Additionally, family members have been unable to access official records related to investigations of Anastasio’s death undertaken by the U.S. Border Patrol’s Critical Incident Investigative Team, Department of Homeland Security’s Office of Inspector General, U.S. Custom and Border Protection (CBP) Office of Internal Affairs, the federal grand jury, and CBP’s Use of Force Review Board. A hearing before this Honorable Commission will be a first and only opportunity for family members to present information about the severe and long-term emotional, psychological, and economic impacts and stigma they have suffered as a result of the human rights violations committed by the United States and to identify the measures of reparations, including the measures of truth and justice, satisfaction, non-repetition, and other remedies that the United States must implement in accordance with its obligations under the American Declaration.

C. During the hearing, Petitioners will identify the systems and structures that foster state violence and impunity at the U.S.-Mexico border at a critical and urgent moment.

Petitioners have argued that the United States has a legal duty to provide full reparations to Anastasio Hernandez Rojas’s family members for the harms they suffered as a result of

Letter from Michelle Celleri, Human Rights Counsel, and Andrea Guerrero, Exec. Dir., Alliance San Diego to Summer Stephan, San Diego Cnty Dist. Att’y (Nov. 4, 2021), https://d3n8a8pro7vhm.cloudfront.net/alliancesandiego/pages/3299/attachments/original/1636052078/Final_letter_to_DA_11.4.21.pdf?1636052078.

violations of the American Declaration. Full restitution entails truth and justice measures, including carrying out a thorough and effective investigation into Anastasio's death and public access to the investigative files of all the agencies that investigate the incident. Full reparations also require measures of satisfaction which include guarantees of nonrepetition that will change U.S. law and practice to prevent repetition of the harm, such as reform of laws and policies on use of force, investigative procedures, and accountability mechanisms that are implicated in Anastasio's case, and which continue to enable state violence and impunity against residents, migrants, and travelers in the border region.

Since 2010, over 230 migrants and U.S. citizens have died as the result of an encounter with a CBP agent at the U.S.-Mexico border.²³ In the vast majority of these cases, impunity is a predestined outcome. Since 1987, U.S. Border Patrol has used BPCITs to mitigate and conceal the culpability of agents involved in serious human rights violations. U.S. law condones as “objectively reasonable” force that under international standards amounts to torture or excessive use of force. Moreover, secrecy is the rule for federal grand jury investigations. U.S. law blocks participation and access to information about grand jury proceedings by victims and their families. The deficiencies of U.S. law and policy contributed to the United States' failure to prevent the acts of violence against Anastasio—and many other victims of excessive use force by border agents²⁴—and virtually ensured that the agents would be shielded from accountability. Indeed, successful disciplinary, civil, or criminal actions against U.S. border agents are exceedingly rare: CBP's system for handling complaints of abuse and misconduct is patently ineffective; to date, no known civil plaintiff in a border killing case has won at trial; and the U.S. Department of Justice has closed all but one criminal investigation of a border killing without pursuing charges.²⁵

Recent events demonstrate the scale and scope of impunity for state violence at the border and the need for urgent reform of a broken oversight system. Government agencies have been unwilling or unable to hold border agents to account for their acts of violence, and the U.S. Supreme Court effectively has given all federal agents who violate constitutional rights immunity from civil lawsuits. BPCITs have been allowed to continue to interfere with criminal investigations of human rights violations. For example, in 2022, after a border agent fatally shot an unarmed migrant in Arizona, BPCITs seized control of the scene, detained and questioned the witnesses, exercised custody of the body, and attended the autopsy.²⁶ Not only do CBP oversight

²³ SBCC, Fatal Encounters with CBP since 2010, https://www.southernborder.org/deaths_by_border_patrol.

²⁴ For example, on June 16, 2021, a woman named Marisol Garcia Alcantara was nearly killed when a border patrol agent shot her in head while she was sitting in the backseat of a car in Nogales, Arizona. See Liliana Soto, 'Why Me?' Woman Allegedly Shot in the Head by a Border Patrol Agent Speaks Out, ABC15 Ariz. (Sept. 3, 2021), <https://www.abc15.com/news/state/why-me-woman-allegedly-shot-in-the-head-by-a-border-patrol-agent-speaks-out>. In December 2021, Marisol filed a Federal Torts Claim Act (FTCA) claim against the Border Patrol in U.S. federal court. Anita Snow, Mexican woman shot in head by border patrol files claim, AP News (Dec. 15, 2021), <https://apnews.com/article/shootings-arizona-22a67bc78bde39e2087a1d5a6c32097d?fbclid=IwAR3x7SONbvLrXJkX6mj1H1w-Mh6-GBTmg0wsOMhnfV75a90-VU8DqPy76wI>.

²⁵ Petition, *supra* note 8 at 11.

²⁶ See Associated Press, U.S. Border Agent Accused of Fatally Shooting Man on Rugged Trail in Arizona, NBC NEWS (Feb. 21, 2022), <https://www.nbcnews.com/news/us-news/us-border-agent-accused-fatally-shooting-man-rugged-trail-arizona-rca17099>; Ryan Devereaux, 'This is America Motherfucker': Witnesses Describe Border Patrol Killing of Mexican Migrant, (May 12, 2022), https://theintercept.com/2022/05/12/border-patrol-migrant-killing-coverage/?utm_campaign=theintercept&utm_source=twitter&utm_medium=social; Cochise County Sheriff, Office Report for

bodies demonstrate little interest in preventing BPCIT interference with investigation, they have proven ineffective in conducting internal investigations. After images of White border agents on horseback violently removing Haitian migrants from an encampment in Del Rio, Texas brought condemnation from high-ranking government officials, including President Joe Biden, CBP launched an internal investigation. In July 2022, the agency announced that it had found “no evidence” that agents had struck migrants with their reins, forced them to return to Mexico, or prevented them from entering the United States.²⁷ The agency reached these conclusions without interviewing any of the migrants who were involved or witnessed the incident.

Moreover, the U.S. Supreme Court is further eroding victims’ access to redress and reshaping domestic law to shield federal law enforcement from accountability. Earlier this year, the Supreme Court ruled in *Egbert v. Boule* that victims could not sue the federal government in court for misconduct if an “alternative” mechanism for redress existed.²⁸ Robert Boule, who runs a bed-and-breakfast on the U.S.-Canada border, had sued Border Patrol agent Erik Egbert for damages after he entered the inn without a warrant in search of a guest and threw Boule to the ground, injuring him. The court’s decision closes the courthouse doors to victims of abuse by U.S. border agents and instructs them to seek redress from the agency’s administrative grievance process, which is ineffective and insufficient.

This Honorable Commission has recognized systemic and structural factors that foster violence and impunity by law enforcement against racial and ethnic minorities in the United States²⁹ and has specifically condemned state violence against migrants along the U.S.-Mexico border.³⁰ During the Commission’s 2019 visit to the U.S.-Mexico border, the Commission “consistently heard complaints about discriminatory, abusive treatment and physical and psychological violence” by border agents.³¹ The Commission underscored the United States’ obligation to protect individuals detained at the border from ill-treatment and discrimination.³² In response to incidents involving excessive use of force by border agents, the Commission has also stressed the United States’ duty to investigate and to punish anyone responsible for violence and excessive use of force against migrants.³³ The Commission, however, has also recognized that

Incident 22-03910, <https://www.documentcloud.org/documents/22005859-cochise-county-sheriff-investigation-into-border-patrol-killing-of-cruz-marcos>.

²⁷ Department of Homeland Security, U.S. Customs and Border Protection, Office of Professional Responsibility, Report of Investigation: 202112280 (Apr. 17, 2022), <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

²⁸ 596 U.S. ___, 3 (2022).

²⁹ See generally, Inter-American Commission on Human Rights, Police Violence Against Afro-Descendants in the United States, ¶ 111-112, OEA/Ser.L./V/II, doc. 156 (Nov. 26, 2018) [hereinafter “IACHR U.S. Police Violence Against Afro-Descendants”].

³⁰ See, e.g., Preliminary Observations, *Visita de trabajo virtual a México sobre Personas en situación de Movilidad Humana* (2021) <https://www.oas.org/es/cidh/prensa/comunicados/2021/33-A.pdf> (condemning use of force by Mexican agents in Chiapas, Mexico against a caravan of migrants moving north towards the United States).

³¹ Press Release, OAS, *IACHR conducted visit to the United States’ border* (Sept. 16, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/228.asp. See also, OAS, P.C. Res. 1106 (2168/18), *Impact on the Human Rights of Migrants of the Policy of the Government of the United States of America of Separating Migrant Families* (June 29, 2018).

³² Press Release, OAS, *IACHR conducted visit to the United States’ border* (Sept. 16, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/228.asp.

³³ Press Release, OAS, *IACHR and UN’s Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from haiti at the United States’ Southern Border* (Oct. 4, 2021), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/260.asp.

victims of state violence in the United States face barriers to justice. The Commission has expressed concern about the independence of prosecutors and grand juries in cases involving law enforcement,³⁴ and the failure of U.S. law to differentiate between lethal and non-lethal force by law enforcement in accordance with the necessity and proportionality principles established by international law.³⁵

A hearing on this case is an opportunity for the Commission to examine how structures of violence and impunity have operated on the U.S.-Mexico border in the past decade, and, crucially, to identify the devastating impacts that these structures have on the lives of victims and their loved ones. Anastasio's death and the experiences of his family members during their search for truth and justice exemplify why, until use of force laws and policies, investigative procedures, and training programs fully reflect the state's obligation to ensure fundamental human rights, law enforcement agents will continue to be shielded from accountability for acts of unjustified violence and victims of U.S. law enforcement will suffer repeated violations of basic human rights.

Finally, our request for a hearing comes at a critical moment when the call for accountability for Anastasio's death has reached the halls of the U.S. Congress and CBP has begun to move towards reform. By shining the international spotlight on this matter through a public hearing and creating a moment for unbiased and independent scrutiny of CBP misconduct, the Commission would contribute to the promise of structural reform that Petitioners and the larger community have long sought in the United States.

PETITION

For all of the above, we respectfully request that the Honorable Commission grant a hearing in this case. The following individuals will attend/participate in the hearing on behalf of petitioners:

- Maria Puga, Petitioner (Anastasio Hernandez Rojas's widow)
- Bernardo Hernandez, Petitioner (Anastasio Hernandez Rojas's brother)
- Yeimi Judith Hernandez, Petitioner (Anastasio Hernandez Rojas's daughter)
- Daisy Alejandra Hernandez, Petitioner (Anastasio Hernandez Rojas's daughter)
- Andrea Guerrero, Co-counsel
- Roxanna Altholz, Co-counsel
- Jenn Budd, Investigator
- James F. Tomscheck, expert witness (former Assistant Commissioner of Customs and Border Protection Internal Affairs Office)
- James Wong, expert witness (Deputy Assistant Commissioner of Customs and Border Protection Internal Affairs Office)

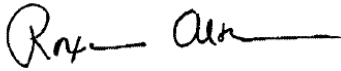
³⁴ IACHR U.S. Police Violence Against Afro-Descendants, *supra* note 29, at ¶¶ 111-112 (expressing concern about the independence of local prosecutors and local grand juries because of the "secretive nature" of the grand jury and "the role of prosecutors in guiding the grand jury process and instructing on the law.")

³⁵ *Id.* ¶ 211.

Petitioners respectfully request adequate time to present oral arguments and to question witnesses and experts. Given the number of witnesses, the complexities of CBP and other agency structures and procedures implicated in this case, and the deficiencies of U.S. use-of-force and other criminal law and procedures, a two-hour hearing would afford the Commission sufficient time to hear directly from the federal government insiders and family members, and to examine the laws and policies at issue.

Please contact us if you require further information. Thank you in advance for considering this request.

Sincerely,



Roxanna Altholz
Co-Director
International Human Rights Law Clinic
Berkeley Law



Andrea Guerrero
Executive Director
Alliance San Diego