BEFORE THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Case No. 14.042

FAMILY MEMBERS OF ANASTASIO HERNANDEZ ROJAS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF INTERNATIONAL LEGAL SCHOLARS
AS AMICI CURIAE
IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

Amici are legal experts in the fields of international law and human rights.¹ They teach and have written extensively on these subjects. While they pursue a wide variety of legal interests, they all share a deep commitment to the rule of law, respect for human rights, and the principles of accountability for perpetrators and redress for victims.

Amici are deeply troubled by the allegations contained in the Petitioners’ submission to the Inter-American Commission on Human Rights.² They involve serious violations of international norms regarding the right to life, the prohibitions against torture and other cruel, inhuman, or degrading treatment, and the permissible use of force by law enforcement officials. They also involve violations of international norms regulating the treatment of individuals under detention. In this case, the United States breached several of its international obligations. Officials who were entrusted to protect human life violated the most basic principles of international law and took a life without cause or justification.

In their submissions, the Petitioners have provided detailed legal sources from the Inter-American system to establish that the United States violated its

¹ A list of the Amici appears in the Addendum.
² Numerous reports have documented the pervasive abuse of migrants at the United States-Mexico border. See, e.g., HUM. RTS. WATCH, “THEY TREAT YOU LIKE YOU ARE WORTHLESS:” INTERNAL DHS REPORTS OF ABUSES BY U.S. BORDER OFFICIALS (Oct. 2021).
obligations under the American Declaration of the Rights and Duties of Man. These obligations include the prohibition against the unnecessary and disproportionate use of force, the prohibitions against torture and other cruel, inhuman, or degrading treatment, and the prohibition against the arbitrary deprivation of life. *Amici* would like to provide the Inter-American Commission with an additional perspective on these issues informed by international treaty law and customary international law. These sources include multilateral treaties ratified by the United States as well as international instruments generated by the United Nations and other bodies, and which are reflective of customary international law. *Amici* believe this submission will assist the Inter-American Commission in its deliberations.

**SUMMARY OF ARGUMENT**


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3 Because Petitioners have provided the Inter-American Commission with detailed information from the Inter-American system, *Amici* focus their submission on international treaty law and customary international law.
inspection. He was initially transferred to a Customs and Border Protection ("CBP") detention center, and it is here where his abuse began. Complaint, at 3. At the center, a CBP agent struck and injured Mr. Hernandez without justification. Id. Despite his repeated requests, Mr. Hernandez was denied medical treatment. Id. As CPB agents prepared to deport Mr. Hernandez, they began to physically assault him. According to the Petitioners, CPB agents struck Mr. Hernandez with steel batons and then handcuffed him. Id. at 4–5. While he was defenseless and on the ground, agents kneeled on Mr. Hernandez’s neck and lower back. Id. at 5. Even though Mr. Hernandez was restrained and on the ground, they continued assaulting him with repeated blows to his head and torso. Id. CPB agents then used a Taser weapon against Mr. Hernandez, discharging the weapon multiple times.\footnote{A Taser is a weapon that discharges electricity in high doses to incapacitate individuals. The weapon causes uncontrolled muscle spasms and can result in significant injuries. See generally AMNESTY INT’L, THE HUMAN RIGHT IMPACT OF LESS LETHAL WEAPONS AND OTHER LAW ENFORCEMENT EQUIPMENT 20 (2015) (“The electric shock delivered causes almost immediate neuro muscular effects and incapacitation, with the target collapsing without control.”).} Id. at 5–6. Even after discharging the Taser weapon, CPB agents continued to assault Mr. Hernandez. They also exerted pressure against his head and back while he remained in a prone and facedown position on the ground, thereby restricting his breathing. Id. at 6–7.

As a result of this physical assault, Mr. Hernandez suffered a heart attack, brain damage, and cardiac arrest. Id. at 7. He died two days later. Despite the
determination by U.S. government officials that Mr. Hernandez’s death constituted homicide, no criminal charges were ever filed. In fact, the United States has indicated that the actions of the CBP officers were lawful and in full compliance with established use of force policies.

The actions taken by U.S. law enforcement officials are contrary to several multilateral treaties that the United States has ratified as well as customary international law, which also binds the United States. These international norms contain clear standards regarding the right to life and the lawful use of force by law enforcement officials. According to international law, states have a clear obligation to protect individuals under their custody or control. The use of force against detainees must comply with the principles of legality, precaution, necessity, proportionality, and non-discrimination. These norms apply to all forms of force, including less-lethal force.\(^5\) They protect individuals in custody or detention as

\(^5\) While the term “non-lethal weapons” is often used to describe electrical discharge guns, a more appropriate terminology is “less-lethal weapons” because these weapons can be lethal. See, e.g., ELIZABETH HOFFberger-PIPPAN, LESS-LEthal WEAPONS UNDER INTERNATIONAL LAW: A THREE-DIMENSIONAL PERSPECTIVE 5 (2021); GENEVA Acad. OF INT’L Humanitarian L. & Hum. RTS., GENEVA GUIDELINES ON LESS-LEthal WEAPONS AND RELATED EQUIPMENT IN LAW ENFORCEMENT 4 (2018) (“GENEVA GUIDELINES”); U.N. OFF. DRUGS AND CRIME & OFF. U.N. HIGH COMM’R HUM. RTS., RESOURCE BOOK ON THE USE OF FORCE AND FIREARMS IN LAW ENFORCEMENT 66 (2017) (“UNDOC RESOURCE BOOK”).
well as those who are in the process of arrest. Because migrants are uniquely vulnerable to abuse, these norms have particular significance to them.  

**ARGUMENT**


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6 See also Off. U.N. High Comm’r Hum. RTS., Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations 5 (2017) (describing vulnerable migrants as those who are subject to an increased risk of abuse and to violations of their human rights); Off. U.N. High Comm’r Hum. RTS., Recommended Principles and Guidelines on Human Rights at International Borders iv (2014) (noting that human rights should be at the center of all border governance measures).

7 International law consists of both treaties and customary international law. See generally Am. L. Inst., Restatement (Third) of the Foreign Relations Law of the United States § 102 (1987). International treaty law creates binding legal obligations on State Parties. Customary international law is established through consistent state practice followed out of a sense of legal obligation (opinio juris). Like treaties, customary international law is considered binding on states that have not objected to its development.

8 See also Off. U.N. High Comm’r Hum. RTS., Minnesota Protocol on the Investigation of Potentially Unlawful Death 3–5 (2016) (establishing that states have an obligation to respect the right to life, investigate unlawful killings, and promote accountability).
I. INTERNATIONAL TREATY LAW SETS FORTH CLEAR STANDARDS REGARDING THE USE OF FORCE BY LAW ENFORCEMENT OFFICIALS, AND THESE STANDARDS ARE BINDING ON THE UNITED STATES.

The use of force by government officials is addressed in several multilateral treaties ratified by the United States. These treaties establish binding legal obligations that the United States is required to enforce under international law. Some of these norms are broad in scope, such as the prohibition against the arbitrary deprivation of life. Others are narrower, such as the specific requirements regarding the permissible use of force by law enforcement officials. Collectively, they generate a set of comprehensive obligations on the United States. See generally RESTATEMENT (THIRD), supra, at § 111 (recognizing that the United States is legally bound to comply with international law and its international obligations).

force by law enforcement in several respects. For example, it provides that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” ICCPR, supra, art. 6(1). In addition, it states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Id. art. 7. Significantly, these provisions are non-derogable under any circumstances. Id. art. 4(2). The ICCPR includes other relevant obligations. It requires that all persons “deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.” Id. art. 10. In addition, it provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Id. art. 26.

The U.N. Human Rights Committee, which was established by the ICCPR to oversee compliance by States Parties, has issued several pronouncements regarding the use of force by law enforcement officials. In September 2019, the Human Rights Committee issued General Comment 36, which addressed various aspects of the international obligation to protect human life. U.N. Hum. Rts. Comm., General Comment No. 36: Article 6: Right to Life, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019). According to the Committee, States Parties must respect the right to life and that this requires the exercise of due diligence. Id. ¶ 21. In addition, the Committee noted that law enforcement officials must comply with all the relevant
international standards regulating the use of force. *Id.* ¶ 13. This includes the use of less-lethal weapons, such as Tasers. These weapons “must be employed only subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or clearly are ineffective to address the threat.” *Id.* ¶ 14. The Committee also recognized that states must take special measures to protect individuals who are in vulnerable situations, including individuals in detention. *Id.* ¶ 25. See also U.N. Hum. Rts. Comm., CCPR General Comment No. 6: Article 6 (Right to Life) ¶ 3 (Sixteenth Sess., 1982), U.N. Doc. HRI/GEN/1/Rev.1, at 6 (1994) (states must prevent arbitrary killing by their own security forces).

concerns are not unique to the United States, and the Committee has expressed similar concerns about the use of force in many countries. 9

In addition to the ICCPR, the United States has ratified other treaties that regulate the use of force by law enforcement. In 1994, the United States ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture"). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Dec. 10, 1984, 1465 U.N.T.S. 85. See generally MANFRED NOWAK & ELIZABETH MCARTHUR, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A COMMENTARY (2008). Pursuant to the Convention against Torture, the United States is obligated to prohibit both torture and other cruel, inhuman, or degrading treatment or punishment. Convention against Torture, supra, arts. 2, 16. It must ensure that law enforcement personnel are properly trained to prevent torture and other cruel, inhuman, or degrading treatment or punishment. Id. art. 10. It must conduct a systematic review of its rules, instructions, methods, and practices regulating the treatment of detainees. Id. art. 11. It must ensure that authorities conduct a prompt and thorough investigation when allegations of torture or cruel, inhuman, or

degrading treatment or punishment are made. *Id.* art. 12. The United States is also required to ensure that individuals who have been subjected to torture or cruel, inhuman, or degrading treatment or punishment have the right to complain and have their cases heard and examined by competent authorities. *Id.* art. 13.

The Committee against Torture, which was established by the Convention against Torture to oversee compliance by States Parties, has expressed concerns about the excessive use of force by law enforcement officials in the United States. *See, e.g.*, U.N. Comm. Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, U.N. Doc. CAT/C/USA/CO/3–5 (Dec. 19, 2014). In its 2014 report on the United States, the Committee against Torture expressed concerns about the number of deaths that occur among people in custody. *Id.* ¶ 22. It highlighted “numerous reports of police brutality and excessive use of force by law enforcement officials.” *Id.* ¶ 26. It also expressed concern about “numerous, consistent reports” regarding the use of electrical discharge weapons against unarmed individuals.”¹⁰ *Id.* ¶ 27. With respect to these weapons, the Committee noted it was “appalled at the number of reported

¹⁰ *See also* NOWAK & MCARTHUR, *supra*, at 549, 566–68 (addressing the Committee’s position that use of electroshock devices to restrain persons in custody can violate the prohibition against cruel, inhuman, or degrading treatment); RODLEY & POLLARD, *supra*, at 93–94, 136–37 (recognizing that the use of excessive physical restraints or electrical shocks on detainees may violate international law).
deaths resulting from the use of electrical discharge weapons.”\textsuperscript{11} Id. Significantly, the Committee indicated these weapons should “be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty.” Id.

Finally, the United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination (“Racial Discrimination Convention”) in 1994. International Convention on the Elimination of All Forms of Racial Discrimination Dec. 21, 1965, 660 U.N.T.S. 195. \textit{See generally} PATRICK THORNBERRY, THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY (2016). The Racial Discrimination Convention defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Racial Discrimination Convention, \textit{supra}, art. 1(1). It requires State Parties to eliminate discrimination and to address the discriminatory effects of the law. Id. art. 2(1). States are obligated to ensure that fundamental rights are respected and protected without distinctions of any kind. This includes

\textsuperscript{11} The Committee against Torture has indicated that “electro-shock instruments, including tasers” can “sometimes be used as instruments of torture.” U.N. Comm. Against Torture, Conclusions and Recommendations of the Fourth Periodic Report of Switzerland, at ¶ 4(b)(i), U.N. Doc. CAT/C/CR/34/CHE (June 21, 2005).
protecting individuals from violence and bodily harm. *Id.* art. 5(b). When these rights are violated, States Parties are obligated to ensure that individuals have the right to “effective protection and remedies, through the competent national tribunals and other State institutions.” *Id.* art. 6.

The Committee on the Elimination of Racial Discrimination, which was established by the Racial Discrimination Convention to oversee compliance by States Parties, has expressed concerns about discriminatory and abusive treatment by law enforcement officials. For example, the Committee has indicated that States Parties must ensure law enforcement officials, including immigration officials, comply with the prohibitions against torture and other cruel, inhuman, or degrading treatment. U.N. Comm. on the Elimination of Racial Discrimination, General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, ¶ 21, U.N. Doc. A/60/18, at 98 (2005). When force is used, it must comply with the principles of proportionality and necessity. *Id.* ¶ 22. The Committee has repeatedly expressed concern about the large number of minority group members who die in custody. See, *e.g.*, U.N. Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland, ¶ 18, U.N. Doc.

In its reports on the United States, the Committee on the Elimination of Racial Discrimination has specifically identified the mistreatment of racial minorities by law enforcement officials, including immigration officials. See U.N. Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Periodic Reports of the United States of America, U.N. Doc. CERD/C/USA/CO/10–12 (Aug. 30, 2022). In its 2022 observations on the United States, the Committee expressed concerns about “the brutality and excessive or deadly use of force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals,” and which has a disproportionate impact on people of color, including persons of Hispanic/Latino origin as well as undocumented migrants. Id. ¶ 20. Significantly, the Committee expressed concern that “impunity for abuses by police and Customs and Border Protection officers continues to be a widespread problem.” Id.; see also id. ¶ 51 (expressing concern about reports of excessive force by Customs and Border Protection officers and Immigration and Customs Enforcement officers that resulted in the death of undocumented migrants).

In addition to the U.N. treaty monitoring bodies, the Universal Periodic Review (“UPR”) process provides a comprehensive review of state compliance

In sum, the United States is bound by numerous international treaty obligations regarding the use of force by law enforcement officials against detainees. *See generally* CASEY-MASLEN, *supra*, at 234 (explaining that states are obligated to respect and protect the lives of all detainees); CASEY-MASLEN & CONNOLLY, *supra*, at 235 (states are obligated to protect the lives of all detainees); JOSEPH & CASTAN, *supra*, at 184–87 (listing several ICCPR cases that describe a state’s obligation to protect detainees); NOWAK & MCArTHUR, *supra*, at 108, 566–
75 (listing several cases under the Convention against Torture that describe a state’s obligation to protect detainees); RODLEY & POLLARD, supra, at 131–37 (listing several cases that describe a state’s obligation to protect detainees). The allegations brought by the Petitioners implicate these international treaty obligations and reveal the clear breach of these norms. Mr. Hernandez was beaten by CBP agents. While injured, he was brutally restrained and subjected to repeated electric shocks. This abuse led to his death. Such actions fall beyond acceptable law enforcement practices and constitute a breach of U.S. treaty obligations regarding the right to life and the lawful use of force. The support for this conclusion is overwhelming.

II. CUSTOMARY INTERNATIONAL LAW SETS FORTH CLEAR STANDARDS REGARDING THE USE OF FORCE BY LAW ENFORCEMENT OFFICIALS, AND THESE STANDARDS ARE BINDING ON THE UNITED STATES.

Customary international law reflects consistent state practice followed out of a sense of legal obligation. See generally JENS DAVID OHLIN, INTERNATIONAL LAW: EVOLVING DOCTRINE AND PRACTICE 33 (2018); BARRY E. CARTER, ALLEN S. WEINER & DUNCAN B. HOLLIS, INTERNATIONAL LAW 123 (7th ed. 2018); MARK WESTON JANIS, JOHN E. NOYES & LEILA NADYA SADAT, INTERNATIONAL LAW: CASES AND COMMENTARY 30 (6th ed. 2018). It can be identified through a variety of sources, including the practice of the United Nations and other international and regional organizations. JAMES CRAWFORD, BROWNLE’S PRINCIPLES OF PUBLIC
Like its international treaty obligations, the United States is also bound by customary international law. Restatement (Third), supra, at § 111.

A. UNITED NATIONS INSTRUMENTS

The United Nations has taken a leading role in developing multilateral human rights standards and monitoring compliance with these norms. See generally The United Nations and Human Rights: A Critical Appraisal (Frédéric Mégret & Philip Alston eds., 2d ed. 2020). This movement began with the adoption of the Universal Declaration of Human Rights by the U.N. General Assembly in 1948. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) (“Universal Declaration”). The Universal Declaration identifies several foundational rights. For example, “[e]veryone has the right to life, liberty and the security of person.” Id. art. 3. In addition, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Id. art. 5. To ensure the equality of treatment, the Universal Declaration affirms that “[a]ll are equal before the law and are entitled without discrimination to equal protection of the law.” Id. art. 7.

Since the adoption of the Universal Declaration, the United Nations has set forth clear standards regarding the use of force by law enforcement officials and the treatment of individuals in detention. Most of these norms have attained the
status of customary international law. See, e.g., CASEY-MASLEN, supra, at 9–10; RODLEY & POLLARD, supra, at 69–70; JOSEPH & CASTAN, supra, at 915–19.

The U.N. Code of Conduct for Law Enforcement Officials (“U.N. Code of Conduct”) was adopted by the U.N. General Assembly in 1979 and requires law enforcement officials to respect human dignity and uphold the human rights of all people. U.N. Gen. Assemb., Code of Conduct for Law Enforcement Officials, U.N. Doc. A/RES/34/169 (Dec. 17, 1979). The U.N. Code of Conduct sets forth several requirements. For example, law enforcement officials “shall respect and protect human dignity and maintain and uphold the human rights of all persons.” Id. art. 2. Accordingly, they may only use force “when strictly necessary and to the extent required for the performance of their duty.” Id. art. 3. In addition, law enforcement officials must protect “the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.” Id. art. 6.


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Doc. A/CONF.144/28/Rev.1 (Sept. 7, 1990). See generally CASEY-MASLEN & CONNOLLY, supra, at 79–82. The U.N. Basic Principles recognize that law enforcement officials must occasionally use force to ensure public safety. When the use of force is unavoidable, law enforcement officials must adhere to specific standards of conduct. They must “[e]xercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved . . . .” U.N. Basic Principles, supra, ¶ 5(a). They must also “minimize damage and injury, and respect and preserve human life . . . .” Id. ¶ 5(b). The use of incapacitating weapons “should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.” Id. ¶ 3.

The U.N. Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, address the use of restraints on individuals who are detained by law enforcement officials. U.N. Gen. Assemb., United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), U.N. Doc. A/RES/70/175 (Jan. 8, 2016). When any instrument of restraint is used, specific principles shall apply. For example, instruments of restraint may not be used when lesser forms of control are available and would be effective at addressing the potential risks. Id. Rule 48(1)(a). In addition, instruments of
restraint shall be imposed “only for the time period required” and must be removed as soon as possible.” *Id.* Rule 48(1)(c).

In addition to these important U.N. instruments, several specialized U.N. mandate holders have addressed the use of force by law enforcement officials.13 For example, the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has repeatedly denounced the use of force by law enforcement officials that amounts to torture or cruel, inhuman, or degrading treatment or punishment.14 In 2017, the Special Rapporteur issued a detailed report on the treatment of detainees and other individuals who are deprived of their

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13 Several U.N. experts have explicitly denounced the mistreatment of detainees by U.S. law enforcement officials and addressed the obligation of the United States to comply with international human rights law. Press Release, Off. U.N. High Comm’r Hum. Rts., *USA: U.N. Experts Urge Far-Reaching Reforms on Policing and Racism* (Feb. 26, 2021). They stated that “[t]he use of potentially lethal force is an extreme measure, which may be resorted to only when strictly necessary to protect life or prevent serious injury from an imminent threat.” *Id.* They also noted that “[s]o-called less-lethal weapons are still weapons. . . . They can kill and have killed; they can harm and wound horribly, leading to permanent disability.” *Id.*


According to the Special Rapporteur, “[i]nternational law requires that States guarantee the effective protection of persons at risk of torture and ill-treatment, in particular persons deprived of their liberty who are under the complete control of the detaining authorities.” Id. ¶ 30. Significantly, the Special Rapporteur recognized that the risk of intimidation, torture, and ill-treatment “is especially high in the very early stages of custody and detention.”

In 2021, the Special Rapporteur reiterated that the prohibitions against torture and other cruel, inhuman, or degrading treatment are “absolute and non-derogable” obligations and reflect “elementary considerations of humanity.” U.N. Gen. Assemb., Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, ¶ 9, U.N. Doc. A/76/168 (July 16, 2021). Indeed, these are core principles of customary international law. Id.

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15 In 2017, the Special Rapporteur issued a detailed report on the use of force by state agents outside custodial settings. See U.N. Gen. Assemb., Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/72/178 (July 20, 2017) (“2017 II U.N. Special Rapporteur”). The Special Rapporteur emphasized that the prohibitions against torture and cruel, inhuman, or degrading treatment or punishment apply with equal force to the treatment of individuals by law enforcement officials even outside custodial settings. Id. ¶ 1.
In 2014, the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions addressed the protection of the right to life during law enforcement operations and the relevant restrictions on the use of force.\textsuperscript{16} See U.N. Gen. Assemb., Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014). The Special Rapporteur acknowledged that the right to life is a fundamental human right, and “a right without which all other rights would be devoid of meaning.” \textit{Id. }¶ 42. It is a right that is codified in international treaty law and recognized by customary international law.\textsuperscript{17} \textit{Id.}

According to the Special Rapporteur, the right to life has two components: (1) the substantive component which provides that “every person has the right to


be free from the arbitrary deprivation of life;” and (2) the procedural component, which requires a “proper investigation and accountability where there is reason to believe that an arbitrary deprivation of life may have taken place.” *Id.* ¶ 47. The substantive component requires that states comply with the principles of legality, necessity, precaution, proportionality, and non-discrimination when they use force against individuals.

The Special Rapporteur provided detailed explanations of these five principles. Legality requires that there must be a sufficient legal basis for the use of lethal force that is grounded in domestic law and complies with international standards. *Id.* ¶ 58. Necessity requires the use of force to pursue a legitimate objective. *Id.* ¶ 59. Precaution requires that states provide sufficient training and planning to minimize the resort to violence and the use of force. *Id.* ¶ 63. Proportionality requires that the use of force must be reasonable and proportionate to the seriousness of the offense and the threat posed. *Id.* ¶ 65. Finally, the principle of non-discrimination requires states to ensure that institutionalized racism and ethnic discrimination do not influence the use of lethal force. *Id.* ¶ 74.

The U.N. High Commissioner for Human Rights (“UNHCHR”) is the principal human rights official of the United Nations. The UNHCHR has issued numerous statements regarding respect for the right to life and concomitant restrictions on the use of force by law enforcement officials. In March 2020, for
example, the UNHCHR issued a detailed guide on the use of less-lethal weapons.\textsuperscript{18} \textit{OFF. U.N. HIGH COMM’R HUM. RTS., UNITED NATIONS HUMAN RIGHTS GUIDANCE ON LESS-LETHAL WEAPONS IN LAW ENFORCEMENT} (2020) (“UNHCHR GUIDANCE”). While police batons, rubber bullets, and chemical irritants are often designated less-lethal weapons, electrical weapons are also placed in this category.\textsuperscript{19} \textit{Id.} at 31. See also UNDOC RESOURCE BOOK, \textit{supra}, at 66.

The U.N. High Commissioner recognized that even less-lethal weapons can lead “to serious injury or even death.”\textsuperscript{20} UNHCHR GUIDANCE, \textit{supra}, at iv. Accordingly, the U.N. High Commissioner indicated that the use of force must comply with the principles of legality, necessity, precaution, proportionality, and non-discrimination. \textit{Id.} at 4. Each of these five principles must be assessed individually, and each is necessary to justify the use of force under international law. These principles reinforce the position taken by other U.N. bodies.\textsuperscript{21}


\textsuperscript{19} The U.N. High Commissioner has addressed the dangers of using electrical weapons on human beings. UNHCHR GUIDANCE, \textit{supra}, at 31–35.

\textsuperscript{20} In fact, the UNHCHR GUIDANCE document specifically avoids referring to weapons as “non-lethal” because “the use of any weapon can have fatal consequences.” \textit{Id.} at 1. This approach is also taken in the UNDOC RESOURCE BOOK, which notes that “less-lethal weapons” can be lethal. UNDOC RESOURCE BOOK, \textit{supra}, at 66.

\textsuperscript{21} See also UNDOC RESOURCE BOOK, \textit{supra}, at 16–20 (use of force must comply with the principles of legality, necessity, proportionality, and non-discrimination);
First, “[t]he use of force shall be regulated by domestic law and administrative regulations in accordance with international law.” Id. at 4. Second, “[l]aw enforcement operations and actions shall be planned and conducted while taking all necessary precautions to prevent or at least minimize the risk of recourse to force by law enforcement officials and members of the public, and to minimize the severity of any injury that may be caused.” Id. at 5. Third, “law enforcement officials may use force only when strictly necessary and only to the extent required for the performance of their duty.” Id. at 6. Fourth, “[t]he type and level of force used and the harm that may reasonably be expected to result from it shall be proportionate to the threat posed . . . or to the offence that an individual or group is committing or is about to commit.” Id. at 6–7. Fifth, “law enforcement officials shall not discriminate against any person on the basis of race, ethnicity, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, disability, property or birth, or other similar criteria.” Id. at 7.

The U.N. High Commissioner indicated that states are obligated to “ensure that law enforcement officials are held accountable for their actions” when they violate any of these five principles. Id. at 8. To achieve accountability, states must establish a rigorous monitoring and reporting system. Id. at 9. When allegations of

2017 II U.N. Special Rapporteur Report, supra, at 5–6 (use of force by state agents is governed by the principles of legality, necessity, proportionality, and precaution).
illegality are made, states must conduct independent and impartial investigations. *Id.* Significantly, the U.N. High Commissioner recognized that states “assume a greater responsibility” when they deprive an individual of liberty.” *Id.* at 11. As a result, there is a presumption of state responsibility when an individual who is detained or otherwise in custody dies. *Id.* On these occasions, the state has the burden of proof to establish that it is not responsible for the death. *Id.*

In 2021, the U.N. Human Rights Council adopted a resolution addressing the responsibility of law enforcement officials to comply with the prohibitions against torture and other cruel, inhuman, or degrading treatment or punishment.22 U.N. Hum. Rts. Council, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Roles and Responsibilities of Police and Other Law Enforcement Officials, U.N. Doc. A/HRC/RES/46/15 (Apr. 1, 2021). Citing several multilateral instruments, the resolution called upon states to ensure that the use of force by law enforcement officials, including the use of less-lethal force, complies with international standards. *Id.* ¶ 12. Specifically, the use of force must comply with the “principles of legality, necessity, proportionality, accountability and non-discrimination.” *Id.*

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B. **OTHER INTERNATIONAL INSTRUMENTS**

In addition to the United Nations, several other international and non-governmental bodies have issued legal opinions and statements regarding the use of force by law enforcement officials. These sources are also reflective of customary international law.

Consistent with the statements of the United Nations, other international bodies have indicated it is beyond dispute that the use of force by law enforcement officials must comply with the principles of legality, necessity, precaution, proportionality, and non-discrimination.\(^\text{23}\) These principles have been recognized in different forms and by different bodies on countless occasions. *See, e.g.*, GENEVA GUIDELINES, *supra*, at 8 (the use of force by law enforcement officials must comply with the principles of legality, necessity, precaution, proportionality, non-discrimination, and accountability); ICRC INT’L RULES, *supra*, at 18–19 (the use of force by law enforcement officials must comply with the principles of legality, necessity, proportionality, and accountability). These principles have also been recognized by scholars. *See, e.g.*, CASEY-MASLEN & CONNOLLY, *supra*, at 82, 95 (the use of force by law enforcement officials must comply with the principles of necessity, precaution, and proportionality); CASEY-MASLEN, *supra*, at 143 (the use of force by law enforcement officials must comply with the principles of

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\(^\text{23}\) *See also* AMNESTY INT’L GUIDELINES, *supra*, at 13–18 (use of force must comply with the principles of legality, necessity, proportionality, and accountability).
legality, necessity, precaution, and proportionality); Nils Melzer, Targeted Killing in International Law 100–02 (2008) (deprivation of life is arbitrary if it does not comply with the principles of legality, necessity, precaution, and proportionality); Aceves, supra, at 146 (use of force must comply with the principles of necessity, precaution, proportionality, and distinction).


The European Court of Human Rights has generated a robust jurisprudence regarding the lawful use of force by law enforcement officials. In Selmouni v.
France, for example, a detainee in police custody was subjected to repeated abuse. Selmouni v. France, Case No. 25803/94, Eur. Ct. Hum. Rts. (Judgment) (1999). The European Court held that France violated the prohibitions against torture and other inhuman and degrading treatment by subjecting the detainee to repeated physical assaults, including strikes to his head and chest. Id. ¶ 82, 92, 105. In its opinion, the Court emphasized that the international norms protecting individuals from such abuse enshrine “the most fundamental values of democratic societies.” Id. ¶ 95.

The European Court has established that states violate their human rights obligations when they use arrest techniques that cause serious injury or death.24 In Saoud v. France, a suspect died while handcuffed and held face down on the ground by police. Saoud v. France, Case No. 9375/02, Eur. Ct. Hum. Rts. (Judgment) (2007). In Semache v. France, a suspect died after being immobilized by police following his arrest. Semache v. France, Case No. 36083/16, Eur. Ct. Hum. Rts. (Judgment) (2018). In each case, the European Court held France responsible for violating the right to life norm. According to the European Court, “the mere fact that an individual dies in suspicious circumstances while in custody

24 See also Akkoc v. Turkey, Case No. 22947/93, Eur. Ct. Hum. Rts. (Judgment) ¶¶ 115–19 (2000) (use of electric shocks, blows to the head, and water treatment against detainee constituted torture); RODLEY & POLLARD, supra, at 93–94, 136–37 (discussing several European Court decisions involving the use of electric shock or physical restraints on detainees).
should raise an issue as to whether the State has compled with its obligations to protect that person’s right to life.” Mustafayev v. Azerbaijan, Case No. 47095/09, Eur. Ct. Hum. Rts. (Judgment) ¶ 53 (2017).

The European Court has also found states liable for violating international law even when a detainee does not die. In these cases, the Court highlighted the state obligation to protect detainees from torture and other inhuman or degrading treatment. See, e.g., Tali v. Estonia, Case No. 66393/10, Eur. Ct. Hum. Rts. (Judgment) ¶ 81 (2014) (finding a violation of the prohibition against inhuman or degrading treatment when a detainee was strapped to a restraining bed for several hours); Georgiev v. Bulgaria, Case No. 51284/09, Eur. Ct. Hum. Rts (Judgment) ¶ 78 (2014) (finding a violation of the prohibitions against torture and other inhuman or degrading treatment when individuals were handcuffed and subjected to electroshock batons). See generally SCHABAS, supra, at 184–86.

These legal opinions are not unique to the European human rights system. They are also recognized in other regional systems. For example, the African Commission on Human and Peoples’ Rights has indicated that when a person dies in state custody, “there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body.” African Comm’n. on Hum. & Peoples’ Rts., General Comment No. 3 on the African

In sum, customary international law establishes explicit standards regarding the permissible use of force by law enforcement officials. The allegations brought by the Petitioners implicate these standards and reveal the clear breach of these obligations by the United States. Like the corresponding U.S. treaty obligations regarding the right to life and the lawful use of force, the support for this conclusion is overwhelming.25

25 The United States has been found to violate these standards on many occasions. See, e.g., UNIV. CHI. L. SCH., INT’L HUM. RTS. CLINIC, DEADLY DISCRETION: THE FAILURE OF POLICE USE OF FORCE POLICIES TO MEET FUNDAMENTAL INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS (2020) (describing how many U.S. cities fail to meet the requirements of international human rights law regarding the use of force by law enforcement officials); AMNESTY INT’L, DEADLY FORCE: POLICE USE OF LETHAL FORCE IN THE UNITED STATES (2015) (describing how state and local law enforcement agencies fail to meet the requirements of international human rights law regarding the use of force).
CONCLUSION

For these reasons, the Inter-American Commission should rule in favor of the Petitioners and find that the United States breached its international obligations on the permissible use of force in the case of Anastasio Hernandez Rojas.

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